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NATURE OF THE CASE

Petitioner was convicted of first degree murder, armed robbery, aggravated vehicular hijacking, and concealment of a homicidal death, and was sentenced to life in prison. After unsuccessfully pursuing a direct appeal and an initial postconviction petition, petitioner moved for leave to file a successive postconviction petition raising a claim of innocence. The circuit court denied leave, and the appellate court affirmed. The question raised on the pleadings is whether petitioner's successive postconviction petition and attached affidavits support a colorable claim of actual innocence.

ISSUE PRESENTED FOR REVIEW

Whether petitioner's claim of innocence is not colorable given his detailed, corroborated confession that he shot Nicole Giles for drug money then burned her body in a trash can; and because his newly discovered evidence circumstantially implicating a State witness is rebutted by the trial evidence, contains inadmissible hearsay, and is not of such conclusive character that no reasonable juror would convict petitioner at a new trial.

JURISDICTION

Appellate jurisdiction lies under Supreme Court Rules 315 and 612(b). On May 22, 2019, this Court granted defendant's petition for leave to appeal. *People v. Robinson*, 124 N.E.3d 495 (Ill. 2019) (Table).

STATEMENT OF FACTS

A. Petitioner Is Convicted Based on “Overwhelming” Evidence, Including His Detailed Confession to the Crime.

Petitioner, Marques Northcutt, and Peter Ganaway were indicted in January 1998 for the first degree murder of Nicole Giles, along with armed robbery, aggravated vehicular hijacking, and concealment of a homicidal death. *See* D.A. C9-23.¹ The codefendants were tried jointly, with Northcutt opting for a jury and petitioner and Ganaway proceeding to bench trials. D.A. C140, R.A3-6.

As the trial evidence showed, petitioner confessed to shooting eighteen-year-old Giles in the neck with an assault rifle pursuant to a premeditated plan to kill and rob her of an anticipated \$200 to \$300. *See* SA9-13. Petitioner first lured Giles to his house through a phone call. After she had come inside, petitioner convinced Giles to give him, Northcutt, and Ganaway a ride in her car. SA15-17, SA23-22. Using her car keys, the men first hid a Mak-90 assault rifle behind her car seat, concealed in a laundry bag. SA19-20. Petitioner directed Giles to a viaduct at the intersection of 88th and Kingston, and Northcutt asked her to pull over, claiming that he needed to

¹ “Pet. Br.” denotes petitioner’s opening brief; “SA” denotes the People’s supplemental appendix; and citations to the record appear as follows: “D.A. C” and “D.A. R” refer to the common-law record and reports of proceedings prepared for petitioner’s direct appeal, No. 1-00-2981; “P.C. C” and “P.C. R” refer to the common-law record and reports of proceedings prepared for petitioner’s postconviction appeal, No. 1-12-3360; and “C” and “R” refer to the common-law record and reports of proceedings prepared for the successive postconviction appeal under review, No. 1-15-3547.

urinate. SA24-25. As Northcutt pretended to urinate, petitioner readied the assault rifle, unwrapping it, and setting it down outside the car with “the butt to the ground.” SA26-27. Ganaway and Northcutt yanked Giles out of the car, and she stumbled to the ground. SA28-29. Petitioner picked up the gun, moved close to Giles, aimed the gun at her, and “[s]queezed the trigger,” intending “to kill her.” SA29-31. He stated that Giles “just dropped.” SA32.

Northcutt then placed a plastic bag over Giles’s head, and the men stuffed her body into the back seat of her car. SA32-33. They drove until they found a suitable alley, where petitioner pulled Giles’s body from the back seat by her legs, reached into her pants pocket, and found \$50 in cash, which he handed to Northcutt. SA33-38. Petitioner and Northcutt dumped Giles’s body headfirst into a black plastic trash can. SA38. Petitioner then drove Giles’s car to alley behind “8918 South Bennett,” where Ganaway hid the assault rifle. SA40. Petitioner drove next to Country Club Hills, near a Metra train station, and abandoned the car, after the men had wiped the surfaces clean of fingerprints. SA41-44. They rode the train back to the city, paying their fares with a \$20 bill stolen from Giles. SA46-50.

When the men returned to petitioner’s house, petitioner told his sister’s boyfriend, Lenny Tucker, that he had killed Giles. SA55-56. Tucker warned him “that the police had a way of finding out if your fingerprints were on clothes.” SA56. Petitioner, Northcutt, and Ganaway decided that Giles’s “clothes had to be burned” to hide their fingerprints. SA57-58. The next

morning, a friend of petitioner's sister, Maisha Muhammad, agreed to drive petitioner and Ganaway to a gas station to fill a gasoline can, then to the alley where they had dumped Giles's body. SA69-73. Ganaway poured gasoline into the trash can, and petitioner lit the can on fire with a gasoline-soaked bandana. SA74-76. After Muhammad drove them home, petitioner told her that they had just burned Giles's body. SA76.

Nearly every detail of petitioner's court-reported statement was corroborated, starting with the phone call by which petitioner lured Giles to his house. Elise Reed testified that she was listening in on a three-way call around 3:00 p.m. on December 28, 1997, when Giles and petitioner discussed the plan for Giles to stop at petitioner's house. D.A. R.K41-42, R.K53-54. Phone records further confirmed that the call was placed from petitioner's home to Giles's phone. D.A. R.K76-79.

Two eyewitnesses, Anjanette Vance and Lavell Rogers, were in a car stopped at the intersection of 88th and Kingston, facing toward a viaduct, around 5:00 p.m. on December 28th. D.A. R.J22-23. Vance saw "someone sitting on the ground against a car" and made out two figures standing over the person on the ground. D.A. R.J23-25, R.J49-50. A third person exited the car and shot the person sitting on the ground, who "jerked and then slumped over." D.A. R.J25-27, R.J49-50. The figures placed a plastic bag over the victim's head and pulled the body into the back seat. D.A. R.J27-28, R.J50. Vance and Rogers flagged down a police car and led officers to the site of the

shooting, where investigators found a shell casing and a pool of Giles's blood. D.A. R.J28, R.J51, R.J59-60, R.J72-73, R.M56-57.

Tucker (the boyfriend of petitioner's sister, Latira Wortham) testified that around 8:00 p.m. on December 28th, he was at petitioner's house when petitioner, Ganaway, and Northcutt arrived together. D.A. R.K88-91. Petitioner told Tucker that "he had killed her," referring to "Nicole." D.A. R.K107. Petitioner told Tucker that "he jumped out the car and shot her in the head," D.A. R.K108, then "drove off and . . . put her body in a garbage can," D.A. R.K110. Tucker warned petitioner that fingerprints could be recovered from clothing. D.A. R.K108-09. The next day, petitioner told Tucker, "It's done, we did it, we burned her body." D.A. R.K111. Tucker admitted that, at Ganaway's request, he kept a tin of ammunition for an assault rifle and Giles's pager in his bedroom, later providing them to police. *See* D.A. R.K95-97, R.K201; *see also* D.A. R.K37-38.

Muhammad (Wortham's friend) testified that on the morning of December 29th, Wortham called Muhammad and asked to borrow her grandmother's burgundy Chevy Corsica. D.A. R.B12-14. Muhammad picked up Ganaway and petitioner in the Corsica, drove them to a gas station to fill a gas can, and then drove until they told her stop near an alley. D.A. R.B14-21. Petitioner and Ganaway got out with the gas can and disappeared down the alley, then jogged back ten minutes later. D.A. R.B21-23. After Muhammad returned them to petitioner's house, petitioner told Muhammad

that “he burnt the garbage can,” and asked if she “remember[ed] Nicky,” telling her “[t]hat’s whose body we burnt.” D.A. R.B34-35.

Michelle McClendon, petitioner’s girlfriend, testified that later on December 29th, she heard petitioner and Ganaway tell Northcutt that they “went and burned Nicky’s body” by soaking a bandana in gasoline and starting a fire in a garbage can. D.A. R.M11-13, R.M17-18. Petitioner also admitted to McClendon that he shot Giles in the head and stated that “when he shot her he could feel the air go through her body . . . right before she fell or hit the ground.” D.A. R.M25.

On the morning of December 29th, officers responded to a fire near 90th and Luella and arrived to find a melted black plastic garbage can with a charred body inside. D.A. R.J98-100. The forensic pathologist ultimately identified Giles, D.A. R.B95-99, and determined that the cause of her death was the wound from a gunshot that entered the left side of her neck and exited on the right side near her jaw, D.A. R.B82-85.

Canvassing the area around the alley, officers found a teenager, D’Andre Weaver, who had seen a burgundy sedan stop near the entrance to the alley just before the fire started. D.A. R.K164-65. As Weaver testified at trial, he saw two men exit the car and run into the alley; they returned to the car shortly before Weaver heard fire engines and saw smoke coming from the alley. D.A. R.J87-92. When shown a photograph of the burgundy Corsica

that Muhammad drove, D.A. R.B23-24, Weaver testified that it could have been the car he saw, D.A. R.J93-94.

A resident of the Village of Homewood, which is adjacent to Country Club Hills, noticed a car parked in front of his house “facing the wrong way” on the one-way street around 10:00 p.m. on December 28th. D.A. R.B7. The car was still there the next evening, so he called police to report it, D.A. R.B7-9, and police learned that the car was registered to Giles’s mother, D.A. R.K137-38, R.K169. The backseat was stained with Giles’s blood, and a plastic bag in the backseat bore bloody smears in a “hair transfer” pattern. D.A. R.K138, R.K146-47. No useable fingerprints were recovered from the car. D.A. R.K149-50, R.K159-60.

Detective Michael McDermott testified that he first questioned petitioner on the evening of December 30, 1997, D.A. R.C3-4, after detectives learned that Giles had been en route to petitioner’s house before disappearing, *see* D.A. R.K28, R.K35-36. In his first conversation with detectives, petitioner admitted that he had participated in the three-way phone call with Reed and Giles, but claimed that Giles never arrived as planned, and he spent the entire evening with Ganaway. D.A. R.C5. After learning that Ganaway had accompanied petitioner to the police station that night, detectives located him in a cafeteria and questioned him; Ganaway likewise claimed that Giles never arrived. D.A. R.C6-8.

Later, detectives moved Ganaway to an interview room and told him that an eyewitness had seen two men in a burgundy Corsica carry a gas can into the alley where the burning garbage can was discovered. D.A. R.C10-12. Ganaway admitted “that he did in fact burn a girl’s body in a garbage can,” but claimed that he did it because a stranger asked him for help. D.A. R.C12-13. After investigators pointed out that it was “strange” that the body was “actually Nicole Giles the girl who was going to come over to the house the day before,” Ganaway admitted to the murder and took detectives to recover the Mak-90 from an alley. D.A. R.C13-14, R.K175-76. Testing of the gun revealed that it could fire the bullets that Tucker had received from Ganaway and could have been the source of the shell casing recovered under the viaduct. D.A. R.B55-65.

After detectives told petitioner that he had been implicated by Ganaway, petitioner also confessed. D.A. R.C15. Ultimately, he gave the court-reported statement published at trial, SA3-79, explaining that he, Northcutt, and Ganaway planned to rob Giles because she had mentioned to petitioner that “she was going to pick up two to three hundred dollars from a supposed cousin.” SA10. At first, the men planned only to rob Giles, but after they realized that “she would go to the police,” they “formulated a plan . . . to kill her” to avoid getting caught. SA11. Using the “\$200 to \$300” they intended to steal from Giles, they intended to purchase “[t]hree 8-balls” of crack cocaine, then “[c]ut it down and sell it” to make a profit. SA13-14.

After doubling their money, they planned to “[p]urchase a pound of marijuana” and “[t]ake it to Minnesota,” because the prices there were higher. SA14. Thus, they concocted their plan to shoot Giles with the Mak-90 after directing her to the viaduct.

Petitioner was convicted of all counts, with the judge noting the “overwhelming evidence” of his guilt. D.A. C145, R.C157. The court found that “the murder was committed in a cold, calculated, and premeditated manner pursuant to a preconceived plan,” P.C. C44, and sentenced petitioner to life in prison, D.A. C180, R.E32.

B. The Circuit Court Denies Leave to File a Successive Postconviction Petition, and the Appellate Court Affirms, Holding that Petitioner Has No Colorable Claim.

After unsuccessfully pursuing a direct appeal, P.C. C40-50, and an initial postconviction petition, P.C. C173-224, petitioner moved the circuit court for leave to file a successive postconviction petition in May 2015, C41-62. The successive petition claimed, in pertinent part, that petitioner is actually innocent.

To support his claim, petitioner submitted affidavits of Andre Mamon, Donald Shaw, and Tavares Hunt-Bey. SA80-85. All three are incarcerated in

the Illinois Department of Corrections (IDOC) on convictions for first degree murder and provided their affidavits to petitioner while in custody.²

The three affiants claim to have seen Tucker involved, respectively, in the shooting under the viaduct, the disposal of the assault rifle, and the purchase of gasoline for burning the body. Mamon claimed that he was near the corner of 88th and Kingston, waiting for a bus, on the evening of December 28, 1997. SA83. He noticed Tucker “and one other guy” sitting in a car. *Id.* Later, Mamon saw a flash of light and heard a gunshot from the viaduct. *Id.* He then witnessed Tucker “shove a A.K. in the back seat of the same car,” then Tucker “and the two guys with him got in the car” and drove off. *Id.* Mamon asserts that petitioner’s “face wasn’t one of the faces [he] saw that night.” SA84. Mamon explained that during a phone call with an unnamed person in August 2014, he learned that “a guy named Ricky from around the way . . . had been locked up a long time for murder around the way on South Chicago under a viaduct,” and he agreed to provide an affidavit after talking to petitioner at a prison dining table. *Id.*

Shaw averred that he was “hanging out in the alley” behind 8918 South Bennett on December 28, 1997, when a “dark colored Ford Contour”

² Mamon is inmate number M09351, Shaw is inmate number R48130, and Hunt (now Hunt-Bey) is inmate number K58845. *See* IDOC website, search for inmate number, at <http://www2.illinois.gov/idoc/offender/pages/InmateSearch.aspx> (last visited Jan. 2, 2020). This Court may take judicial notice of information on IDOC’s website. *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 66.

stopped “a few garages down.” SA80. Shaw recognized Tucker as one of the men in the car; the other two he identified only as “guys that hung with” petitioner. *Id.* After Shaw greeted Tucker, a man “hopped out the backseat of the car with an AK type assault rifle,” ran down a gangway, and returned empty-handed. *Id.* Shaw’s memory was triggered when “an acquaintance of [his] was telling [him] about some information on Facebook” pertaining to petitioner, and Shaw provided his affidavit in March 2015. SA80-81.

Hunt-Bey claimed that he saw Tucker with two unidentified gang members in a “red-maroonish color Chevy Corsica” at a gas station filling up a gas can on December 29, 1997. SA82. Tucker allegedly told him that “he killed one of the [Conservative Vice Lords]’s sister the night before under a viaduct on South Chicago Avenue” and was “borrowing the car from a friend to tie up some loose ends.” *Id.* Hunt-Bey came forward and signed an affidavit in April 2014 when “a mutual friend” told him that “Lenny Tucker falsely testified” against petitioner. *Id.*

The circuit court denied leave to file the successive petition. It reasoned that petitioner needed to “set[] forth a colorable claim” by “rais[ing] the probability that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence.” SA93. Petitioner’s affidavits did not do so “[i]n light of petitioner’s confession and the testimony of the three State witnesses corroborating the confession and the details of the crimes.” SA96.

The court noted that none of the affiants provided conclusive evidence of petitioner's innocence. Mamon "state[d] that he heard a gunshot and saw a flash of light near the viaduct," but he did "not state that he saw the murder itself" or identify "who shot Giles." SA97. Shaw's testimony "provide[d] circumstantial evidence which appears to attempt to create an inference that, because Shaw did not observe petitioner hiding a firearm the night the murder occurred, he was not involved in the murder," but Shaw "cannot testify that petitioner was not present during the murder or on the following day when the body was burned." SA95. Finally, Hunt-Bey's testimony about Tucker's admission would be "inadmissible hearsay" and "[o]n retrial, Hunt-Bey's testimony would be limited to his observations" at the gas station. SA96. Like the other affiants, Hunt-Bey saw neither the murder nor the burning of the body and "[i]n light of petitioner's confession" and the corroborating testimony, Hunt-Bey's testimony "would not change the outcome on retrial." *Id.*

The appellate court affirmed, similarly stressing both the strength of the State's evidence at trial and "each affidavit's individual deficiencies." *People v. Robinson*, 2018 IL App (1st) 153547-U, ¶¶ 36-47. Petitioner's confession, corroborated by the witness testimony, "overwhelmingly pointed to [petitioner] as the person who murdered Giles and burned her body." *Id.* ¶ 47.

