

Case No. 127952

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal
	)	from the Appellate Court of Illinois,
	)	First Judicial District, No. 1-16-3024
Respondent-Appellee,)	
	)	There heard on Appeal from the
v.	)	Circuit Court of Cook County,
	)	Illinois, No. 93 CR 14676
WAYNE WASHINGTON,)	
	)	The Honorable Domenica Stephenson,
Petitioner-Appellant.)	Judge, presiding.
)	
)	

BRIEF OF PETITIONER-APPELLANT WAYNE WASHINGTON

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POINTS AND AUTHORITIES

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NATURE OF THE CASE

No one disputes that Appellant Wayne Washington is innocent of the murder for which he was convicted. Nonetheless, the Circuit Court denied Washington a certificate of innocence, and the Appellate Court affirmed. Washington appeals with leave of this Court. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. When a person who sensibly pled guilty to a crime later proves their innocence, does the guilty plea categorically prohibit a court from granting a certificate of innocence?
2. When an innocent person subjected to an illegal and coercive interrogation gives a false confession, is that their fault such that the false confession prohibits a court from granting a certificate of innocence?

JURISDICTIONAL STATEMENT

Rule 315 confers jurisdiction. The appellate court issued its decision on June 28, 2021, affirming the Circuit Court's judgment denying the petition for a certificate of innocence. A timely petition for rehearing was filed on July 19, 2021, and the appellate court issued an order denying the petition on November 12, 2021. Washington filed a Petition for Leave to Appeal in this Court on January 12, 2022, and this Court granted leave on March 30, 2022.

STATEMENT OF FACTS

A. Washington's Arrest And False Confession

Appellant Wayne Washington was arrested out of the blue on May 27, 1993, seemingly because he happened to be in the same store when police arrived to arrest his ultimate co-defendant, Tyrone Hood. This was the second time that Hood had been arrested for the

murder of Marshall Morgan, Jr. A.398; A.408-09; A.327, 329, 341. The first time Hood had told the police he did not commit this crime and that an individual named “Wayne” could confirm his alibi. A.311. Washington, then nineteen years old, had no previous arrests. A.86; A.415-20.

Washington was taken to the police station and handcuffed to a chair while former subordinates of Jon Burge, notorious for abusing suspects—John Halloran and Kenneth Boudreau—interrogated him, beat him, and repeatedly kicked his chair over. A.409-10; A.320. James O’Brien, another infamous Burge subordinate, was also involved in the investigation and witness interrogations. After enduring this abuse for an extended period, and being held for at least a day and a half, Washington signed a written statement containing information fed to him by the police and falsely confessing to the murder of Marshall Morgan, Jr. A.414-15.

The only information tying Washington to the murder was his own coerced statement and the coerced statement of Jody Rogers. Rogers implicated Washington because detectives abused him and threatened to charge him with the murder. A.101. He repudiated his statement shortly thereafter. A.101-02, 114, 116. Rogers’ statement was obtained by the same detectives. A.95.

B. Washington’s First Trial And Guilty Plea Before His Second Trial

At Washington’s trial, the jury was unable to reach a verdict. A.421. On the morning he was to be retried, Washington spoke with Hood, his equally innocent co-defendant, who was about to be transferred to IDOC to serve the 75-year sentence Hood received following his conviction at trial. A.420. Hood told Washington that “he was praying for [him].” A.420. Washington knew that he could not spend 75 years in prison, so, despite his innocence, he took a plea deal that included a 25-year sentence (with the time to be served

at 50%). A.421. To Washington, the plea deal meant that after serving his sentence, he would still have “a chance at a life.” A.531 ¶ 15.