The appellate court also agreed that the affidavits of Mamon, Shaw, and Hunt-Bey did little to exonerate petitioner. Mamon stated that “he saw Tucker and two unknown men by a viaduct” and heard a gunshot but did “not state that he actually saw the murder take place” and did “not state who shot Giles.” *Id.* ¶¶ 39-40. Shaw’s testimony was weaker still: “[a]ll Shaw saw was someone apparently disposing of a rifle,” but he “did not observe the shooting of Giles or her body being burned.” *Id.* ¶ 38. And, “similarly,” Hunt-Bey’s affidavit did not establish petitioner’s innocence because “Hunt-Bey was not present at the shooting, did not see who shot Giles, and did not see who burned her body.” *Id.* ¶ 42. The court further noted that Tucker’s statement to Hunt-Bey claiming a role in the offense was “rebutted by the evidence at trial,” including petitioner’s confession and the testimony of Muhammad. *Id.* In sum, petitioner’s affidavits failed to “raise the probability that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence,” *id.* ¶ 36 (quoting *People v. Edwards*, 2012 IL 111711, ¶ 31), and the circuit court correctly denied leave to file the successive petition.

STANDARD OF REVIEW

This Court reviews de novo a circuit court’s judgment denying leave to file a successive postconviction petition. *People v. Bailey*, 2017 IL 121450, ¶ 13.

ARGUMENT

I. Petitioner Is Not Entitled to File a Successive Postconviction Petition Because He Has No Colorable Claim of Innocence.

A petitioner may claim that newly discovered evidence establishes his innocence, such that his incarceration violates the Illinois Constitution. *See People v. Coleman*, 2013 IL 113307, ¶¶ 83-84; *see also People v. Washington*, 171 Ill. 2d 475, 485-89 (1996) (recognizing freestanding claim of actual innocence under Ill. Const. art. I, § 2). To prevail on such a claim, a petitioner must “present[] supporting evidence that is new, material, noncumulative and, most importantly, of such conclusive character as would probably change the result on retrial.” *Coleman*, 2013 IL 113307, ¶ 84 (internal quotation marks omitted). This standard “is extraordinarily difficult to meet.” *Id.* ¶ 94.

The Post-Conviction Hearing Act “contemplates the filing of a single petition,” *id.* ¶ 81, and a petitioner may file a successive petition only with leave of court, 725 ILCS 5/122-1(f); *People v. Edwards*, 2012 IL 111711, ¶ 24. Successive petitions are disfavored because “[t]he successive filing of post-conviction petitions plagues [the] finality” of criminal convictions, and “[w]ithout finality, the criminal law is deprived of much of its deterrent effect.” *People v. Flores*, 153 Ill. 2d 264, 274 (1992) (quoting *Teague v. Lane*, 489 U.S. 288, 309 (1989)).

To file a successive petition asserting innocence, a petitioner must set forth a “colorable claim.” *Edwards*, 2012 IL 111711, ¶ 28. “[L]eave of court

should be granted [only] when the petitioner’s supporting documentation raises the probability that ‘it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.’” *Id.* ¶ 24 (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). In determining whether this standard is met, a court “take[s] as true” all “[w]ell-pleaded factual allegations of a postconviction petition and its supporting evidence . . . unless they are positively rebutted by the record of the original trial proceedings.” *People v. Sanders*, 2016 IL 118123, ¶ 48. The court must then evaluate the new evidence “along with the trial evidence” to determine whether it “would probably lead to a different result.” *Coleman*, 2013 IL 113307, ¶ 96.

Here, the circuit court correctly denied leave to file because, even assuming that the affidavits of Mamon, Shaw, and Hunt-Bey are newly discovered, material, and non-cumulative, they are not conclusive proof of petitioner’s innocence.

A. This Court May Assume that the Affidavits of Mamon, Shaw, and Hunt-Bey Are Newly Discovered, Material, and Non-Cumulative, But It Should Disregard Petitioner’s Affidavit.

This Court may assume, as the courts below did, that the affidavits of Mamon, Shaw, and Hunt-Bey are newly discovered, material, and noncumulative. Although petitioner must ultimately show that he was diligent in securing the affidavits to prevail on his claim, *see People v. Snow*, 2012 IL App (4th) 110415, ¶ 21 (noting that “newly discovered” component of innocence test imposes due diligence requirement), he has made a “colorable”

showing of diligence as to these affidavits for purposes of obtaining leave to file.

However, this Court should disregard petitioner's affidavit, C57-61, because it is not newly discovered. "Newly discovered evidence is evidence that was unavailable at trial and could not have been discovered sooner through due diligence." *People v. Harris*, 206 Ill. 2d 293, 301 (2002).

Everything in petitioner's affidavit was known to him at the time of trial, *see* C60 (stating that "[t]he majority of these details herein was actually in my initial statement while being questioned by Detectives that was not used"), and is not newly discovered, *see People v. Wideman*, 2013 IL App (1st) 102273, ¶ 17 (petitioner's own statement was not newly discovered evidence that could support innocence claim).

Because petitioner's affidavit is not newly discovered, this Court need not "take as true" the allegations therein, contrary to petitioner's argument. Pet. Br. 29. A court weighing a postconviction petition at the pleading stages (including the leave-to-file stage) should take as true the well-pleaded allegations in a petitioner's affidavit, just as it would any other affidavit, *see People v. Hall*, 217 Ill. 2d 324 (2005) (taking as true allegations in petitioner's affidavit concerning counsel's advice during plea negotiations) (cited at Pet. Br. 29), but only if the allegations are relevant to the petitioner's legal claim. Because evidence that is not newly discovered cannot support, and therefore is not relevant to, a claim of innocence, this Court should disregard

petitioner's affidavit. *See Edwards*, 2012 IL 111711, ¶¶ 34, 37-38 (declining to consider evidence that was not newly discovered in evaluating whether innocence claim was colorable); *People v. Velasco*, 2018 IL App (1st) 161683, ¶ 108 (court would "not consider" affidavit that was not newly discovered in evaluating claim of innocence).

B. The Overwhelming Evidence at Trial, Including Petitioner's Detailed, Corroborated Confession, Defeats His Claim of Innocence.

In convicting petitioner at trial, the circuit court emphasized that the evidence of his guilt was "overwhelming." D.A. R.C157. That evidence, which included petitioner's seventy-page, court-reported statement admitting his role in Giles's murder, defeats his innocence claim. *See Coleman*, 2013 IL 113307, ¶ 64 (evidence supporting innocence must be "conclusive," and "[c]onclusive means the [new] evidence, when considered along with the trial evidence, would probably lead to a different result"); *see also Harris*, 206 Ill. 2d at 301-02 (noting petitioner's confession in concluding that codefendants' affidavits, asserting that they framed petitioner, were not conclusive enough to support innocence).

In claiming innocence, petitioner "asks [the Court] to find that it is more likely than not that the jury would choose to entirely disregard the defendant's detailed confession" and instead credit the new evidence. *People v. Wideman*, 2016 IL App (1st) 123092, ¶ 67. But petitioner offers no colorable reason to believe that his confession was false. Petitioner never

even moved to suppress his confession. Although his successive petition vaguely alleged that his confession was coerced, *see* C42-47, petitioner offered no supporting evidence, even in his own affidavit, *see* C57-61, and, in any event, he abandoned that argument on appeal. Accordingly, this Court should presume that the confession was voluntary. *See People v. Shaw*, 2019 IL App (1st) 152994, ¶ 25 (presuming that guilty plea was voluntary when evaluating innocence because petitioner abandoned claim that plea was coerced).

More than that, petitioner's confession is both compelling and reliable. "[A] full confession in which the defendant discloses the motive for and means of the crime" is uniquely powerful evidence. *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991) (reasoning that courts should "exercise extreme caution before determining that the admission of [a] confession at trial was harmless" because "[a] confession is like no other evidence"). Petitioner gave just such a confession, explaining that he, Northcutt, and Ganaway killed Giles to steal \$200, plotting to use the money to buy cocaine, sell it for a profit, purchase marijuana, and travel to Minnesota to sell it. SA13-14.

Petitioner offered details that went far beyond the facts necessary to establish his guilt of the crime. For example, he described how the men used Giles's car keys to hide the assault rifle, wrapped in a laundry bag, behind her seat. SA19-21. He stated that Giles noticed the bag and asked the men how it came to be there, and petitioner responded, "[d]on't trip," meaning,

“[d]on’t worry about it.” SA22-23. In another example, petitioner told police that when the men rode the Metra train back to the city, Northcutt pulled Giles’s money from his pocket to pay their fares, and petitioner noticed that a twenty-dollar bill had Giles’s blood on it. SA49. Petitioner told Northcutt “to hand the money face down so the conductor wouldn’t see” the blood. SA49-50. It is exceedingly unlikely that petitioner fabricated such an elaborate narrative when questioned by police.

Petitioner even confessed to his own out-of-court admissions to Tucker, McClendon, and Muhammad, *see* SA56, SA59-60, SA76, each of whom testified at trial that petitioner admitted killing Giles and burning her body immediately following those events, during conversations with him on December 28th and 29th, *see* D.A. R.K107-10 (Tucker), R.M25 (McClendon), R.B35-36 (Muhammad).

Petitioner emphasizes that the affidavits demonstrate his innocence because they recount Tucker’s purported admission to Hunt-Bey. *See* Pet. Br. 30 (characterizing “Tucker’s confession to the murder” as “the most crucial new evidence” he submitted in support of his innocence); Pet. Br. 39 (arguing that his new evidence “indicat[ed] that Tucker was the real murderer” because it “includ[ed] *a confession by Tucker himself*”) (emphasis in original). But it is contradictory to claim, on the one hand, that Tucker’s untested hearsay admission is conclusive evidence of Tucker’s guilt — “so conclusive that it would probably change the result on retrial,” *Coleman*, 2013 IL

113307, ¶ 96 — while insisting, on the other hand, that his own contemporary, court-reported, and corroborated statement carries no weight in evaluating his innocence claim.

Instead, precedent dictates that the Court consider both, viewing “all the evidence, both new and old, together,” *id.* ¶ 95, to evaluate whether no reasonable juror could credit petitioner’s multiple confessions in light of the affiants’ testimony. Plainly, petitioner’s own contemporaneous confessions are more reliable than Tucker’s single admission recounted seventeen years later, and they defeat petitioner’s claim of innocence.

C. The Affidavits Support No Colorable Claim Because They Are Rebutted by the Trial Record, Contain Inadmissible Hearsay, and Are Not of Such Conclusive Character that No Reasonable Juror Would Convict Petitioner at a New Trial.

Petitioner has furthermore failed to set forth a colorable claim of innocence because his new affidavits are rebutted by the trial record, contain inadmissible hearsay, and are not of a sufficiently conclusive character. As this Court has emphasized, “the conclusiveness of the new evidence is the most important element of an actual innocence claim,” *Sanders*, 2016 IL 118123, ¶ 47, and the affidavits of Hunt-Bey, Mamon, and Shaw “do[] not raise the probability that, in the light of the new evidence, it is more likely than not that no reasonable juror would have convicted petitioner,” *Edwards*, 2012 IL 111711, ¶ 40.

Viewed separately, none of the affidavits is conclusive as to petitioner's innocence. Hunt-Bey's affidavit is rebutted by the trial record, contains inadmissible hearsay, and is consistent with petitioner's guilt. Shaw's affidavit implicates Tucker in the concealment of evidence but is likewise consistent with petitioner's guilt. And Mamon's affidavit contradicts itself with respect to the number of perpetrators and is consistent with petitioner's guilt. Taken together, even if this evidence were admitted to impeach Tucker at a new trial, and even if it led a factfinder to disregard Tucker's testimony entirely, the evidence of petitioner's guilt would still be overwhelming. Thus, petitioner has no colorable claim of innocence.

1. Hunt-Bey's affidavit is rebutted by the trial evidence, contains inadmissible hearsay, and is consistent with petitioner's guilt.

Hunt-Bey's affidavit should carry no weight. This Court "take[s] as true" only the "[w]ell-pleaded factual allegations of a postconviction petition and its supporting evidence" that are not "positively rebutted by the record of the original trial proceedings." *Sanders*, 2016 IL 118123, ¶ 48.

Hunt-Bey's allegations are rebutted. He claims that he saw Tucker, along with two other gang members, in a "red-maroonish color Chevy Corsica" at a gas station filling a gas can. SA82. The testimony about the maroon Corsica appears consistent with the trial testimony proving that the men who burned the trash can came from Muhammad's car. But Muhammad, who admitted her role in driving the men, testified that she

drove petitioner and Ganaway (and no one else). D.A. R.B18-22. Hunt-Bey's allegations are further rebutted by petitioner's confession that he and Ganaway were in the car with Muhammad during the trip to the gas station and then lit the garbage can on fire using a gasoline-soaked bandana. SA69-76.

Petitioner's claim that allegations in an affidavit may be rebutted only by "physical evidence," rather than witness testimony or a defendant's confession, Pet. Br. 13-14, 27, is unsupported. In *Sanders*, to the contrary, this Court noted that a witness's recantation of his trial testimony was insufficient to show innocence because it conflicted with *both* the physical evidence and witness testimony. 2016 IL 118123, ¶¶ 48-52 (cited at Pet. Br. 14).³

This Court should also discount Tucker's purported confession as related by Hunt-Bey because it is inadmissible hearsay, as the circuit court found. SA96. To be sure, hearsay evidence would be admissible at a postconviction evidentiary hearing because the rules of evidence do not

³ Nor did *Edwards* establish such a rule, as petitioner suggests. See Pet. Br. 14. This Court found in that case that the codefendant's postconviction affidavit was not sufficiently conclusive, *Edwards*, 2012 IL 111711, ¶ 40, and did not address the extent to which a petitioner's pre-trial statement can rebut the allegations of a postconviction affidavit. Notably, the Court considered the petitioner's pre-trial statement, in which he admitted he was present at the scene of the shooting, *id.* ¶ 5, in weighing the new evidence, noting that the codefendant's postconviction affidavit did "not assert that petitioner was not *present* when the shooting took place" and was consistent with Edwards's guilt on an accountability theory, *id.* ¶ 39 (emphasis in original).

govern such hearings, Ill. R. Evid. 1101(b)(3) (cited at Pet. Br. 30), but it would be inadmissible at a new *trial*. In evaluating a claim of innocence, a court “in effect predicts what another jury would likely do, considering all the evidence, both new and old, together,” *Coleman*, 2013 IL 113307, ¶ 97, and inadmissible evidence could not impact the result. As the Illinois Appellate Court has noted, an overly broad reading of Rule 1101 in this context would “conflict with the requirement that a postconviction actual innocence claim must be of such a conclusive character that it would probably change the result on retrial,” because that analysis “necessarily encompasses a determination of whether that evidence would be *admissible* at a retrial.” *Shaw*, 2019 IL App (1st) 152994, ¶ 67 (emphasis added); *see also People v. Wallace*, 2015 IL App (3d) 130489, ¶ 29 (affirming dismissal of innocence claim at first stage of postconviction review because “inadmissible hearsay . . . is insufficient as a matter of law to support a claim of actual innocence”).

Petitioner argues that Tucker’s admission to Hunt-Bey would be admissible under *Chambers v. Mississippi*, *see* Pet. Br. 31-33, which held that hearsay rules “may not be applied mechanistically to defeat the ends of justice” and infringe a defendant’s right to present a defense, 410 U.S. 284, 301 (1973). However, Tucker’s statement is insufficiently reliable. Acknowledging that “[o]ut-of-court statements are traditionally excluded because they lack the conventional indicia of reliability,” the *Chambers* Court held that the three hearsay statements at issue in that case should have been

admitted at trial because they “were originally made and subsequently offered at trial under circumstances that provided considerable assurance of their reliability” — including that the several “independent confessions provided additional corroboration for each.” *Id.* at 298-301. Here, petitioner offers no evidence that Tucker made multiple admissions, and Hunt-Bey recounted Tucker’s only alleged admission to the murder for the first time more than seventeen years after the statement was made.

Finally, admissibility aside, Tucker’s purported admission is not conclusive evidence of innocence because it does not preclude petitioner’s guilt. Petitioner repeatedly maintains that his affidavits establish that Tucker was “the real murderer,” Pet. Br. 11, 34, 37, but there were three people involved in Giles’s murder, and Tucker’s involvement would not preclude petitioner’s. Indeed, Tucker’s statement to Hunt-Bey does not even unequivocally assert that he *personally* shot Giles and could be construed as an admission that he was involved in shooting Giles with accomplices (including petitioner). In any event, by his own admission, petitioner planned the murder and would be accountable even if an accomplice had pulled the trigger. *See Edwards*, 2012 IL 111711, ¶ 39 (codefendant’s affidavit “that he was the principal offender” was not conclusive proof of innocence because petitioner could still be accountable).

Thus, Hunt-Bey’s affidavit is not of such conclusive character that no reasonable juror would convict petitioner in light of his testimony.

2. Shaw’s affidavit concerns only the concealment of evidence, in which crime Tucker was already implicated, and is consistent with petitioner’s guilt.