C. Washington’s Exoneration And Undisputed Innocence

On February 9, 2015, the State moved to vacate both Hood’s and Washington’s convictions and grant the two men a new trial. A.529 ¶ 6. The State proceeded to dismiss all charges. *Id.*

Today, no one disputes Washington’s innocence. The victim’s father, Marshall Morgan, Sr., killed his son to collect on a life insurance policy. A.82-84; A.131. Morgan, Sr. is a twice-confessed and convicted murderer: first, in 1977, of his friend, William Hall, who owed him \$700; and later, in 2001, of his fiancée, Deborah Jackson, on whom he had taken out a life-insurance policy, which he collected after killing her. [See A.125; A.146-49.] He also likely killed another girlfriend, Michelle Soto, on whom he had also taken out a life-insurance policy; after her death, Morgan, Sr. collected on the life insurance policy and fraudulently sold Soto’s home. A.133; A.160. Both Jackson and Soto were “shot and left to die, partially nude, inside the rear of [their] own car[s].” A.2.

The modus operandi of these murders strongly implicates Morgan, Sr. in the murder of Morgan, Jr. Like the other victims, Morgan, Jr. was a family member or friend of Morgan, Sr. Like Jackson and Soto, Morgan, Jr. was shot and found partly nude in his own car. A.69. Like Jackson and Soto, Morgan, Jr. was the subject of a life-insurance policy on which Morgan, Sr. collected immediately after his death. A.74. And the policy on Morgan, Jr. is all the more damning given that Morgan, Jr. was a healthy teenage college basketball player and that Morgan, Sr. had been estranged from him for over fifteen years at the time he took out the policy. A.196; A.67.

D. Washington's Petition For A Certificate Of Innocence In The Circuit Court

One week after the Circuit Court vacated his conviction, Washington filed a petition for a certificate of innocence. The State did not oppose the petition. A.3 ¶ 10, A.4 ¶ 18.

1. Evidence Of Washington's Coerced Confession At The Certificate Of Innocence Hearing

At the hearing on his certificate of innocence, Washington presented uncontroverted evidence showing that he confessed falsely because notorious confederates of Jon Burgecoerced his confession. At the hearing, the State did not ask a single question, offer any evidence, or present any witnesses. A.377, A.402, A.421, A.443. Washington's evidence showed the following:

Washington testified that he was initially arrested along with Hood, and “wrestled to the [police car]”; he then “was locked in [a] room for four and a half hours before anybody said anything to [him].” A.410. After those four-and-a-half hours elapsed, the officers announced that “they didn't like that police station” and transported Washington, along with Hood, to a different station; Washington observed that Hood “already looked like he had been beaten up.” *Id.* At the new police station, Washington had “both hands handcuffed to the handles of [his] chair” and was again “left in there for a couple of hours.” A.411. After those couple of hours elapsed, Detective Boudreau came in and “started . . . telling [Washington] about the murder.” *Id.*

When questioned, Washington told Detective Boudreau that he “didn't know anything about a murder.” A.412. But Detective Boudreau was not satisfied with that answer. Washington described what happened next: “I was pushed around, slapped around. The chair was knocked over a few times, picked back up, knocked over again. And they kept on telling me to tell them about a murder.” *Id.* Amid this abuse, Washington recounts, the

officers made clear how he could obtain his freedom: “The police [told] me basically everything everybody else said and what everybody else said to go home. And if I said the same thing, I could go home too.” A.415. Under these circumstances—after spending seven hours handcuffed alone to a chair, then being beaten and told a confession would be the ticket to freedom—Washington gave a false confession. Washington’s testimony about this abuse was uncontroverted.

In addition to his own undisputed testimony, Washington also submitted evidence that the detectives physically abused other witnesses in this case. Hood, Washington’s co-defendant, “was slapped to his head, with an open hand, by [Detective] Halloran,” and another detective “put a gun in [his] face.” A.52. Terry King, another suspect in Washington’s case, was struck by three detectives who then “stepped on his penis” and “threw him to the floor, stepped on his neck and put a gun in his mouth”; the City of Chicago later settled a lawsuit by King regarding his abuse. A.198. And the same group of detectives held Joe West, another suspect in Washington’s case, for “many hours,” during which they “pointed [a] gun at various parts of Joe’s body” and “kept yelling at him ‘you did it, we know you did it just tell us how it happened.’” A.176. All this evidence was also undisputed.

In addition, Washington introduced uncontroverted evidence that Boudreau, Halloran, and O’Brien engaged in a systemic pattern of physically abusing suspects. The record in this case contains the expert report of former Chicago Police Superintendent Richard Brezezek, who concluded that a “pattern of investigative malpractice on the part of these detectives [Boudreau, Halloran, and O’Brien] is significantly and obviously present in this investigation.” A.94, 95, 97. According to Superintendent Brezezek: “Kenneth Boudreau,

John Halloran and/or James O'Brien . . . have been previously identified as engaging in patterns of similar coercive conduct.” A.95.

Washington’s submissions included specific, detailed allegations of abusive conduct by Detectives Boudreau, Halloran, and O’Brien in over twenty cases; invariably, the allegations accuse the detectives of “holding persons in custody for extended periods of time, physically abusing and threatening to lodge charges against witnesses, withholding food, and denying access to an attorney.” A.221; *see also* A.220-34. Among the allegations: a man who “was hit in the face, stomach, and side, including with a flashlight,” by Detectives Boudreau and Halloran, A.226; a man who was “handcuffed to a wall, beaten and electro-shocked” by Detectives O’Brien and Boudreau, A.225; a man who was “grabbed . . . by the neck” and forced to identify a particular suspect in a lineup by Detective O’Brien, A.222; a man who was “forcefully grabbed . . . by the neck and choked” by Detective Boudreau, A.227; a man who was “kicked and slapped about the face and body and choked during 30 hours of interrogation by Detectives Boudreau, O’Brien, and Halloran,” A.228; a man who was “smacked on the face and head and punched in the ribs by Boudreau and Halloran,” A.228-29; and a man who was “interrogated for more than 36 hours, during which time he was slapped, kicked, and punched in the face and body by Boudreau [and] Halloran,” A.230. Most of these cases produced false confessions, and in several related civil suits the detectives have refused to answer questions and invoked their Fifth Amendment right against self-incrimination. A.220-34. This evidence was also undisputed.

Finally, Washington submitted evidence showing that the detectives had taken the Fifth Amendment to avoid answering questions about whether they beat him into confessing. In

other proceedings, Detective Halloran asserted the Fifth Amendment right against self-incrimination in response to questions about whether he struck Washington during his interrogation. A.171-73. Detective Halloran took the Fifth, again, in response to questions about whether he struck Hood, whether he pointed a gun at Hood's head during his interrogation, whether he observed another detective point a gun at Hood's head during his interrogation, whether he fabricated an incriminating statement by Hood, and whether he struck Jody Rogers, the supposed witness who incriminated Washington and later recanted. A.163-68. Likewise, Detective O'Brien asserted his Fifth Amendment right against self-incrimination in response to questions about whether he struck Joe West, whether he observed Detective Halloran strike West, whether he struck Hood, whether he observed injuries to Hood's face during his interrogation, whether he pointed a gun at Hood during his interrogation, whether he fabricated an incriminating statement by Hood, whether he observed Detective Boudreau repeatedly beat Hood, whether he observed Detective Halloran repeatedly beat Hood, and whether he had a conversation with Detectives Halloran and Boudreau about getting Hood to give a false confession. A.180-90.

2. The Circuit Court's Demand For Material Outside The Record

After the close of evidence in Washington and Hood's certificate-of-innocence hearing, the Circuit Court demanded that they provide extra-record materials from the original criminal proceedings, including the transcript of Hood's trial and the transcript of Washington's testimony at his suppression hearing and first trial. A.448; A.257. Over the objection of Washington and Hood, the Circuit Court *sua sponte* announced its intention to take judicial notice of these materials after the close of evidence, even though no party had submitted these materials into evidence. A.448.

3. The Circuit Court's Denial Of A Certificate Of Innocence Based On Material Outside The Record

Although no party objected to Washington's petition for a certificate of innocence, the Circuit Court denied it *sua sponte*. The court did not question Washington's innocence, denying the petition solely on the ground that Washington "voluntarily brought about his own conviction." A.255. First, the Circuit Court held that Washington voluntarily brought about his own conviction because he pled guilty. A.255-56. The court viewed Washington's guilty plea as a "procedural bar" to relief. A.255.