Shaw’s affidavit also fails to provide conclusive proof of innocence.

Shaw averred that he was “hanging out in the alley” on December 28, 1997, behind 8918 South Bennett, when a “dark colored Ford Contour” stopped “a few garages down.” SA80. Inside the car were Tucker and two other “guys that hung with” petitioner. *Id.* Shaw greeted Tucker, and a man “hopped out the backseat of the car with an AK type assault rifle,” then ran down a gangway and returned empty-handed. *Id.* As the appellate court noted, “[a]ll Shaw saw was someone apparently disposing of a rifle,” but “[t]his evidence would not exonerate [petitioner].” *Robinson*, 2018 IL App (1st) 153547-U, ¶ 38. His testimony pertained only to the disposal of evidence; Shaw “was not present at the shooting and did not observe the shooting of Giles or her body being burned.” *Id.*

Notably, the trial evidence had already implicated Tucker in the disposal of evidence: he had both Giles’s pager and ammunition compatible with the murder weapon in his bedroom. D.A. R.K95-97. Evidence establishing that Tucker had greater involvement in hiding the evidence, including the disposal of the murder weapon, would have impeached Tucker further but would not have prevented the fact-finder from crediting petitioner’s confession.

3. Mamon's affidavit is internally contradictory and consistent with petitioner's guilt as a third unidentifiable perpetrator.

Nor is Mamon's affidavit conclusive proof of petitioner's innocence.

Mamon claims that around the time of the shooting, he noticed Tucker "and one other guy" sitting in a car. SA83. Mamon heard a gunshot, then witnessed Tucker "shove a A.K. in the back seat of the same car," and then Tucker "and the *two* guys with him got in the car" and drove off. *Id.* (emphasis added). Mamon was certain that petitioner's face "wasn[']t one of the faces he saw that night." SA84.

Mamon's affidavit is inconsistent in recounting how many people he saw with Tucker on the night of the shooting, which is reason alone to reject it. But assuming Mamon intended to convey that he *initially* saw Tucker and only one other man in the car, then noticed a third person involved after he heard the gunshot, the testimony of the other eyewitnesses makes clear that Mamon could not have seen the face of the third person in the darkness of the viaduct. D.A. R.J23-24, R.J40, R.J49, R.J52-53. Accordingly, even taken as true, Mamon's declaration that petitioner's "face wasn[']t one of the faces [he] saw that night," SA84, is consistent with petitioner's guilt, and Mamon's affidavit also does not support a colorable claim of innocence.

4. Even if new impeachment led a factfinder to disregard Tucker’s testimony, the remaining evidence of petitioner’s guilt would still be overwhelming.

Even if the affidavits and Tucker’s purported admission are viewed collectively in terms of their impeachment value, they still fail to support a colorable claim of innocence. *See People v. Ortiz*, 235 Ill. 2d 319, 335 (2009) (noting that new evidence impeaching state witness is generally “an insufficient basis for granting a new trial”); *People v. Collier*, 387 Ill. App. 3d 630, 637 (1st Dist. 2008) (“Evidence that merely impeaches a witness will typically not be of such conclusive character as to justify postconviction relief.”).

The allegations in the three affidavits would impeach Tucker’s testimony concerning his own involvement in the crime, as petitioner notes. *See* Pet. Br. 28. But a factfinder could disregard Tucker’s testimony entirely, and the remaining evidence of petitioner’s guilt would still be overwhelming. Indeed, the factfinder likely *did* discount Tucker’s testimony for the reasons petitioner cites, including his complicity in concealing the homicide and his desire to avoid culpability. *See* D.A. R.K102-03 (Tucker admits that, during his interview, police told him that he was a suspect).

The value of Tucker’s trial testimony was primarily its corroboration of petitioner’s court-reported statement that he told Tucker that he had killed Giles. However, both Muhammad and McClendon also, separately, recounted petitioner’s out-of-court admissions to them, and Tucker’s testimony was

largely cumulative of theirs. Because Tucker's testimony was not necessary to petitioner's conviction, impeachment of Tucker's testimony cannot constitute conclusive proof of petitioner's innocence.

D. Rejecting Petitioner's Claim Does Not Require the Court to Make Credibility Determinations or Adopt a Rule that Circumstantial Evidence Can Never Support a Claim of Innocence.

Petitioner argues that the appellate court erred in its reasoning and that rejecting his claim requires a departure from this Court's established standards for reviewing postconviction petitions. *See* Pet. Br. 34-39.

Petitioner is mistaken in his depiction of both the appellate court's opinion and the law.

First, petitioner errs in suggesting that a rejection of his claim requires prohibited credibility determinations. *See* Pet. Br. 37-39. As this Court has emphasized, a court reviewing a postconviction petition at the pleading stage should not reject a claim of innocence solely because a petitioner's evidence is insufficiently reliable or his witnesses incredible. *Sanders*, 2016 IL 118123, ¶¶ 37, 42. Thus, in *Sanders*, this Court held that an innocence claim supported by a witness's recantation of his trial testimony should not be rejected on the logic that (1) recantations are inherently unreliable, or (2) the recantation at issue was incredible as proven at a codefendant's evidentiary hearing. *See id.* ¶¶ 33, 37, 42.

But it does not follow that the Court must presume that a petitioner's affiants are credible or, more importantly, "that a hypothetical fact-finder

would believe these affiants' testimony, *as opposed to* the State's witnesses." Pet. Br. 26-27 (emphasis added). Indeed, in *Sanders*, this Court ultimately held that the recantation was insufficiently conclusive because it "conflict[ed] with much of the evidence at petitioner's trial." 2016 IL 118123, ¶ 48. Because the recantation "merely add[ed] conflicting evidence to the evidence adduced at the trial," it was "not of such conclusive character as would probably change the result on retrial." *Id.* ¶ 52. This Court should hold here, as it did in *Sanders*, that petitioner's evidence is not conclusive, the key inquiry in evaluating whether an innocence claim is colorable.

Furthermore, rejecting petitioner's claim does not amount to an "implicit holding" that circumstantial evidence can never support a claim of innocence. *See* Pet. Br. 34. Contrary to petitioner's argument, *see* Pet. Br. 34-37, the appellate court never suggested that this was case; indeed, it expressly declined to reach that issue. *Robinson*, 2018 IL App (1st) 153547-U, ¶ 48 (declining to address whether "circumstantial evidence was insufficient as a matter of law to change the outcome on retrial"). In weighing the conclusiveness of the new affidavits, the appellate court properly observed that none of the affiants witnessed the shooting or the burning of Giles's body. Petitioner cannot dispute that direct testimony generally carries more weight than circumstantial evidence, and, accordingly, direct evidence is more likely to be conclusive in proving innocence. *See*

Ortiz, 235 Ill. 2d at 335 (finding petitioner established claim of innocence based on direct “first-person account of the incident”).

The flaw in petitioner’s evidence is not that it is circumstantial, but rather that it is not *compelling*. Assuming that circumstantial evidence could support a claim of innocence, *see generally Hayes v. Battaglia*, 403 F.3d 935, 938 (7th Cir. 2005) (positing, as example of compelling evidence of innocence, testimony by “non-relative who placed [petitioner] out of the city, with credit card slips, photographs, and phone logs to back up the claim”), petitioner’s circumstantial evidence tending, at best, to impeach the credibility of a non-essential State witness is not of a sufficiently conclusive character to support a colorable claim of innocence in the face of petitioner’s detailed and corroborated confession.

Because petitioner has thus “failed, as a matter of law, to raise the probability that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence,” the courts below correctly held that he was not entitled to file a successive postconviction petition. *Edwards*, 2012 IL 111711, ¶ 41.

CONCLUSION

This Court should affirm the appellate court's judgment.

January 8, 2020

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

ERIN M. O'CONNELL
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
Telephone: (312) 814-1235
Fax: (312) 814-1235
eserve.criminalappeals@atg.state.il.us

*Counsel for Respondent-Appellee
People of the State of Illinois*

RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is thirty-one pages.

/s Erin M. O'Connell
ERIN M. O'CONNELL
Assistant Attorney General

SUPPLEMENTAL APPENDIX

E-FILED
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Carolyn Taft Grosboll
SUPREME COURT CLERK

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1 STATE OF ILLINOIS)
) ss
2 COUNTY OF C O O K)

3 IN THE CIRCUIT COURT OF COOK COUNTY
4 COUNTY DEPARTMENT - CRIMINAL DIVISION

5 THE PEOPLE OF THE)
6 STATE OF ILLINOIS)
) Case No. 98-CR-3873
7 vs.)
)
8 RICKY ROBINSON)
 (Impleaded)

9 REPORT OF PROCEEDINGS

10 BE IT REMEMBERED that on the 23rd day of
11 November, 1999, this cause came on for hearing before
12 the Honorable DENNIS A. DERNBACH, Judge of said Court,
13 upon the information herein, the defendant having
14 entered a plea of not guilty.

15 APPEARANCES:

16 HON. RICHARD A. DEVINE,
17 State's Attorney of Cook County, by
18 MS. LUANN RODI,
19 MS. BRIDGETT HUGHES, and
20 MR. FRANK MAREK,
21 Assistant State's Attorneys,
22 Appeared on behalf of the People;

23 MR. TODD URBAN,
24 Appeared on behalf of the Defendant.

25 Gwendolyn Clark
26 Official Court Reporter
27 Circuit Court of Cook County
28 County Department-Criminal Division.

1 concealing a homicide... Finding of guilty.

2 All bonds will be revoked.

3 MS. HUGHES: Could we have December 15th.

4 THE COURT: December 15th, Mr. Brandstrader.

5 PSI ordered, order of court December 15, '99
6 for post-trial motions.

7 THE CLERK: Ricky Robinson.

8 THE COURT: Both sides ready?

9 MS. RODI: Yes.

10 THE COURT: State, call your next witness.

11 MR. MAREK: Call Assistant State's Attorney John
12 Karnezis.

13 (Witness was sworn.)

14 JOHN KARNEZIS,
15 called as a witness on behalf of the People of the
16 State of Illinois, having been first duly sworn, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MAREK:

20 Q Sir, state your name for the record?

21 A John Karnezis.

22 Q Spell your last name.

23 A K-A-R-N-E-Z-I-S.

24 Q And, Mr. Karnezis, what's your profession or

1 A Yes.

2 Q And these photos are in the same condition as
3 they were at the time as they were used by you as
4 exhibits during the court-reported statement?

5 A Yes.

6 Q People's Exhibit No. 69 appears to be in the
7 same conditions as it was when it was signed by both
8 yourself and Mr. Robinson?

9 A Yes, it is.

10 THE COURT: Was the photograph given a new number.

11 MR. MAREK: No. 70.

12 At this time subject to cross-examination,
13 State would offer into evidence People's Exhibit No. 69
14 and 70.

15 MR. URBAN: No objection.

16 MR. MAREK: At this time I would ask People's
17 Exhibit No. 69 be published by Assistant State's
18 Attorney Karnezis.

19 THE COURT: Okay.

20 THE WITNESS: "Statement of Ricky Robinson taken
21 in an interview room, second floor, Area 2 Violent
22 Crimes, Chicago Police Department, 727 East 111th
23 Street, Chicago, Cook County, Illinois on December 31,
24 1997 at 8:42 a.m.

1 Present: Mr. John Karnezis, Assistant
2 State's Attorney; Detective Michael McDermott, star
3 No. 20364, Area 2 Violent Crimes crimes. Reported by
4 Donna J. O'Connor, CSR, Illinois State License No.
5 84-003579.

6 Mr. Karnezis: Let the record reflect that we
7 are in an interview room at Area 2 police
8 headquarters. Today's date is December 31, 1997. The
9 time is now 8:42 a.m.

10 Present in the room with me, Assistant
11 State's Attorney John Karnezis, Detective Mike
12 McDermott, star No. 20364, the court reporter, and
13 Rickey Robinson.

14 We are here to take the statement of Rickey
15 Robinson concerning the investigation of the first-
16 degree murder of Nicole Giles which occurred on 28
17 December 1997 at approximately 4:45 a.m. at or near
18 8800 South Kingston.

19 QUESTION: Rickey Robinson, I talked
20 to you earlier and I explained to you
21 I am an assistant state's attorney, a
22 lawyer and a prosecutor, but not your
23 lawyer, is that correct?

24 ANSWER: Yes.

1 QUESTION: And before we spoke, I
2 advised you of your constitutional
3 rights, is that correct?

4 ANSWER: Yes.

5 QUESTION: I would like to do that
6 again. I will advise you of your
7 constitutional rights again, okay?

8 ANSWER: Sure.

9 QUESTION: Number one, do you
10 understand that you have the right
11 to remain silent?

12 ANSWER: Yes.

13 QUESTION: Do you understand that
14 anything you say can be used against
15 you in a court of law?

16 ANSWER: Yes.

17 QUESTION: Do you understand that
18 you have the right to talk to a
19 lawyer and have him present with you
20 while you are being questioned?

21 ANSWER: Yes.

22 QUESTION: Do you understand that
23 if you cannot afford to hire a lawyer
24 and you want one, a lawyer will be

1 appointed by the Court to represent
2 you before any questioning?

3 ANSWER: Yes.

4 QUESTION: Rickey, understanding all
5 of these rights, do you now want to
6 make a statement?

7 ANSWER: Yes.

8 QUESTION: Mr. Robinson, could you
9 please state your name for the record?

10 ANSWER: Rickey Robinson.

11 QUESTION: How old are you?

12 ANSWER: Eighteen.

13 QUESTION: What is your date of birth?

14 ANSWER: 5/25/79.

15 QUESTION: And do you go to school
16 now, Rickey?

17 ANSWER: No.

18 QUESTION: What was the last grade
19 you completed?

20 ANSWER: GED.

21 QUESTION: When did you complete your
22 GED?

23 ANSWER: A couple of months ago.

24 QUESTION: Where did you go to school

1 before completing your GED?

2 ANSWER: Bowen High School.

3 QUESTION: What grade did you complete
4 at Bowen High School?

5 ANSWER: Tenth.

6 QUESTION: Can you read and write the
7 English language?

8 ANSWER: Yes.

9 QUESTION: Okay. I would first like
10 to show you what I will mark as Exhibit
11 No. 1, a Polaroid photograph, and ask
12 you if you recognize the person in that
13 photograph?

14 ANSWER: Yes.

15 QUESTION: Who is that?

16 ANSWER: Marques Northcutt.

17 QUESTION: Do you know that person?

18 ANSWER: Yes.

19 QUESTION: How long have you been known
20 Marques Northcutt?

21 ANSWER: Since 6th or 7th grade.

22 QUESTION: How would you characterize
23 your relationship with Marques Northcutt?

24 ANSWER: Best friend.

1 QUESTION: I want to show you what I
2 have marked as Exhibit No. 2, another
3 Polaroid photograph. Do you recognize
4 the person depicted in that photograph?

5 ANSWER: Yes.

6 QUESTION: Who is that?

7 ANSWER: Another friend.

8 QUESTION: What is that person's name?

9 ANSWER: Andrew Ganaway.

10 QUESTION: How long have you known
11 Andrew?

12 ANSWER: Two years.

13 QUESTION: I want to talk about the
14 week or weeks preceding December 28, 1997?

15 ANSWER: Okay.

16 QUESTION: Prior to December 28, 1997,
17 were you friends with Andrew and Marques
18 who are depicted in Exhibit No. 1 and
19 Exhibit No. 2?

20 ANSWER: Yes.

21 QUESTION: And before December 28, 1997,
22 did the three of you plan or formulate
23 a plan to get some money?

24 ANSWER: Yes.

1 QUESTION: Can you tell us a little bit
2 about that plan?

3 ANSWER: Yes. The plan was to commit a
4 robbery.

5 QUESTION: Did you have a specific
6 person that you were going to rob?

7 ANSWER: Yes.

8 QUESTION: What was that person's name?

9 ANSWER: Nicole Giles.

10 QUESTION: How long had you known Nicole
11 Giles as of December 28, 1997?

12 ANSWER: A few months.

13 QUESTION: How do you know Nicole Giles?

14 ANSWER: Through her cousin Allison.

15 QUESTION: How would you characterize
16 your relationship with Nicole Giles?

17 ANSWER: Friend.

18 QUESTION: And who was the person that
19 decided to rob Nicole Giles?

20 ANSWER: The three of us me, Andrew
21 and Marques.

22 QUESTION: Why did you decide to rob
23 Nicole Giles?

24 ANSWER: For money.

1 QUESTION: Why did you pick Nicole Giles
2 out of all the people you know?

3 ANSWER: Because we knew she had a lump
4 sum of money coming in.

5 QUESTION: Rickey, how did you know that
6 Nicole had a lot of money coming in?

7 ANSWER: Because I had spoken with her
8 on the phone. She told me she was
9 going to pick up two to three hundred
10 dollars from a supposed cousin named
11 named Gerry.

12 QUESTION: Did you have that conversation
13 with Nicole Giles before December 28th?

14 ANSWER: Yes.

15 QUESTION: Did you have a general idea
16 when she was supposed to pick up this
17 money?

18 ANSWER: Yes.

19 QUESTION: When did you believe she
20 was going to get that money?

21 ANSWER: A week or so after I had spoken
22 with her.

23 QUESTION: Would that be a few days
24 before December 28th?

1 ANSWER: Yes.

2 QUESTION: Was your plan simply to
3 rob Nicole Giles?

4 ANSWER: At first, yes.

5 QUESTION: Did that plan change?

6 ANSWER: Yes.

7 QUESTION: Can you tell me exactly
8 how that plan changed from initially
9 just intending to rob her?

10 ANSWER: Because we knew if she would
11 just be robbed, she would go to the police.
12 We would be turned in. Then we formulated
13 a plan we would have to kill her.

14 QUESTION: Can you tell me exactly
15 why you decided it was necessary to kill
16 Nicole Giles if you robbed her?

17 ANSWER: So we would not get caught.

18 QUESTION: Did you have a plan as to
19 how you were going to kill Nicole Giles?

20 ANSWER: Yes.

21 QUESTION: Did you have a weapon in mind?

22 ANSWER: Yes.

23 QUESTION: Can you tell me what weapon
24 you had in mind?

1 ANSWER: A Mak-90.

2 QUESTION: I want to show you Exhibit
3 No. 3 which is a Polaroid photo. Do
4 you recognize what's depicted in that
5 photograph?

6 ANSWER: Yes.

7 QUESTION: What is that?

8 ANSWER: That is a Mak-90.

9 QUESTION: That is a Mak-90, a rifle?

10 ANSWER: Yes.

11 QUESTION: Is that a semi-automatic
12 rifle?

13 ANSWER: Yes.

14 QUESTION: And the gun or the rifle
15 that is depicted in that picture, did
16 you actually have that rifle?

17 ANSWER: Yes.

18 QUESTION: When did you get it?

19 ANSWER: Maybe about a month ago.

20 QUESTION: Where did you get that rifle
21 that's depicted in Exhibit No. 3?

22 ANSWER: From Daniel Williams' brother.

23 QUESTION: Is that the weapon that you
24 intended to use to kill Nicole Giles?

1 ANSWER: Yes.

2 QUESTION: How much money did you plan on
3 getting after robbing Nicole Giles?

4 ANSWER: About \$200 to \$300.

5 QUESTION: Did you have a plan for that
6 money? What were you going to use that
7 money for?

8 ANSWER: To purchase cocaine.

9 QUESTION: How much cocaine did you
10 intend to purchase?

11 ANSWER: Three 8-balls.

12 QUESTION: Can you describe what that
13 means by the term 8-ball?

14 ANSWER: An 8-ball is a weight of 3.5
15 grams.

16 QUESTION: So when you say three 8-ball,
17 would that mean three separate quantities
18 of 3.5 grams of cocaine?

19 ANSWER: Yes.

20 QUESTION: What type of cocaine did
21 you intend to purchase?

22 ANSWER: Crack cocaine.

23 QUESTION: What were you going to do
24 with the three 8-balls of cocaine?

1 ANSWER: Cut it down and sell it.

2 QUESTION: Were you going to make a
3 profit on these sales?

4 ANSWER: Yes.

5 QUESTION: Approximately how much
6 did you plan on profiting?

7 ANSWER: Double.

8 QUESTION: What were you going to do
9 with the money you received from those
10 sales?

11 ANSWER: Purchase a pound of marijuana.

12 QUESTION: What did you plan on doing
13 with the pound of marijuana?

14 ANSWER: Take it to Minnesota.

15 QUESTION: Why would you want to take
16 it to Minnesota?

17 ANSWER: To either double or triple my
18 money.

19 QUESTION: Why couldn't you just sell
20 the marijuana in Chicago instead of
21 Minnesota?

22 ANSWER: Because the price for the
23 quantities up there are higher.

24 QUESTION: I want to now talk about

1 December 28, 1997. Do you remember
2 what day of the week December 28th was?

3 ANSWER: Yes.

4 QUESTION: What day?

5 ANSWER: Sunday.

6 QUESTION: On that day did you see your
7 friends Marques and Andrew?

8 ANSWER: Yes.

9 QUESTION: Where did you see them?

10 ANSWER: At my house.

11 QUESTION: Approximately what time
12 did you meet at your house?

13 ANSWER: Andrew stays with me.

14 Marques spent Saturday night over at
15 my house.

16 QUESTION: On December 28th, did you
17 contact Nicole Giles?

18 ANSWER: Yes.

19 QUESTION: Did you call Nicole Giles
20 by Nicole or by another name?

21 ANSWER: By another name.

22 QUESTION: What name?

23 ANSWER: Nickey.

24 QUESTION: Did you contact Nicole

1 Giles on December 28th?

2 ANSWER: Yes.

3 QUESTION: How did you contact her?

4 ANSWER: Over the phone.

5 QUESTION: Did you call her or did
6 she call you?

7 ANSWER: I called her.

8 QUESTION: What phone number did you
9 call her at?

10 ANSWER: 708-481-3412.

11 QUESTION: When you called that number,
12 did you speak with Nickey Giles?

13 ANSWER: Yes.

14 QUESTION: Did you have a conversation
15 with her?

16 ANSWER: Yes.

17 QUESTION: What did you say to her and
18 what did she say to you?

19 ANSWER: I asked her to come and visit
20 and she said yes.

21 QUESTION: Why did you ask her to come
22 and visit you?

23 ANSWER: So that I could make the
24 robbery.

1 QUESTION: When you made that call,
2 were your friends Marques and Andrew
3 with you?

4 ANSWER: Yes.

5 QUESTION: After that call, did you
6 tell Marques and Andrew you had talked
7 to Nickey?

8 ANSWER: Yes.

9 QUESTION: Did Nicole Giles ever arrive
10 at your house?

11 ANSWER: Yes.

12 QUESTION: Where were you living at
13 the time?

14 ANSWER: 8707 South Colfax.

15 QUESTION: And did Nickey -- and had
16 Nickey Giles ever been over to your
17 house before?

18 ANSWER: Yes.

19 QUESTION: Do you know how Nickey Giles
20 got from her house to your house?

21 ANSWER: Yes.

22 QUESTION: How?

23 ANSWER: In a vehicle.

24 QUESTION: Can you describe that car?

1 ANSWER: Yes.

2 QUESTION: Describe it for me?

3 ANSWER: It was a Ford Contour, purple,
4 kind of violet type of color.

5 QUESTION: How many doors?

6 ANSWER: Four.

7 QUESTION: Do you remember the
8 approximate year of that model?

9 ANSWER: It was a '97 or '98.

10 QUESTION: Had you ever seen that car
11 before December 28, 1997?

12 ANSWER: Yes.

13 QUESTION: How many times?

14 ANSWER: Several.

15 QUESTION: On those several occasions,
16 was Nickey Giles always driving that
17 car?

18 ANSWER: Yes.

19 QUESTION: Did you recognize that car
20 that you described as Nickey Giles'?

21 ANSWER: Yes.

22 QUESTION: After Nickey Giles arrived
23 at your house, did she come inside or
24 did she stay in the car?

1 ANSWER: She came inside.

2 QUESTION: When she came inside your
3 house, who was there?

4 ANSWER: Me, my sister Letiera, Andrew,
5 Marques and my little brother.

6 QUESTION: After Nickey Giles entered
7 your house, did you get anything from her?

8 ANSWER: Yes.

9 QUESTION: What?

10 ANSWER: Her car keys.

11 QUESTION: Why did you get her car keys?

12 ANSWER: So I could slip the gun into
13 the car.

14 QUESTION: When you say the gun, are
15 you referring to the weapon that is
16 pictured in Exhibit No. 3?

17 ANSWER: Yes.

18 QUESTION: Tell me exactly how you
19 slipped that weapon into her car?

20 ANSWER: I gave the keys to Andrew,
21 and I grabbed the Mak-90. We went
22 to the car and put the Mak-90 into
23 the back of the seat.

24 QUESTION: When you put the Mak-90

1 into the back seat, was there anything
2 covering the rifle?

3 ANSWER: Yes.

4 QUESTION: What was that?

5 ANSWER: A laundry bag.

6 QUESTION: Tell me why you put a
7 laundry bag over the weapon?

8 ANSWER: So no one could see it,
9 especially her.

10 QUESTION: Why didn't you want her
11 to see the Mak-90?

12 ANSWER: So she would not know what
13 was going to happen.

14 QUESTION: What was going to happen?

15 ANSWER: She was going to be killed.

16 QUESTION: Who actually brought the
17 Mak-90 into Nicole's car?

18 ANSWER: Andrew.

19 QUESTION: Did you see Andrew
20 carrying the Mak-90?

21 ANSWER: Yes.

22 QUESTION: When you saw Andrew
23 carrying the Mak-90, did you see
24 the gun or did you simply see the

1 laundry bag?

2 ANSWER: I simply seen the laundry bag.

3 QUESTION: Who put the gun into the
4 laundry bag?

5 ANSWER: I did.

6 QUESTION: Did you recognize that
7 laundry bag when you saw Andrew
8 carrying it?

9 ANSWER: Yes.

10 QUESTION: After Andrew put the
11 Mak-90 into the car, what did you do?

12 ANSWER: I then went back into the
13 house.

14 QUESTION: When you went back into
15 the house, did you talk to Nickey?

16 ANSWER: Yes.

17 QUESTION: Did you say anything to her?

18 ANSWER: Yes.

19 QUESTION: What did you say?

20 ANSWER: I told her we was ready to go.

21 QUESTION: After saying that to Nickey,
22 did you leave your house?

23 ANSWER: Yes.

24 QUESTION: Where exactly did you go

1 when you left your house?

2 ANSWER: Into the car.

3 QUESTION: Who went with you to
4 the car?

5 ANSWER: Me, Marques, Andrew, and
6 Nickey.

7 QUESTION: Where was everyone seated
8 within that car?

9 ANSWER: Nickey was in the driver's
10 seat and Andrew was in the passenger
11 seat. I was behind the passenger's
12 seat and Marques was behind the driver.

13 QUESTION: Do you know if Nicole Giles
14 or Nickey ever noticed that laundry bag
15 that was in the back seat?

16 ANSWER: Yes.

17 QUESTION: How do you know whether
18 she noticed it or not?

19 ANSWER: She wanted to see if we had
20 enough room in the back, and she noticed
21 the bag.

22 QUESTION: Did she say anything about it?

23 ANSWER: Yes.

24 QUESTION: What?

1 ANSWER: What is this? Where did it
2 come from?

3 QUESTION: When she said that, was she
4 pointing to anything specifically?

5 ANSWER: She was touching it.

6 QUESTION: By it, do you mean the
7 Mak-90 that was concealed in the
8 laundry bag?

9 ANSWER: Yes.

10 QUESTION: What did you say after
11 she was touching the Mak-90?

12 ANSWER: Don't trip.

13 QUESTION: What did you mean by
14 the phrase don't trip?

15 ANSWER: Don't worry about it.

16 QUESTION: After you said don't
17 trip to Nickey Giles, what did she do?

18 ANSWER: She turned around and began
19 to drive.

20 QUESTION: Did anyone direct Nickey
21 Giles to go to a specific location?

22 ANSWER: Yes.

23 QUESTION: Who?

24 ANSWER: Andrew.

1 QUESTION: Where did Andrew direct
2 her to go?

3 ANSWER: To make a left on 87th Street
4 going west.

5 QUESTION: Did Nickey Giles follow
6 those directions?

7 ANSWER: Yes.

8 QUESTION: After she followed those
9 directions, did anyone else direct her
10 to drive?

11 ANSWER: Yes.

12 QUESTION: Who?

13 ANSWER: I.

14 QUESTION: Where exactly did you
15 direct her to go to, Ricky?

16 ANSWER: To make the left at South
17 Chicago.

18 QUESTION: You directed her to or --
19 what was the ultimate location you
20 told her to go to?

21 ANSWER: I told her to drive to 88th
22 and Kingston, stop under the viaduct,
23 to make a right.

24 QUESTION: Approximately what time was

1 it you directed her to that location?

2 ANSWER: Maybe 4:45 p.m.

3 QUESTION: Why did you direct her

4 to go under the viaduct?

5 ANSWER: So Marques could tell her

6 to pull over so he could use the

7 bathroom.

8 QUESTION: That was part of your plan?

9 ANSWER: Yes.

10 QUESTION: Did you know if Marques

11 really had to go to the bathroom?

12 ANSWER: Yes.

13 QUESTION: Did he have to go to

14 the bathroom?

15 ANSWER: No.

16 QUESTION: Did Marques leave the car?

17 ANSWER: Yes.

18 QUESTION: When Marques left the car,

19 could you still see him?

20 ANSWER: Yes.

21 QUESTION: Where were you positioned

22 when Marques left the car?

23 ANSWER: Still in my seat.

24 QUESTION: Where did Marques go

1 when he left the car?

2 ANSWER: He went around the back of
3 the car going to my side of the car.

4 QUESTION: When Marques arrived on your
5 side of the car, what did you do?

6 ANSWER: I then opened up my door.

7 QUESTION: Was that the driver's side
8 door or the passenger door?

9 ANSWER: The passenger back door.

10 QUESTION: Why did you open the back door?

11 ANSWER: So that I could lure the
12 Mak-90 outside of the door without her
13 seeing it.

14 QUESTION: After you opened your door,
15 did you touch the Mak-90?

16 ANSWER: Yes.

17 QUESTION: What did you do with it?

18 ANSWER: I sat it on the ground, sat
19 the butt to the ground.

20 QUESTION: Outside of the car?

21 ANSWER: Yes.

22 QUESTION: After you put the Mak-90
23 outside of the car, could you still see
24 Marques?

1 ANSWER: Yes.

2 QUESTION: Where was Marques at this time?

3 ANSWER: Standing at a pillar pretending
4 to be urinating.

5 QUESTION: Did you ever see Marques move
6 from that pillar back to the car?

7 ANSWER: No.

8 QUESTION: When you saw Marques at the
9 pillar, did you know where Andrew was at?

10 ANSWER: Yes.

11 QUESTION: Where was Andrew?

12 ANSWER: Exiting the passenger's door.

13 QUESTION: Did you see where Andrew went
14 after he left the passenger's door?

15 ANSWER: Yes.

16 QUESTION: Where?

17 ANSWER: He went around to Nickey's door.

18 QUESTION: What did he do once he
19 arrived at Nickey's door?

20 ANSWER: He tried to open it.

21 QUESTION: Was he able to do that.

22 ANSWER: No.

23 QUESTION: Why not?

24 ANSWER: Because Nickey had locked it.

1 QUESTION: Did you see Nickey lock
2 that door?

3 ANSWER: Yes.

4 QUESTION: What did you do after you
5 saw that Andrew couldn't get in that door?

6 ANSWER: I unlocked the door.

7 QUESTION: After you unlocked the door,
8 was Andrew still at the driver's side door?

9 ANSWER: Yes.

10 QUESTION: Did he open the door?

11 ANSWER: Yes.

12 QUESTION: What did he do then?

13 ANSWER: He tried to force her out
14 of the car.

15 QUESTION: When you say her, who
16 do you mean?

17 ANSWER: Nickey.

18 QUESTION: Was he successful in
19 forcing her from the car?

20 ANSWER: No.

21 QUESTION: What happened after he
22 tried to get her out of the car?

23 ANSWER: He stepped aside and came
24 back over to the passenger's side of

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the car.

QUESTION: What happened then?

ANSWER: Marques came and yanked her out of the car.

QUESTION: What part of Nicole's body did Marques grab to yank her from the car?

ANSWER: The left arm.

QUESTION: After he grabbed her left arm, did you see where Nickey went?

ANSWER: Yes.

QUESTION: Where?

ANSWER: Outside the door onto the ground.

QUESTION: When Nicole fell to the ground, where exactly were you?

ANSWER: I was exiting out of my door.

QUESTION: When you say my door, do you mean the driver's side back door or the passenger's door?

ANSWER: The passenger's back door.

QUESTION: When you exited the passenger's back door, what was the very first thing that you did?

ANSWER: Picked up the Mak-90.

QUESTION: Was the Mak-90 still in

1 the laundry bag?