Second, the court rejected Washington's alternative argument that even if a plea ordinarily precludes a certificate of innocence, Washington had little choice but to plead guilty because the police coercively extracted a confession from him, which the prosecution would use to secure a conviction if Washington insisted on a trial. A.256. In rebuffing this contention, the court relied entirely on Washington's decades-old testimony at his suppression hearing and first trial, material that the court considered over Washington's objection that it was not in the record and had not been offered into evidence. A.448; A.257. Based on perceived discrepancies between Washington's previous, extra-record testimony and his testimony at the certificate-of-innocence hearing, the Circuit Court found his claims of physical abuse non-credible. A.257.¹

The Circuit Court also denied Hood's petition for a certificate of innocence. *People v. Hood*, 2021 IL App (1st) 162964 ¶ 17. As in Washington's case, the Circuit Court relied

¹ As Washington recently described, his lack of a certificate of innocence affects him in several ways, including by preventing him from being approved to chaperone his daughter's fieldtrips and from passing employment background checks. See <https://www.cbsnews.com/chicago/news/wayne-washington-wrongfully-convicted-innocence-certificate/>.

heavily on transcripts of the original criminal proceedings, which no party introduced into evidence. *Id.* ¶ 32.

E. Appellate Court Proceedings

Washington and Hood both appealed to the First District, and their appeals were consolidated. A.529.² The State did not oppose either appeal. In Washington’s case, the Appellate Court affirmed the denial of a certificate of innocence. Like the Circuit Court, the Appellate Court did not question Washington’s innocence, explicitly stating that its refusal to grant a certificate of innocence was “not an issue of whether Washington proved by a preponderance of the evidence that he is innocent.” A.535 ¶ 27.

Instead, the First District majority adopted a categorical rule that precludes innocent people who plead guilty from obtaining certificates of innocence: “A defendant who has pled guilty ‘cause[d] or [brought] about his or her conviction’ and is not entitled to a certificate of innocence.” A534 ¶ 25 (quoting 735 ILCS 5/2-702(g)(4)).

While that categorical holding sufficed to resolve the case, the Appellate Court also set forth an alternative ground, opining that Washington caused his own conviction because he failed to show that detectives extracted his confession through coercion. A.534-36 ¶¶ 26, 29. The majority ignored Washington’s argument that the Circuit Court improperly relied on extra-record materials to discredit Washington’s testimony that he was physically abused into confessing.

Justice Walker dissented. Whereas the majority posited that a guilty plea categorically precludes a certificate of innocence, Justice Walker explained that “a guilty plea should

² Because the certificate-of-innocence hearings in *Washington* and *Hood* were combined, A.359, and because the cases were consolidated on appeal, A.529, excerpts from both records are included in the appendix.

foreclose relief only when the person falsely accused culpably misled police or other officials.” A.543 ¶ 48 (Walker, P.J., dissenting). Justice Walker also concluded that Washington deserved a certificate of innocence because he “proved by a preponderance of the evidence from multiple witnesses . . . that police used physical coercion and threats to obtain [his] wrongful conviction.” A.541 ¶ 43 (Walker, P.J., dissenting). Justice Walker faulted the Circuit Court for disregarding Washington’s compelling evidence of coercion on the basis of decades-old testimony that appears nowhere in the record: “Washington deserves an answer as to why the circuit court may find him not credible based on evidence no party presented, where the circuit court does not even permit Washington to respond to the evidence the circuit court found.” A.540-41 ¶ 42 (Walker, P.J., dissenting).

More fundamentally, Justice Walker asserted that majority opinion threatened to “continue[] the difficulty associated with the too many wrongful accusations against black and brown people. Wrongful convictions and accusations like these can devastate families, foreclose career opportunities, and undermine the integrity of our justice system.” A.544 ¶ 50 (Walker, P.J., dissenting).