2 ANSWER: No.

3 QUESTION: When you grabbed the Mak-90,
4 how did you hold it?

5 ANSWER: I held it ready to be fired.

6 QUESTION: After grabbing the Mak-90,
7 where exactly did you go?

8 ANSWER: I ran around the back of the
9 car over to the passenger's side.

10 QUESTION: Which side of the car did
11 you go to?

12 ANSWER: Excuse me. I ran to the back
13 of the car to the driver's side.

14 QUESTION: When you got to the driver's
15 side of that car, could you still see
16 Nickey Giles?

17 ANSWER: Yes.

18 QUESTION: Was she standing or sitting?

19 ANSWER: She was sitting.

20 QUESTION: Was she facing you or facing
21 away from you?

22 ANSWER: Facing away from me.

23 QUESTION: When you saw her facing
24 away from you, how close to you was she?

1 ANSWER: She was right there in front
2 of her door, and I was at the rear of
3 the car.

4 QUESTION: As you stood at the rear of
5 the car, were you still holding that
6 Mak-90 in your hand?

7 ANSWER: Yes.

8 QUESTION: Did you point that weapon in
9 any direction?

10 ANSWER: Yes.

11 QUESTION: Whose direction did you
12 point it in?

13 ANSWER: Nickey's.

14 QUESTION: When you put it in Nickey's
15 direction, what did you do?

16 ANSWER: Squeezed the trigger.

17 QUESTION: Why did you squeeze the
18 trigger of the Mak-90 as it was pointing
19 at Nickey Giles?

20 ANSWER: To kill her.

21 QUESTION: Why did you want to kill her?

22 ANSWER: To obtain the money.

23 QUESTION: As you pointed that Mak-90
24 at Nickey Giles, what exactly did you do?

1 ANSWER: I squeezed the trigger.

2 QUESTION: When you squeezed the trigger,
3 did anything happen?

4 ANSWER: Yes.

5 QUESTION: What happened?

6 ANSWER: A bang.

7 QUESTION: Did you see Nickey Giles move
8 at all after you squeezed that trigger?

9 ANSWER: Yes.

10 QUESTION: Can you describe what you saw?

11 ANSWER: She just dropped.

12 QUESTION: After she dropped to the
13 ground, did you ever see Nicole Giles
14 move again?

15 ANSWER: No.

16 QUESTION: What was the first thing
17 that you did after squeezing the trigger
18 of that Mak-90 and seeing Nicole Giles
19 fall to the ground?

20 ANSWER: I threw the Mak-90 to the back
21 of the car.

22 QUESTION: What did you do after you
23 discarded that gun?

24 ANSWER: I helped Marques after he had

1 pulled the plastic bag over her head.

2 I helped Marques pull the body to the
3 back seat.

4 QUESTION: After Nicole Giles' body
5 was placed in the back, what did you do?

6 ANSWER: Then I ran around to the
7 passenger's side and jumped in the
8 back seat.

9 QUESTION: Did you see Marques at that time?

10 ANSWER: Yes.

11 QUESTION: What did Marques do after
12 helping you place Nicole Giles' body in
13 the back seat?

14 ANSWER: He sat behind me.

15 QUESTION: In the back seat?

16 ANSWER: Yes.

17 QUESTION: Could you see Andrew at
18 that time?

19 ANSWER: Yes.

20 QUESTION: What did Andrew do after
21 you and Marques put Nicole Giles' body
22 in the back seat?

23 ANSWER: He hopped into the driver's seat.

24 QUESTION: At that point did Andrew

1 drive from that location?

2 ANSWER: Yes.

3 QUESTION: Did anyone tell Andrew where
4 to drive?

5 ANSWER: Yes.

6 QUESTION: Who.

7 ANSWER: Me.

8 QUESTION: Can you tell me exactly or
9 as close as you can remember what you
10 said to Andrew as you drove from that
11 location?

12 ANSWER: Drive up 90th and just drive
13 until I spotted an alley that we should
14 go down.

15 QUESTION: Why were you looking for an
16 alley, Ricky?

17 ANSWER: To get rid of the body.

18 QUESTION: Why did you want to get rid
19 of the body?

20 ANSWER: I did not want it to be in my
21 possession.

22 QUESTION: Why not?

23 ANSWER: Because I did not want to get
24 caught.

1 QUESTION: Did you eventually find an alley?

2 ANSWER: Yes.

3 QUESTION: Can you tell me where that
4 alley was located?

5 ANSWER: In between Crandon and Luella.

6 QUESTION: On 90th Street?

7 ANSWER: Yes.

8 QUESTION: In that alley, could you see
9 any buildings in that area?

10 ANSWER: There were houses.

11 QUESTION: In that alley, could you
12 see any garbage cans?

13 ANSWER: Yes.

14 QUESTION: Can you describe those cans?

15 ANSWER: There were three specific
16 garbage cans right next to some branches
17 and twigs.

18 QUESTION: Once you arrived at that
19 location, did you remain inside of the
20 car or did you get out?

21 ANSWER: I got out.

22 QUESTION: What did Marques do?

23 ANSWER: He got out.

24 QUESTION: What did Andrew do?

1 ANSWER: He got out.

2 QUESTION: At that time was Nicole
3 Giles still left in the back seat of
4 the car?

5 ANSWER: Yes.

6 QUESTION: At that time when she was
7 left in the back seat, did she still
8 have the plastic bag over her head?

9 ANSWER: Yes.

10 QUESTION: What did you do after getting
11 out of the car?

12 ANSWER: I checked to see if the branches
13 could be moved.

14 QUESTION: Why did you move the branches?

15 ANSWER: To see if we could put a body
16 up under it.

17 QUESTION: What did Andrew and Marques do?

18 ANSWER: They stood by the garbage can.
19 I decided to move the car up to the
20 garbage can.

21 QUESTION: Why did you move the car to
22 the garbage can?

23 ANSWER: So it would be easier so all
24 I would have to do is to open the door

1 and lift the door of the garbage can.

2 QUESTION: What happened to your idea
3 about moving the trees and putting the
4 body behind the trees?

5 ANSWER: Because we couldn't move it.
6 We did not have enough time to do that.

7 QUESTION: After you pulled the car up to the
8 garbage can, whose idea was it to place
9 the body in the garbage can?

10 ANSWER: All three of us.

11 QUESTION: After you pulled the car up,
12 can you describe how you moved the body
13 from the car?

14 ANSWER: I opened the door and pulled
15 the legs out first. Then I checked the
16 pocket for money I was hoping for.

17 QUESTION: How much money were you hoping
18 to find?

19 ANSWER: Approximately \$200.

20 QUESTION: Did you find any money in
21 Nicole's pockets?

22 ANSWER: Yes.

23 QUESTION: How much money did you find?

24 ANSWER: Fifty dollars.

1 QUESTION: What did you do with the fifty
2 dollars?

3 ANSWER: I handed it to Marques.

4 QUESTION: After you handed that fifty
5 dollars to Marques, did you continue
6 trying to move the body?

7 ANSWER: Yes.

8 QUESTION: Tell me about that?

9 ANSWER: I saw that the bag was trying
10 to come off of her face, so I covered
11 it up so I didn't have to see it.
12 Marques helped lift her up and put her
13 in the garbage can.

14 QUESTION: Can you describe how you
15 placed the body into the garbage can?

16 ANSWER: Head first.

17 QUESTION: After you placed Nicole
18 Giles' body head first into the garbage
19 can, what did you do?

20 ANSWER: We closed it and got back
21 in the car.

22 QUESTION: What position did you take
23 once inside the car?

24 ANSWER: The driver's side.

1 QUESTION: Where was Marques?

2 ANSWER: The back seat.

3 QUESTION: Where was Andrew?

4 ANSWER: Next to me in the passenger's seat.

5 QUESTION: Where did you drive to next?

6 ANSWER: I then drove to the back of the
7 house off 8918 South Bennett.

8 QUESTION: Why did you go to 8918 South
9 Bennett?

10 ANSWER: So Andrew could get rid of the
11 Mak-90.

12 QUESTION: Why did you want to get rid
13 of the Mak-90?

14 ANSWER: I did not want it in my
15 possession.

16 QUESTION: Why not?

17 ANSWER: I did not want to get caught
18 with it.

19 QUESTION: When you say get caught,
20 what did you not want to get caught for?

21 ANSWER: For murder.

22 QUESTION: Once you arrived at 8918
23 South Bennett, did you see Andrew leave
24 the car?

1 ANSWER: Yes.

2 QUESTION: When he left the car, was
3 he holding anything?

4 ANSWER: Yes.

5 QUESTION: What was he holding?

6 ANSWER: The Mak-90.

7 QUESTION: Did you see the direction
8 that Andrew walked?

9 ANSWER: Yes.

10 QUESTION: And when he walked from the
11 car, could you see him at all times?

12 ANSWER: No.

13 QUESTION: Did he disappear from your sight,
14 your line of sight?

15 ANSWER: Yes.

16 QUESTION: How long did Andrew disappear
17 for?

18 ANSWER: No longer than a minute.

19 QUESTION: When Andrew returned, did you
20 notice if he had anything in his hand?

21 ANSWER: Yes.

22 QUESTION: Did he have anything in his
23 hands?

24 ANSWER: No.

1 QUESTION: Once he returned to the car,
2 did Andrew say anything to you?

3 ANSWER: Yes.

4 QUESTION: What exactly did Andrew say?

5 ANSWER: He said I hid it on the side
6 of the garage.

7 QUESTION: When Andrew said that to you,
8 where was Marques?

9 ANSWER: Still sitting in the back seat of
10 the car.

11 QUESTION: After Andrew returned to the car,
12 did you then drive the car from 8918 South
13 Bennett?

14 ANSWER: Yes.

15 QUESTION: Where did you drive Nickey Giles'
16 car to next?

17 ANSWER: I drove Nickey's car to Country
18 Club Hills.

19 QUESTION: Why did you go to Country Club
20 Hills?

21 ANSWER: Because that's where I knew I
22 could ditch the car as far as from my
23 vicinity and get to the Metra Station.

24 QUESTION: Can you explain the route

1 you took from 8918 South Bennett to get
2 out to Country Club Hills?

3 ANSWER: Stoney Island to the expressway,
4 Route 57.

5 QUESTION: Where did you go within Country
6 Club Hills, if you know?

7 ANSWER: I went to one of Andrews friend's
8 house by the name of Megan.

9 QUESTION: Was anyone home at Megan's house?

10 ANSWER: No.

11 QUESTION: After you went to Megan's house,
12 where did you go next?

13 ANSWER: We then drove eastbound on 175th
14 Street, finding a place to ditch the car.

15 QUESTION: Where did you ultimately ditch
16 Nicole Giles' car?

17 ANSWER: Close to the Metra Station.

18 QUESTION: Did you ditch the car on a
19 side street or busy street?

20 ANSWER: Side street.

21 QUESTION: Do you remember if this street
22 ran north and south or east and west?

23 ANSWER: East and west.

24 QUESTION: Which way did you leave the

1 car facing?

2 ANSWER: East.

3 QUESTION: Was that car on the north
4 side of the street or south side of the
5 street?

6 ANSWER: North.

7 QUESTION: After you arrived at that
8 location, did you get out of the car?

9 ANSWER: No.

10 QUESTION: What did you do?

11 ANSWER: I started wiping off
12 everything I touched.

13 QUESTION: Why did you do that?

14 ANSWER: To erase my fingerprints.

15 QUESTION: Did you see Marques when
16 you were trying to wipe the surface
17 of the car?

18 ANSWER: Yes.

19 QUESTION: What was Marques doing?

20 ANSWER: The same.

21 QUESTION: Did you see Andrew?

22 ANSWER: Yes.

23 QUESTION: What was Andrew doing?

24 ANSWER: The same.

1 QUESTION: Whose idea was it to wipe
2 the fingerprints from inside of the car?

3 ANSWER: Mine.

4 QUESTION: Did you tell Marques to do the
5 same?

6 ANSWER: Yes.

7 QUESTION: Did you tell Andrew to do the
8 same?

9 ANSWER: Yes.

10 QUESTION: How long did you spend wiping
11 the surfaces in the car?

12 ANSWER: A minute and a half maybe.

13 QUESTION: Can you tell me exactly what
14 you used to wipe the surface of the car?

15 ANSWER: My jacket.

16 QUESTION: After you wiped the surface of
17 that car, did you then leave the car?

18 ANSWER: Yes.

19 QUESTION: Did Andrew leave the car?

20 ANSWER: Yes.

21 QUESTION: Did Marques leave the car?

22 ANSWER: Yes.

23 QUESTION: Where did you go next?

24 ANSWER: First we dropped the laundry

1 bag into the garbage can.

2 QUESTION: Was that the laundry bag
3 that you had used earlier to conceal the
4 Mak-90 as it was placed in the back of
5 Nicole Giles' car?

6 ANSWER: Yes.

7 QUESTION: Tell me again exactly where
8 you left that laundry bag?

9 ANSWER: Into one of the residences
10 around that area, the garbage can.

11 QUESTION: Did you notice anything
12 different about the laundry bag from
13 the time you used it to conceal the
14 weapon until the time you threw it away?

15 ANSWER: Yes.

16 QUESTION: What was different?

17 ANSWER: It was covered with blood.

18 QUESTION: Did you see any other blood in
19 that car?

20 ANSWER: No.

21 QUESTION: After you discarded that
22 laundry bag, where did you go?

23 ANSWER: I hid the keys across Dixie
24 Highway by the Metra Station.

1 QUESTION: Did anyone go with you?

2 ANSWER: Yes.

3 QUESTION: Who?

4 ANSWER: Andrew and Marques.

5 QUESTION: What were you going to do
6 at the Metra Station?

7 ANSWER: To get to the Metra Station
8 and head back to the city.

9 QUESTION: Did you intend to catch a
10 train at the Metra Station?

11 ANSWER: Yes.

12 QUESTION: Which direction were you
13 going to take that train?

14 ANSWER: North.

15 QUESTION: Did you have any money to
16 take a train?

17 ANSWER: No.

18 QUESTION: How were you going to pay
19 for your train ride?

20 ANSWER: The money we had stole from
21 Nicole Giles.

22 QUESTION: Who was holding that money?

23 ANSWER: Marques.

24 QUESTION: Do you remember which train

1 you caught?

2 ANSWER: Yes.

3 QUESTION: Tell me about that?

4 ANSWER: The E-Zone train that arrives
5 at 6:06 p.m.

6 QUESTION: Did Marques get on the train
7 with you?

8 ANSWER: Yes.

9 QUESTION: Did Andrew get on the train
10 with you?

11 ANSWER: Yes.

12 QUESTION: Did you buy your ticket
13 before getting on the train or once
14 you were on the train?

15 ANSWER: First I got rid of the keys
16 before I got on the train.

17 QUESTION: When you say keys, can you
18 be more specific?

19 ANSWER: Car keys.

20 QUESTION: Nicole Giles' car keys?

21 ANSWER: Yes.

22 QUESTION: Can you tell me exactly how
23 you got rid of the keys?

24 ANSWER: I threw them on the tracks.

1 QUESTION: Why?

2 ANSWER: I did not want them in my
3 possession.

4 QUESTION: Why not?

5 ANSWER: I did not want to get caught
6 with them.

7 QUESTION: After you threw the keys away,
8 did you then board the train?

9 ANSWER: Yes.

10 QUESTION: When you boarded the train,
11 did you already have your ticket?

12 ANSWER: No.

13 QUESTION: Where did you get your ticket?

14 ANSWER: On the train.

15 QUESTION: Who paid for the tickets?

16 ANSWER: Marques.

17 QUESTION: You say Marques paid for
18 those tickets?

19 ANSWER: Yes.

20 QUESTION: Did you see where he got the
21 money from?

22 ANSWER: Yes.

23 QUESTION: Where did he get the money from?

24 ANSWER: Out of his pockets.

1 QUESTION: Where were you seated when
2 Marques pulled that money from his pockets?
3 ANSWER: Right behind him.
4 QUESTION: From where you were, did
5 you have a view of that money yourself?
6 ANSWER: Yes.
7 QUESTION: Did you notice anything about
8 that money?
9 ANSWER: Yes.
10 QUESTION: What did you notice?
11 ANSWER: One of the bills had blood on it.
12 QUESTION: Do you remember the denomination
13 of that bill?
14 ANSWER: A Twenty-dollar bill.
15 QUESTION: After you saw what you
16 believed to be blood on this twenty-dollar
17 bill, did you say anything to Marques?
18 ANSWER: Yes.
19 QUESTION: What did you say to Marques?
20 ANSWER: I advised him to hand the money
21 face down so the conductor wouldn't see
22 the money.
23 QUESTION: Why did you not want the
24 conductor to see the money?

1 ANSWER: We wanted to get rid of the
2 bill so he would not be on to us.

3 QUESTION: Did Marques give this twenty-
4 dollar bill to the conductor?

5 ANSWER: Yes.

6 QUESTION: Did you ever get off that
7 train?

8 ANSWER: Yes.

9 QUESTION: Where did you get off it?

10 ANSWER: At 59th and University.

11 QUESTION: After you got off the Metra
12 train at 59th and University, where
13 did you go?

14 ANSWER: Switched over to the B-Zone
15 train.

16 QUESTION: When you say we, who do
17 you mean?

18 ANSWER: Me, Marques, and Andrew.

19 QUESTION: Where did you catch the
20 B-Zone train?

21 ANSWER: Over on the next platform.

22 QUESTION: Where did the B-Zone train
23 take you?

24 ANSWER: 95th between Commercial and Buffalo.

1 QUESTION: At 91st did you get off the
2 train?

3 ANSWER: Yes.

4 QUESTION: How about Marques?

5 ANSWER: Yes.

6 QUESTION: And Andrew?

7 ANSWER: Yes.

8 QUESTION: After leaving that train,
9 where did the three of you go?

10 ANSWER: I headed back towards South
11 Chicago cutting through the park to
12 Lenny's house.

13 QUESTION: How did you get the train
14 to Lenny's house?

15 ANSWER: We walked.

16 QUESTION: Who is Lenny?

17 ANSWER: My sister's boyfriend.

18 QUESTION: Does he have a last name?

19 ANSWER: Yes.

20 QUESTION: What is his last name?

21 ANSWER: Tucker.

22 QUESTION: Do you know where he lives?

23 ANSWER: Yes.

24 QUESTION: Where?

1 ANSWER: On 87th and Marquette.

2 QUESTION: When you went to Lenny's
3 house, was anyone there?

4 ANSWER: Yes.

5 QUESTION: Who?

6 ANSWER: His mother.

7 QUESTION: Were you looking for Lenny's
8 mother or for Lenny?

9 ANSWER: For Lenny.

10 QUESTION: After discovering Lenny was
11 not there, where did you go?

12 ANSWER: I went home.

13 QUESTION: Where is home?

14 ANSWER: At 87th and Colfax.

15 QUESTION: Did anyone go with you?

16 ANSWER: Yes.

17 QUESTION: Who?

18 ANSWER: Andrew and Marques.

19 QUESTION: When you arrived home, who
20 was there?

21 ANSWER: My mother, my sister, my
22 little brother, Lenny. That's it.

23 QUESTION: Is that the same Lenny you
24 say was at your house when you arrived

1 home? Is that the same Lenny whose house
2 you had gone to earlier?

3 ANSWER: Yes.

4 QUESTION: What was the very first thing
5 that you did after arriving home?

6 ANSWER: Went straight to my room and
7 took off all my clothes and advised
8 Marques and Andrew to do the same.

9 QUESTION: Why did you take your
10 clothes off?

11 ANSWER: Because I had blood on them.

12 QUESTION: Where did you have blood on
13 your clothes?

14 ANSWER: On my shoes and my pants.

15 QUESTION: Do you know where that blood
16 came from?

17 ANSWER: Yes.

18 QUESTION: Where?

19 ANSWER: Nicole Giles.

20 QUESTION: Why did you tell Marques to
21 take his clothes off?

22 ANSWER: Because I spotted some blood
23 on his jacket.

24 QUESTION: Why did you tell Andrew to

1 take his clothes off?

2 ANSWER: Because he had on dark clothes.

3 If there was any trace of blood, I would
4 wash it off.

5 QUESTION: Why was it so important to
6 wash off all these clothes?

7 ANSWER: So we had no trace of her blood.

8 QUESTION: Why did you not want any
9 trace of Nicole Giles' blood on those
10 clothes?

11 ANSWER: Because I didn't want to get caught.

12 QUESTION: What did you do with your
13 clothes, Marques' clothes, and Andrew's
14 clothes?

15 ANSWER: I placed them in the washing
16 machine downstairs.

17 QUESTION: All together?

18 ANSWER: Yes.

19 QUESTION: What did you do with your
20 shoes that you noticed had blood on them?

21 ANSWER: I threw them away.

22 QUESTION: Can you describe those shoes?
23 What color were they?

24 ANSWER: Red, white, and blue.

1 QUESTION: What brand?

2 ANSWER: Fila.

3 QUESTION: Were they high tops or low tops?

4 ANSWER: Low tops.

5 QUESTION: Leather or canvass?

6 ANSWER: Both.

7 QUESTION: Where did you throw them,
8 exactly?

9 ANSWER: In garbage can behind my house.

10 QUESTION: Approximately what time did
11 you arrive home?

12 ANSWER: About 8:00 or 8:15.

13 QUESTION: After you arrived home and
14 placed your clothes into the washing
15 machine and you threw your gym shoes
16 away, did you talk with anyone?

17 ANSWER: Yes.

18 QUESTION: Who?

19 ANSWER: I talked to Lenny.

20 QUESTION: Where did you have a
21 conversation with Lenny?

22 ANSWER: In the kitchen.

23 QUESTION: Who else was in the room
24 at that time?

1 ANSWER: Andrew.

2 QUESTION: Where was Marques?

3 ANSWER: In the room laying down.

4 QUESTION: What did you say to Lenny
5 and what did he say to you?

6 ANSWER: I told Lenny what we had did.
7 I told him we had killed Nicole, and he
8 didn't believe me.

9 QUESTION: What did you say that he
10 finally did believe you?

11 ANSWER: I convinced him by -- I gave
12 him details, like, how we had dropped
13 the car off and how we had caught the
14 Metra train.

15 QUESTION: After you told him those
16 facts, did he appear to believe your
17 story?

18 ANSWER: Yes.

19 QUESTION: What did you say to him then?

20 ANSWER: He asked me about the bag
21 that I kept the Mak-90 in and who had
22 touched it and that the police had a
23 way of finding out if your fingerprints
24 were on clothes.

1 QUESTION: After hearing this from
2 Lenny, what did you do?

3 ANSWER: I immediately thought about
4 the clothing of Nicole Giles that our
5 fingerprints may have been on it.

6 QUESTION: Why did you think that?

7 ANSWER: I was informed by Lenny by
8 touching cloth or clothing, they can
9 find fingerprints.

10 QUESTION: After having this
11 realization or thought, did you
12 talk to anybody about it?

13 ANSWER: Yes.

14 QUESTION: Who did you speak with?

15 ANSWER: Marques and Andrew.

16 QUESTION: Where did you speak to
17 Marques and Andrew?

18 ANSWER: In my room.

19 QUESTION: When did you speak to
20 Marques and Andrew?

21 ANSWER: After I finished speaking with
22 Lenny.

23 QUESTION: What did you say to Marques
24 and Andrew at that time?

1 ANSWER: What Lenny had told me. That
2 it is possible that our prints maybe on
3 Nickey Giles' clothes.

4 QUESTION: After having that discussion
5 with Andrew and Marques, did you formulate
6 another plan?

7 ANSWER: We formulated that the clothes
8 had to be burned.

9 QUESTION: Whose clothes?

10 ANSWER: Nicole Giles'.

11 QUESTION: Why did you believe you
12 had to burn Nickey Giles' clothes?

13 ANSWER: Because our prints maybe on it.

14 QUESTION: When did you plan to burn
15 Nickey Giles' clothes?

16 ANSWER: We planned to burn Nickey Giles'
17 clothes on the 28th.

18 QUESTION: Did you, in fact, burn
19 those clothes on the 28th?

20 ANSWER: No.

21 QUESTION: After you had this conversation
22 with Andrew and Marques, what did you do?

23 ANSWER: I then got on the phone and
24 called my grandmother.

1 QUESTION: Why did you call your
2 grandmother?

3 ANSWER: I called my Grandma to tell
4 her I was on my way.

5 QUESTION: Did you go to your grandmother's
6 house that evening?

7 ANSWER: Yes.

8 QUESTION: How did you get there?

9 ANSWER: I called Michelle, my girlfriend,
10 to come get me and take me.

11 QUESTION: What is Michelle's last name?

12 ANSWER: McClendon.

13 QUESTION: Did you talk to her at her house?

14 ANSWER: Yes.

15 QUESTION: What's her phone number?

16 ANSWER: Area 773-241-7936.

17 QUESTION: After you called your
18 girlfriend Michelle, did you have a
19 conversation with her?

20 ANSWER: Yes.

21 QUESTION: What did you say to her?

22 ANSWER: I had two conversations with her.
23 The first conversation I spoke with her,
24 I was telling her that remember what me,

1 Andrew, and Marques was talking about --
2 Nicole Giles -- well, we did it. She
3 told me she would call me back.

4 The second conversation I had with
5 her is when I called and asked her to
6 take me to my grandmother's.

7 QUESTION: When did you have that first
8 conversation with Michelle McClendon?

9 ANSWER: Right after I spoke to Marques
10 and Andrew about the clothing, the prints
11 on the clothing.

12 QUESTION: And in that first conversation
13 you told her you did it, is that correct?

14 ANSWER: Yes.

15 QUESTION: And what did you mean by it?

16 ANSWER: That we killed her.

17 QUESTION: Did you ever discuss your
18 plan to rob and murder Nicole Giles
19 when you were near Michelle McClendon?

20 ANSWER: Yes.

21 QUESTION: How many times?

22 ANSWER: Maybe once or twice.

23 QUESTION: And how much before December
24 28th did you discuss that plan to rob and

1 murder Nicole Giles?

2 ANSWER: A whole week.

3 QUESTION: How many times during the week?

4 ANSWER: Several times.

5 QUESTION: How many times was Michelle

6 McClendon present for those conversations?

7 ANSWER: Once or twice.

8 QUESTION: Did Michelle McClendon

9 participate in those conversations?

10 ANSWER: No.

11 QUESTION: Did she seem interested in

12 carrying out the plan of robbery and

13 murder?

14 ANSWER: No.

15 QUESTION: After you had this phone

16 conversation with Michelle and you

17 announced that you did it, you said you

18 had a second conversation with Michelle?

19 ANSWER: Yes.

20 QUESTION: During that conversation,

21 did you ask her to come to your house?

22 ANSWER: Yes.

23 QUESTION: Did she, in fact, arrive

24 at your house?

1 ANSWER: Yes.

2 QUESTION: Approximately what time did

3 Michelle arrive?

4 ANSWER: About 8:45.

5 QUESTION: When she arrived at your house,

6 did you leave your house?

7 ANSWER: Yes.

8 QUESTION: Did you leave alone or were you

9 with someone?

10 ANSWER: I was with someone.

11 QUESTION: Who?

12 ANSWER: Marques and Andrew.

13 QUESTION: Where did the four of you go?

14 ANSWER: We went to my grandmother's house.

15 QUESTION: How long did you stay at your

16 grandmother's house?

17 ANSWER: A little over 20 minutes.

18 QUESTION: What did you do at your

19 grandmother's house?

20 ANSWER: We got left over Christmas

21 plates and a.

22 QUESTION: After taking some Christmas

23 presents from your grandma's house,

24 where did you go?

1 ANSWER: I then went back home.

2 QUESTION: Was Andrew and Marques
3 still with you?

4 ANSWER: Yes.

5 QUESTION: How long did you remain at home?

6 ANSWER: Not even two minutes.

7 QUESTION: Did you leave home again with
8 Michelle, Andrew, and Marques?

9 ANSWER: Yes.

10 QUESTION: Where did you go?

11 ANSWER: To purchase some pot.

12 QUESTION: Where did you go to purchase
13 some pot?

14 ANSWER: 72nd and Coles.

15 QUESTION: By pot, you mean marijuana?

16 ANSWER: Yes.

17 QUESTION: When you went to 72nd and
18 Coles, did you purchase any marijuana?

19 ANSWER: No.

20 QUESTION: Where did you go after
21 72nd and Coles?

22 ANSWER: We then went to Michelle's house.

23 QUESTION: Where is that located?

24 ANSWER: On 73rd and Constance.

1 QUESTION: Were Marques and Andrew
2 still with you?

3 ANSWER: Yes.

4 QUESTION: When you went to Michelle's
5 house, did you pick anyone up?

6 ANSWER: Yes.

7 QUESTION: Who?

8 ANSWER: Michelle's best friend Myesha
9 and Giovanni.

10 QUESTION: Where did you go after
11 picking up Myesha and Giovanni?

12 ANSWER: We then went to the Shell
13 station on 83rd and Stoney Island for gas.

14 QUESTION: Where did you go after that?

15 ANSWER: We we went to drop Giovanni
16 off at home in Riverdale.

17 QUESTION: You dropped Giovanni off?

18 ANSWER: Yes.

19 QUESTION: After dropping Giovanni off
20 where did you go?

21 ANSWER: We went to drop Marques off.

22 QUESTION: After you went to drop
23 Marques off, who was left inside
24 the car?

1 ANSWER: Me, Michelle, Myesha and Andrew.
2 QUESTION: Where did you drop Marques off?
3 ANSWER: At 111th and Bell.
4 QUESTION: After dropping Marques off at
5 111th and Bell, did you Michelle direct
6 to drive to any of specific location?
7 ANSWER: No, sir, Andrew did.
8 QUESTION: Where did Andrew tell Michelle
9 to drive to?
10 ANSWER: Back to where we had ditched
11 the gun, 89th and Bennett.
12 QUESTION: Why did he want to go back
13 to 89th and Bennett?
14 ANSWER: He said he did not hide the
15 gun well enough. He wanted to rehide it.
16 QUESTION: Did Michelle drive to 8918
17 Bennett?
18 ANSWER: Yes.
19 QUESTION: When she drove to that
20 location, did Andrew get out of the car?
21 ANSWER: Yes.
22 QUESTION: When Andrew got out of the
23 car, did he disappear from your line
24 of sight?

1 ANSWER: Yes.

2 QUESTION: For how long?

3 ANSWER: For less than two minutes.

4 QUESTION: When Andrew returned, did
5 you notice if he had anything in his
6 hands?

7 ANSWER: No.

8 QUESTION: Did you see anything in his
9 hands?

10 ANSWER: No.

11 QUESTION: When he returned, did he say
12 anything to you?

13 ANSWER: Yes.

14 QUESTION: What did Andrew say?

15 ANSWER: He was stating he rehid the
16 gun across the alley on the side of the
17 garage.

18 QUESTION: Did you then leave 8918
19 South Bennett?

20 ANSWER: Yes.

21 QUESTION: Did you ask Michelle to
22 drive anywhere then?

23 ANSWER: Yes.

24 QUESTION: Where?

1 ANSWER: Home.

2 QUESTION: What did you do once you
3 arrived at home?

4 ANSWER: I asked that Myesha get out
5 of the car and I asked Andrew to get
6 out of the car.

7 QUESTION: Why?

8 ANSWER: So I could talk to Michelle alone.

9 QUESTION: Did you have a conversation
10 with Michelle at that time?

11 ANSWER: Yes.

12 QUESTION: What did you say to her?

13 ANSWER: I told her that I loved her,
14 and she told me that she loved me. Then
15 she said I was going to go to jail. I
16 told her don't think like that.

17 QUESTION: After that conversation,
18 did you leave the car?

19 ANSWER: Yes.

20 QUESTION: Where did you go?

21 ANSWER: Home.

22 QUESTION: What did you do once you
23 went home?

24 ANSWER: I went in the house and fixed

1 a plate from my Grandma's and layed
2 down and I fell asleep.

3 QUESTION: I now want to talk to you
4 about December 29, 1997, okay? The
5 following day on December 29, 1997,
6 did you speak with Marques?

7 ANSWER: Yes.

8 QUESTION: Did you speak with him in
9 person or over the phone?

10 ANSWER: Over the phone.

11 QUESTION: Do you remember approximately
12 what time you talked with him?

13 ANSWER: About 10:30 or 11:00 o'clock a.m.

14 QUESTION: Did you call him or did he
15 call you?

16 ANSWER: He called me.

17 QUESTION: Marques called you?

18 ANSWER: Yes.

19 QUESTION: What, if anything, did he say?

20 ANSWER: He said get up so that yall
21 could get on that business.

22 QUESTION: What did you understand that
23 phrase so yall can get on that business
24 to mean?

1 ANSWER: Going to erase those
2 fingerprints.

3 QUESTION: How did you plan on erasing
4 those fingerprints?

5 ANSWER: By burning them.

6 QUESTION: Did you have a plan on how
7 you were going to burn those clothes?

8 ANSWER: I did now.

9 QUESTION: What was that plan?

10 ANSWER: Gasoline.

11 QUESTION: Who thought of that plan?

12 ANSWER: I did.

13 QUESTION: How were you going to carry
14 that gasoline?

15 ANSWER: I hand't thought of that yet.

16 QUESTION: Did you think of that later?

17 ANSWER: Yes.

18 QUESTION: What did you come up with?

19 ANSWER: I told my sister to get the
20 gas can out of the shed. She called her
21 best friend Myesha to come over.

22 QUESTION: Is this Myesha the same
23 Myesha that was in the car on December
24 28th, 1997?

1 ANSWER: No.

2 QUESTION: This Myesha you asked your

3 sister to call, what's her last name?

4 ANSWER: Mohammed.

5 QUESTION: Do you know this person?

6 ANSWER: Yes.

7 QUESTION: How long have you known that

8 person?

9 ANSWER: Maybe 4 years.

10 QUESTION: Did Myesha Mohammed ever

11 arrive at your house?

12 ANSWER: Yes.

13 QUESTION: Approximately what time?

14 ANSWER: I don't remember.

15 QUESTION: Was it during the daytime

16 or night?

17 ANSWER: During the day.

18 QUESTION: When Myesha Mohammed arrived

19 at your house, was she in a car?

20 ANSWER: Yes.

21 QUESTION: Can you describe that car?

22 ANSWER: Yes.

23 QUESTION: What color was it?

24 ANSWER: A maroon Corsica.

1 QUESTION: How many doors?

2 ANSWER: Four.

3 QUESTION: Do you remember the approximate
4 year or model?

5 ANSWER: No.

6 QUESTION: Did you get into that Chevy
7 Corsica?

8 ANSWER: Yes.

9 QUESTION: Were you with anyone?

10 ANSWER: Yes.

11 QUESTION: Who?

12 ANSWER: Andrew.

13 QUESTION: Did you have anything once
14 you went to that car?

15 ANSWER: Yes.

16 QUESTION: What did you have.

17 ANSWER: The gas can.

18 QUESTION: Did you tell Myesha Mohammed
19 to drive to any specific location after
20 entering her car?

21 ANSWER: Yes.

22 QUESTION: Where to?

23 ANSWER: The Clark gas station on 87th
24 and Exchange.

1 QUESTION: Why did you tell her to go
2 to the Clark gas station at 87th and
3 Exchange?

4 ANSWER: So I could get a dollar's worth
5 of gas.

6 QUESTION: What did you plan on doing
7 with the dollar's worth of gas?

8 ANSWER: Erase the fingerprints.

9 QUESTION: Where were you going to put
10 this dollar's worth of gas?

11 ANSWER: In the gas can.

12 QUESTION: Did you bring that gas can
13 with you to 87th and Exchange.

14 ANSWER: Yes.

15 QUESTION: At 87th and Exchange, did you
16 pay for a dollar's worth of gas?

17 ANSWER: Yes.

18 QUESTION: Did you fill up that gas can?

19 ANSWER: Yes, three quarters.

20 QUESTION: After you put the gas into
21 the gas can, where did you go?

22 ANSWER: We proceeded up Commercial
23 Avenue to South Chicago -- Excuse me,
24 to 91st and crossed over to South

1 Chicago?

2 QUESTION: When you say we, do you
3 mean yourself, Myesha and Andrew?

4 ANSWER: Yes.

5 QUESTION: Who directed Myesha where
6 to drive?

7 ANSWER: I did.

8 QUESTION: Where did you tell her to go?

9 ANSWER: Over the viaduct to Nicole's body.

10 QUESTION: Were you able to find Nicole's
11 body quickly?

12 ANSWER: No.

13 QUESTION: Why not?

14 ANSWER: Because we had forgot which
15 alley we had put her in.

16 QUESTION: How long did it take to
17 locate the body?

18 ANSWER: 20 minutes.

19 QUESTION: At some point did you find
20 Nicole's body?

21 ANSWER: Yes.

22 QUESTION: Did you notice anything
23 different about the body when you
24 found it?

1 ANSWER: Yes.

2 QUESTION: What's that?

3 ANSWER: A garbage bag had been placed
4 on top of her?

5 QUESTION: Does this garbage can that
6 you placed Nicole in, can you describe it?

7 ANSWER: Black with wheels and a handle
8 on top of it.

9 QUESTION: Did you get out of the car
10 when you found Nicole's body?

11 ANSWER: Yes.

12 QUESTION: Did you have the gas can?

13 ANSWER: No.

14 QUESTION: Who had the gas can?

15 ANSWER: Andrew.

16 QUESTION: What did Andrew do with
17 the gas can?

18 ANSWER: He carried it.

19 QUESTION: To where?

20 ANSWER: To the garbage can.

21 QUESTION: What did he do once he
22 arrived at the garbage can?

23 ANSWER: He opened up the garbage can
24 and drenched the body with gas and her

1 clothes.

2 QUESTION: What did you do.

3 ANSWER: Then I closed the garbage can
4 and he gave me a bandanna that I put
5 on top of the garbage can, and we both
6 were holding the gas can pouring the
7 gasoline on it.

8 QUESTION: When you say on it, do you
9 mean the bandanna?

10 ANSWER: Yes.

11 QUESTION: After you placed the bandanna
12 on top of the garbage can, what did you
13 do with the lid?

14 ANSWER: The lid was closed.

15 QUESTION: What did you do with this
16 bandanna?

17 ANSWER: I then picked it up off of the
18 lids and opened the lid and made sure
19 that one part of the bandanna was
20 touching her body and the other part was
21 laying outside the garbage can, and
22 then I closed the lid.

23 QUESTION: What did you do next?

24 ANSWER: Andrew handed me some matches

1 and I lit a match and sat the bandanna
2 on fire, and then I seen nothing but
3 flames.

4 QUESTION: What did you do after seeing
5 the flames?

6 ANSWER: I ran.

7 QUESTION: Where did you run to?

8 ANSWER: I ran to the car, back to the car.

9 QUESTION: What did Andrew do?

10 ANSWER: He ran back to the car.

11 QUESTION: After arriving back to the
12 car, what did you do?

13 ANSWER: I got in and Myesha asked me
14 what did we just do.

15 QUESTION: What did you say?

16 ANSWER: I said remember Nicole Giles?
17 We just burned her body.

18 QUESTION: What did Myesha say?

19 ANSWER: She said why. I said because
20 our fingerprints were on it. She didn't
21 ask no more questions. She just wanted
22 to go.

23 QUESTION: Did you then go back to your
24 house on Colfax?

1 ANSWER: Yes.

2 QUESTION: Did you get out of the car
3 at that time?

4 ANSWER: Yes.

5 QUESTION: Where did you go then?

6 ANSWER: In the house.

7 QUESTION: Sometime after that, did you
8 come to the Area 2 police station on 111th
9 Street?

10 ANSWER: Yes.

11 QUESTION: That was on December 30, 1997?

12 ANSWER: Yes.

13 QUESTION: What time did you arrive here?

14 ANSWER: Fifteen minutes to 6:00 p.m.

15 QUESTION: Did you choose to come here
16 of your own free will?

17 ANSWER: Yes.

18 QUESTION: No one forced you to come here?

19 ANSWER: No.

20 QUESTION: Since you have been here,
21 how have you been treated, fairly?

22 ANSWER: Yes.

23 QUESTION: Have you been treated fairly
24 by the police officers?

1 ANSWER: Yes.

2 QUESTION: By the detectives?

3 ANSWER: Yes.

4 QUESTION: By the assistant state's
5 attorney?

6 ANSWER: Yes.

7 QUESTION: Have you been given any food
8 to eat?

9 ANSWER: Yes.

10 QUESTION: Have you been given water to
11 drink?

12 ANSWER: Yes.

13 QUESTION: Have you been allowed to rest
14 when you wanted to?

15 ANSWER: Yes.

16 QUESTION: Have you been allowed to use
17 the washroom?

18 ANSWER: Yes.

19 QUESTION: Prior to giving this statement,
20 has anyone threatened you in any way to
21 make a statement?

22 ANSWER: No.

23 QUESTION: Has anyone promised you
24 anything to make this statement?

1 ANSWER: No.

2 QUESTION: As we sit here today, are
3 you free from the influence of drugs
4 or alcohol?

5 ANSWER: Yes.

6 QUESTION: Okay. At this time the court
7 reporter is now going to type up your
8 statement. We will then read over the
9 entire statement together and you will
10 be allowed to make any additions or
11 corrections that you wish. Do you
12 understand that?

13 ANSWER: Yes.

14 MR. KARNEZIS: This will conclude the court-
15 reported statement of Ricky Robinson. The time is now
16 9:43 a.m."

17 Signed Ricky Robinson. Witnesses: Assistant
18 State's Attorney John Karnezis and Detective Mike
19 McDermott.

20 MR. MAREK:

21 Q Mr. Karnezis, was the transcript reviewed by
22 you and Mr. Robinson corrected?

23 A Yes.

24 Q And the corrections which are reflected in

State of Illinois)
) SS
 County of Lawrence)

A F F I D A V I T

I, Donald A. Shaw, being first duly sworn upon my oath depose and state that the following matters are both true and correct made upon my personal knowledge and belief, and if called as a witness, I am competent to testify thereto:

From approximately January of 1995 to August of 1999, I used to hang out and spend time on the block of 89th Bennett in the City of Chicago. Recently, an acquaintance of mine was telling me about some information on Facebook pertaining to Rickey (Rickey Robinson-E1). That conversation caused me to recall the night of December 28, 1997 which was three days after Christmas and two days before I heard about Rickey being locked up.

On the evening of December 28, 1997, while I was hanging out in the alley behind 8918 S. Bennett, a dark colored Ford Contour rode past me and stopped a couple of garages down. I approached the car and saw that it contained three guys that hung with Rickey. One was Lenny, whom I knew well and shook hands with. During my brief conversation with Lenny one of the guys hopped out the back seat of the car with an AK type assault rifle and ran between a gangway on the other side of the alley towards Constance Avenue. After about a minute or two he returned empty handed without the gun. He then got back into the backseat of the car which contained Lenny and Rick's other acquaintance and they drove off.

I can say with absolute certainty that Rickey Robinson-E1 was not in that Ford Contour with Lenny on 12-28-97, the evening when I saw that guy hop out with that assault rifle and put it up on the block.

After all these years it did not dawn on me that this information could and would have been helpful. I make this affidavit of my own free will and have not

been threatened, pressured, paid or otherwise coerced.

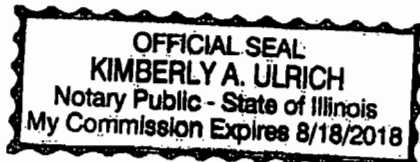
AFFIANT, 

Donald A. Shaw
10930 Lawrence rd.
Sumner, Illinois 62466

SUBSCRIBED and SWORN to before ME on the

5th day of March 2015

NOTARY PUBLIC 



STATE OF ILLINOIS)

COUNTY OF Will) ss.

AFFIDAVIT

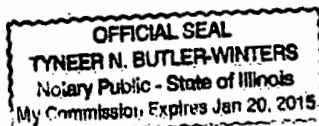
I, TAVARES HUNT - BEY, being first duly sworn upon oath do hereby depose and state that the following statements are true and correct. I further state as follows:

I, TAVARES HUNT-Bey, come forward stating knowledge and information in regard to the innocence of Ricky Robinson. I bear witness that on the date of December 29th 1997, at approximately 10-11 o'clock AM while hanging around the gas station on 87th and Exchange, I saw a red-maroonish color Chevy Corsica pull into the gas station. On alert, I approached the red Corsica and recognized the driver as a former fellow gang member by the name of "Leonard 'Lenny' Tucker." He threw up an identifiable gang sign when he saw me approach, then he and two more members exit the vehicle. The three shook hands with me. One went to pay for the gas, the second got back inside the car and Lenny stood outside of the car conversing with me. I asked Lenny who car was he driving and what were the three men about to get into that morning. Lenny answered telling me that he killed one of the CVL's sister the night before, under a viaduct on South Chicago Avenue, and that I should be on point because the CVL's might seek revenge behind what he did. He also said that he was just borrowing the car from a friend to tie up some loose ends. Lenny then pulled out a gas can from the front passenger side floor and began pumping gas into it while the guy who paid for the gas got back into the passenger seat of the car. When Lenny was done pumping gas we traded gang signs, he got back behind the steering wheel, drove off east of 87th street and turned south on Commercial street. The following day I heard the news that Ricky Robinson had confessed to the girl's killing and setting the body on fire. I knew right then that Ricky Robinson was taking the rap for Lenny, and because of me, Ricky and Lenny belonging to the same gang at the time, "honoring the Code of Silence," I couldn't and was not suppose to deal with the police and wouldn't feel safe amongsts the members as switching on a fellow member, because it was deemed a death violation. Not too long after that encounter, I was faced with my own set of legal issues. Recently through a mutual friend, I learned that Leonard Tucker had falsely testified against Ricky Robinson at trial and the knowledge that Lenny is no longer a member, I personally feel obligated to take this opportunity to give this knowledge to the Court with honesty.

Signed and sworn before me
this 25 day of April, 2014

[Signature]
NOTARY PUBLIC

1st TAVARES HUNT-Bey
Affiant - Pro-se.



STATE OF ILLINOIS)

) SS

COUNTY OF Will)AFFIDAVIT

I, Andre Mamon being first duly sworn under oath depose and state that the foregoing is true and correct and made upon my personal knowledge and I am competent to testify thereto.

In December of 1997, just days after Christmas, I
witnessed someone get shot and shoved into a car for the
first time in my life.

On that night I was with my father and three of his
unknown female associates.

We had just left the liquor store on 87th and South
Colfax ave., and walked down Colfax towards 88th street
to catch the bus on South Chicago, when a car parked
across the street honked the horn. The three girls waved
and yelled their hello greetings to a guy named Denny
who was sitting in the car with one other guy.

We continued to walk down Colfax, got to 88th and
turned right to Kingston ave., and then turned left on
Kingston to the bus stop. After standing there for a little
while our attention was averted to the viaduct across
South Chicago after a bright flash and loud gun shot. That's
when I saw that same Denny guy shove a A.K. in the back
seat of the same car we saw him sitting in. Denny and the
two guys with him got in the car and disappeared through
the viaduct. Our bus came and we got on it and out of there.

August 2014 sometime, while on the phone I was asked if I had ran into a guy named Ricky from around the way. I didn't know him at first because he go by a nick name now. That phone conversation revealed to me that had been locked up a long time for a murder around the way on South Chicago under a viaduct. I recalled that incident I saw years ago but the name to go with the face I saw was Lenny.

Recently while sitting at the dining table talking to a guy named R.C., I noticed his I.D. Card on his left lapel that read "Ricky Robinson". At that point I asked him if he had a murder that happened under a viaduct right off South Chicago. R.C. (Ricky) confirmed and I told him I was on the bus stop when it happened and his Face wasn't one of the faces I saw that night.

Knowing that I did not see Ricky under that viaduct that night, and that Ricky is not guilty, I wrote out this affidavit with help from my cellmate rather than to remain silent and have that on my conscience. These are my Facts that I offer to the Courts on behalf of Ricky Robinson on my own free will, free from any

Andrew Mamont

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 19th DAY December, 20 14

David Mansfield
NOTARY PUBLIC

"OFFICIAL SEAL"
DAVID MANSFIELD
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 10/28/2018

PAGE 3

threats, bribery or coercion

Andrew Mamon

AFFILIANT

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 19th DAY December, 2014

David Mansfield

NOTARY PUBLIC

"OFFICIAL SEAL"
DAVID MANSFIELD
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 10/28/2018

SA85

C: 00056

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Plaintiff-Respondent)	
)	Successive Post-Conviction
v.)	98-CR-0387301
)	
RICKEY ROBINSON,)	
)	Honorable Carol M. Howard
Defendant-Petitioner.)	Presiding Judge

ORDER

Petitioner, Rickey Robinson, seeks post-conviction relief from the judgment of conviction entered against him on July 6, 2000. Following a bench trial, petitioner was convicted of first degree murder, armed robbery, aggravated vehicular hijacking, and concealment of a homicidal death. 720 ILCS 5/9-1 (LEXIS 1998); 720 ILCS 5/18-2 (LEXIS 1998); 720 ILCS 5/18-4 (LEXIS 1998); 720 ILCS 5/9-3.1 (LEXIS 1998). He was sentenced to natural life in prison for the first degree murder; 30 years for the armed robbery, to be served consecutively; 30 years for the aggravated vehicular hijacking, to be served concurrently; and 5 years for concealment of a homicidal death, to be served consecutively.

As grounds for post-conviction relief, petitioner claims that: (1) his confession was the result of police coercion; (2) the testimony of three State witnesses was the result of police pressure; and (3) he is actually innocent of the crime based on newly discovered evidence. In support of his third claim, petitioner has attached affidavits from Yasmyn Johnson, Donald Shaw, Tavares Hunt-Bey, and Andre Mamon.

BACKGROUND

Petitioner's conviction stems from the December 28, 1997, shooting death of Nicole Giles. The underlying facts regarding petitioner's conviction have been recounted in the appellate court opinion on petitioner's initial petition for post-conviction relief. *People v. Robinson*, 2015 IL App (1st) 123360-U. At trial the State read into the record, without objection, a signed 70 page statement petitioner gave to Assistant State's Attorney John Karnezis and Detective Michael McDermott. Petitioner and two codefendants, Marques Northcutt and Peter Andrew Ganaway, decided to rob and murder Nicole Giles. On December 28, 1997, petitioner and codefendants were with Giles in her vehicle. They had Giles stop under a viaduct where petitioner shot her in the head. The three men took money from Giles' body and placed her remains in a trash can. The three men drove away in Giles' vehicle. The following day, petitioner and a codefendant returned to the scene and lit Giles' body on fire in an attempt to destroy evidence of their involvement. The State also introduced testimony from three witnesses, each of whom stated that petitioner admitted to shooting Giles. Finally, the State introduced testimony from two other witnesses who observed the shooting and corroborated details in the confession, but could not identify the assailants.

PROCEDURAL HISTORY

On direct appeal, petitioner argued that: (1) his sentence of natural life in prison for first degree murder violated his due process rights pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because (a) he was sentenced under an unconstitutional statute, (b) he did not waive his right to a jury for sentencing, (c) he was denied his right to a grand jury indictment, and (d) he was not given sufficient notice; and (2) his consecutive sentence for armed robbery was improper because (a) the murder was improperly used as a triggering offense and (b) it violated his due

process guarantees pursuant to *Apprendi*. On September 20, 2002, the appellate court affirmed petitioner's sentence and conviction. *People v. Robinson*, 333 Ill. App. 3d 1211 (2002). Petitioner filed a timely petition for leave to appeal. On February 5, 2003, the Illinois Supreme Court denied the petition. *People v. Robinson*, 202 Ill. 2d 691 (2003). Petitioner did not file a writ of certiorari to the United States Supreme Court.

On January 26, 2005, petitioner filed a *pro se* post-conviction petition, which the trial court advanced to the second stage. On October 7, 2010, the State filed a motion to dismiss the petition. On July 5, 2011, petitioner's attorney filed a Rule 651(c) certificate along with petitioner's *pro se* motion. On July 6, 2011, petitioner fired his public defender and requested to continue *pro se*. On October 12, 2011, this Court ordered petitioner to respond to the State's motion to dismiss. On October 18, 2011, petitioner filed a reply to the State's motion to dismiss, an amended *pro se* petition for post-conviction relief, a motion to provide private investigator assistance, and a motion for access to the prison law library. On November 17, 2011, this Court granted petitioner's motion for access to the prison law library, but denied his motion for a private investigator. On February 15, 2012, petitioner requested an extension of time to file a *pro se* amended post-conviction petition. Petitioner filed an amended *pro se* post-conviction petition on March 30, 2012. In the amended petition he claimed: (1) the trial court erred in (a) excusing petitioner from the courtroom during the testimony of testifying witnesses, (b) admitting a gun into evidence, (c) admitting the prior inconsistent statement of Peter Andrew Ganaway into evidence, and (d) admitting hearsay testimony of a phone conversation into evidence; (2) ineffective assistance of trial counsel for (a) failing to argue that petitioner was arrested in violation of the Fourth Amendment and failing to file a motion to suppress his statement, (b) failing to request a severed trial, (c) failing to object to the trial court's excusal of petitioner from

the courtroom, (d) failing to cross-examine and impeach a witness, (e) failing to object to prejudicial statements during closing arguments; and (3) ineffective assistance of appellate counsel.

On October 12, 2012, this Court granted the State's motion to dismiss and dismissed petitioner's amended petition. On October 29, 2012, petitioner filed a notice of appeal. On February 23, 2015, the appellate court affirmed the dismissal. *People v. Robinson*, 2015 IL App (1st) 123360-U.

ANALYSIS

On May 8, 2015, petitioner filed this successive post-conviction petition under the Post-Conviction Hearing Act ("Act"). 725 ILCS 5/122-1(f) (LEXIS 2015). The Act generally limits a petitioner to filing one petition. *People v. Holman*, 191 Ill. 2d 204, 209 (2000). Effective January 1, 2004, the legislature, in its amendment to section 122-1 of the Act, 725 ILCS 5/122-1(f) (LEXIS 2003), mandated:

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 demonstrated cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure.

In adopting the "cause and prejudice test," subsection (f) codifies the holding of the Illinois Supreme Court in *People v. Pitsonbarger*, 205 Ill. 2d 444 (2002). That is, as the statute provides:

- (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.

725 ILCS 5/122-1(f)(1)-(2) (LEXIS 2015).

“[B]oth elements, or prongs of the cause-and-prejudice test must be satisfied in order for the defendant to prevail.” *People v. Guerrero*, 2012 IL 112020, ¶ 15 (citing *People v. Pitsonbarger*, 205 Ill. 2d 444, 464; *People v. Thompson*, 383 Ill. App. 3d 924, 929 (2008))

I. Police Coercion

Initially, this Court notes that petitioner raised this issue under the auspice of an ineffective assistance of counsel claim. The appellate court affirmed the dismissal of the ineffective assistance of counsel claim but also stated that, if petitioner chose to file a successive post-conviction petition based on the underlying coercion allegation, it would be subject to the cause and prejudice showing. *Robinson*, 2015 IL App (1st) 123360-U, ¶ 58. In support of his claim, petitioner states he was coerced. Petitioner includes, in the body of his motion, a link to a 2006 Special State’s Attorney’s Report.

A. Cause

Petitioner has failed to identify an objective factor which impeded his ability to raise this claim in his initial post-conviction petition. Petitioner does not allege that the facts underlying his present claim were withheld from him. A claim of police coercion would be available to petitioner from the moment the coercion occurred and therefore could have been raised at any stage of his proceedings. Petitioner claims that he could not bring the claim in his initial post-conviction petition because he elicited help from gang affiliates in crafting his petition and feared reprisals for raising the claim of coercion and that his post-conviction counsel “thwarted petitioner’s tactic”. Petitioner has provided no evidence to support his argument that fear of gang reprisals constituted an objective factor preventing him from raising this claim. Furthermore, this argument is undermined by petitioner’s filings. In his initial petition petitioner failed to raise this claim, but in his *pro se* amended petition he raises the issue in relation to his ineffective

assistance of counsel claim. Finally, regarding petitioner's claim concerning ineffective assistance of counsel, the appellate court has already determined that post-conviction counsel was not ineffective and therefore this argument is without merit. *Robinson*, 2015 IL App (1st) 123360-U, ¶ 59.

In the alternative, petitioner claims that the 2006 Special State's Attorney's report is newly discovered evidence which demonstrates Detective McDermott's involvement in other cases of police coercion and substantiates his claim. Showing a factual or legal basis for a claim which was not reasonably available to counsel can constitute cause. *Pitsonbarger*, 205 Ill. 2d at 460 (citing *Strickler v. Greene*, 527 U.S. 263, 283 (1999)). The 2006 Special State's Attorney's report was released after petitioner filed his initial post-conviction petition. However, at the time that post-conviction counsel filed his 651(c) certificate, this evidence was available. After petitioner filed his post-conviction counsel, petitioner included this evidence in his amended *pro se* petition, which became the operative petition for his initial claim for post-conviction relief. This evidence was reasonably available to both post-conviction counsel and petitioner at the time that the amended petition was filed and does not constitute cause for a successive petition.

Petitioner does not meet the "cause" prong because he has failed identify an objective factor which prevented him from asserting a claim of police coercion in his previous filings.

B. Prejudice

The Illinois Supreme Court has held that a defendant has presented sufficient evidence at the pleading stage to entitle him to a post-conviction, evidentiary hearing for a torture claim when: (1) the officers allegedly involved are identified in other allegations of torture; (2) he has consistently claimed he was tortured; (3) his claims are "strikingly similar" to other claims of torture; and (4) the defendant's allegations are consistent with the Office of Professional

Standards (OPS) findings of systemic and methodical torture at Area 2 under Jon Burge and the Special State's Attorney's report's findings of torture. *People v. Wrice*, 2012 IL 111860, ¶ 43 (citing *People v. Patterson*, 192 Ill. 2d 93, 145 (2000)).

Even if petitioner satisfied the "cause" prong, he has failed to meet all of the *Patterson* factors to establish prejudice. First, there is sufficient evidence to show that Detective McDermott has been involved in other allegations of torture. Second, petitioner has not raised his claim consistently. Petitioner did not file a motion to suppress the statement and, when the statement was read in its entirety into the record, he did not object. Petitioner did not raise this claim on direct appeal. Petitioner did not raise this claim in his initial *pro se* post-conviction petition. Petitioner first raised this claim in his amended *pro se* petition under a claim of ineffective assistance of trial counsel. Third, petitioner does not provide any details of the coercion he alleges. Petitioner only makes a general allegation of coercion which cannot be compared to other instances of torture and coercion to show "striking similarity" to other claims of torture. Fourth, petitioner's allegations provide insufficient evidence to establish consistency with either OPS findings or the Special State's Attorney's report.

The fact that an officer involved in petitioner's case was involved in other allegations of torture is, in itself, insufficient to show prejudice without something more to substantiate the claim. Petitioner does not meet the "prejudice" prong because he has failed to satisfy three of the four *Patterson* factors for a claim of police coercion.

II. Witness Coercion

Petitioner previously raised this claim in his initial petition for post-conviction relief through his ineffective assistance of counsel claim. The appellate court considered the witness testimony while analyzing the ineffective assistance of counsel claim and found it consistent

with one another and the autopsy results. *Robinson*, 2015 IL App (1st) 123360-U, ¶ 32. The appellate court affirmed the dismissal of this issue. *Id.* at ¶ 60. Petitioner has not attached new evidence to the instant petition which would require reconsideration of the claim. "Rulings on issues that were previously raised at trial or on direct appeal are *res judicata*, and issues that could have been raised, but were not, are waived." *People v. Miller*, 203 Ill. 2d 433, 437 (2002). As such, this claim is barred by *res judicata*.

III. Actual Innocence

Petitioner claims that he is actually innocent based on newly discovered evidence. Petitioner alleges that he accepted blame on behalf of fellow gang member Leonard "Lenny" Tucker. Petitioner attached the affidavits of Yasmyn Johnson, Tavares Hunt-Bey, Andre Mamon, and Donald Shaw in support of his actual innocence claim.

Where a petitioner sets forth a colorable claim of actual innocence in a successive post-conviction petition, he is excused from showing cause and prejudice. *People v. Edwards*, 2012 IL 111711, ¶ 23. To do so, petitioner's request for leave of court and his supporting documentation must raise the probability that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence. *Edwards*, 2012 IL 111711, ¶ 24. The touchstone of actual innocence is "total vindication" or "exoneration." *People v. Barnslater*, 373 Ill. App. 3d 512, 520 (2007). This burden is not easily met. The United States Supreme Court has stated that a claim of actual innocence must be supported by "new reliable evidence—whether it be exculpatory, scientific, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." *Schulp v. Delo*, 513 U.S. 298, 324 (1995). The Supreme Court added, "[b]ecause such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful." *Id.* Pursuant to *People v. Ortiz*, 235 Ill. 2d 319 (2010), the

elements of a colorable claim of actual innocence are that the evidence in support of the claim must be: (1) newly discovered; (2) material and not merely cumulative; and (3) of such a conclusive character that it would probably change the result on retrial. *Ortiz*, 235 Ill. 2d at 331. Evidence is considered "newly discovered" if: (a) it has been discovered since the trial; and (b) the defendant could not have discovered it sooner through due diligence. *Id.* at 334. Evidence is material if it is relevant and probative of the petitioner's innocence. *People v. Coleman*, 2013 IL 113307, ¶ 96. Non-cumulative means the evidence adds to what the jury heard. *Id.*

This Court will consider the affidavits of Yasmyn Johnson, Tavares Hunt-Bey, Andre Mamon, and Donald Shaw to determine whether the evidence meets the above mentioned requirements.

A. The Affidavit of Yasmyn Johnson

In relevant part, in her affidavit dated November 11, 2014, Yasmyn Johnson states that, on December 28, 1997, she saw petitioner, her then boyfriend, at 50 W. 71st Street. She initially saw petitioner when the sun was beginning to set and was with petitioner for approximately one to two hours.

First, petitioner has failed to meet the burden of demonstrating that Johnson's affidavit is newly discovered evidence. Although the affidavit is written after petitioner's trial, petitioner could have discovered this evidence on his own through due diligence. Johnson was petitioner's girlfriend at the time and petitioner should have been aware of his own whereabouts on the night of the crime and therefore could have obtained this evidence for his trial.

Second, petitioner has not established that the evidence is relevant or probative of his innocence. Taken as true, Johnson's affidavit only indicates that she saw petitioner at some point in the evening of the crime for approximately one to two hours but does not indicate that this

visit occurred during the timeframe of the crime or otherwise serves as an alibi for petitioner. It is not probative of petitioner's innocence.

Third, Johnson's affidavit does not directly contradict any other evidence and would have little, or no, bearing on retrial.

Accordingly, Johnson's affidavit does not support a colorable claim of actual innocence.

B. The Affidavit of Donald Shaw

In his affidavit dated March 5, 2015, Donald Shaw states that, on the evening of December 28, 1997, he observed a Ford Contour containing a person identified as "Lenny" and two of petitioner's acquaintances stop near 8918 S. Bennett. Shaw observed one of the vehicle occupants exit with an 'AK type' firearm and return two-three minutes later without the weapon. He also states that petitioner was not in the vehicle at that time.

Shaw's affidavit satisfies the first two *Ortiz* elements: it is newly discovered and material. Shaw's affidavit is not of such a conclusive character that it would probably change the outcome on retrial. Shaw provides circumstantial evidence which appears to attempt to create an inference that, because Shaw did not observe petitioner hiding a firearm the night the murder occurred, he was not involved in the murder. Shaw did not see the crime occur and cannot testify that petitioner was not present during the murder or on the following day when the body was burned. In light of petitioner's confession and the testimony of the three State witnesses corroborating the confession and the details of the crimes, Shaw's testimony would not change the outcome on retrial.

Accordingly, Shaw's affidavit does not support a colorable claim of actual innocence.

C. The Affidavit of Tavares Hunt-Bey

In his affidavit dated April 25, 2014, Tavares Hunt-Bey states that, on the morning of December 29, 1997, he had a conversation with Leonard Tucker at a gas station located near the corner of 87th Street and Exchange Avenue. Hunt-Bey states that Tucker confessed to the crime, filled a can with gasoline, and departed the gas station in a red Chevy Corsica in the company of two unidentified men.

Hunt-Bey's affidavit satisfies the first two *Ortiz* elements: it is newly discovered and material. Hunt-Bey's affidavit is not of such a conclusive character that it would probably change the outcome on retrial. Hunt-Bey's testimony about Tucker's statement is inadmissible hearsay. On retrial, Hunt-Bey's testimony would be limited to his observations on December 29, 1997. Those observations are that Tucker drove to the gas station with two other people, filled a can with gas, and left. Hunt-Bey did not observe the murder or the subsequent burning of the body. In light of petitioner's confession and the testimony of the three State witnesses corroborating the confession and the details of the crimes, Hunt-Bey's testimony would not change the outcome on retrial.

Accordingly, Hunt-Bey's affidavit does not support a colorable claim of actual innocence.

D. The Affidavit of Andre Mamon

In his affidavit dated December 19, 2014, Andre Mamon states that, on the night of an unspecified day after Christmas, he observed a person identified as Lenny and two unidentified individuals near a viaduct on South Chicago Avenue. While there, he heard a gunshot and saw a flash of light. After the gunshot, he observed the person identified as Lenny place a firearm in a

vehicle and leave the scene. He states that he met petitioner in prison and he does not recognize petitioner as one of the three people he observed near the viaduct.

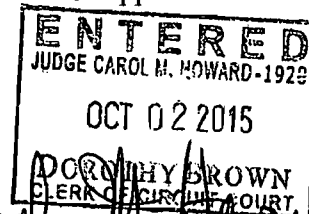
Mamon's affidavit satisfies the first two *Ortiz* elements: it is newly discovered and material. Mamon's affidavit is not of such a conclusive character that it would probably change the outcome on retrial. Mamon does state that he heard a gunshot and saw a flash of light near the viaduct. Mamon does not state that he saw the murder itself, who shot Giles, or who burned the body the following day. Mamon's observations are not of such a conclusive nature that they would probably change the outcome of the case on retrial in the face of the State's evidence.

Accordingly, Mamon's affidavit does not support a colorable claim of actual innocence.

CONCLUSION

Based on the foregoing discussion, this Court finds that petitioner has failed to satisfy the cause and prejudice test set forth by the legislature. Petitioner has not set forth a colorable claim of actual innocence. Accordingly, leave to file the instant petition is hereby DENIED. Petitioner's request for leave to proceed *in forma pauperis* and for appointment of counsel is likewise DENIED.

ENTERED:



Hon. Carol M. Howard
Circuit Court of Cook County
Criminal Division

DATED: _____

CERTIFICATE OF FILING AND SERVICE

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 January 8, 2020, the foregoing **Brief and Supplemental Appendix of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which automatically served notice on the following e-mail addresses:

Michael Gomez
Assistant Appellate Defender
Office of the State Appellate Defender,
First Judicial District
203 North LaSalle Street, 24th Floor
Chicago, Illinois 60601
1stdistrict.eserve@osad.state.il.us

Kimberly M. Foxx
State's Attorney of Cook County
300 Daley Center
Chicago, Illinois 60602
eserve.criminalappeals@cookcountyil.gov

/s/ Erin M. O'Connell
ERIN M. O'CONNELL
Assistant Attorney General

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Carolyn Taft Grosboll
SUPREME COURT CLERK