Meanwhile, the same First District panel decided Hood’s case. Reversing the Circuit Court, the panel granted Hood’s petition for a certificate of innocence—correctly, but also in a way that contradicts its decision in Washington’s case. Not only do the decisions leave two equally innocent codefendants in vastly different circumstances, but the appellate decision in *Hood* reversed the Circuit Court for considering transcripts from the original criminal proceedings that were not in evidence—the same error that the majority ignored, over Justice Walker’s dissent, in this case. In *Hood*, the Appellate Court reversed the Circuit Court because “it was error for the circuit court to rely on prior sworn testimony at

Hood’s underlying criminal trial in reaching its decision because that testimony was not offered or placed in evidence.” 2021 IL App (1st) 162964, ¶ 32. As the Appellate Court explained in *Hood*, the Circuit Court had “embark[ed] on its own fact-finding mission, independently research[ing] the record and history of the original criminal proceedings to inform and influence its judgment in the certificate of innocence proceeding.” *Id.* This expedition “create[ed] an inherent tension and conflict with the circuit court’s role as an independent, disinterested fact finder.” *Id.*

Washington sought and obtained this Court’s leave to appeal.

ARGUMENT

A. Summary Of Argument

Washington’s guilty plea does not preclude a certificate of innocence. Washington’s innocence is obvious and unquestioned. Contrary to the First District majority, a guilty plea does not automatically prevent an innocent person from obtaining a certificate of innocence. The Court should adopt the standard urged by Justice Walker in dissent: “[A] guilty plea should foreclose relief only when the person falsely accused culpably misled police or other officials.” A.543 ¶ 48 (Walker, P.J., dissenting).

If the legislature had intended the categorical rule adopted by the Appellate Court—no certificates of innocence for all innocent people who plead guilty—it would have said so in the statute itself, as certain other states have chosen to do. Moreover, categorically denying certificates of innocence to people who plead guilty directly contradicts the intent of the certificate of innocence statute in three ways.

First, the legislature acted to sweep away “a variety of substantive and technical obstacles in the law” that prevented innocent people from obtaining certificates of innocence. 735 ILCS 5/2-702(a); *People v. Palmer*, 2021 IL 125621, ¶ 54. The First

District majority turned the statute on its head by inventing a new and damaging “obstacle in the law” that would automatically bar certificates of innocence for nearly one-fifth of exonerees. *See People v. Reed*, 2020 IL 124940, ¶ 33. This newly minted barrier to restoring one’s name radically breaks with settled practice: At least 77 Illinoisans who pled guilty have already obtained certificates of innocence, sometimes even receiving judicial commendation for the “the sacrifice [they] made in their effort to bring the rule of law to Chicago.” *People v. Glenn*, 2018 IL App (1st) 161331, ¶ 22 (Neville, J.).

Second, the Appellate Court’s rule contradicts the intent of the statute by denying relief to people like Petitioner who plead guilty through no fault of their own. The purpose of the certificate of innocence statute “is to benefit ‘men and women that have been falsely incarcerated through no fault of their own.’” *People v. Dumas*, 2013 IL App (2d) 120561, ¶¶ 18-19). Washington is the archetypal example of an exoneree who cannot be faulted for pleading guilty. Washington first pled not guilty, but after the jury hung at his first trial and another jury convicted his innocent co-defendant, he quite sensibly changed his plea to guilty to avoid a *de facto* life sentence.

Third, the General Assembly enacted the certificate-of-innocence statute to provide job training, mental health services, and other benefits to the wrongfully convicted. It makes no sense to condition these benefits on whether one went to trial: the wrongfully convicted need these benefits regardless of how they happened to plead.

Excluding innocent people who plead guilty from the reach of the statute not only contravenes legislative intent but creates an equal protection problem. An arbitrary distinction between innocent people based on the vagaries of plea bargaining would flunk

rational basis review. To avoid that constitutional infirmity, the Court should interpret the statute to protect innocent people who plead guilty.

In any event, the ultimate vacatur of Washington's conviction reduced the plea to a nullity. *See People v. Shinaul*, 2017 IL 120162, ¶ 14. It therefore cannot provide a basis to deny him a certificate of innocence. On top of that, Washington could not have given a knowing and voluntarily waiver of his right to seek a certificate of innocence. When he pled guilty in 1996, Washington could not have foreseen that the legislature would authorize certificates of innocence over a decade later, so he could not have knowingly relinquished his right to seek one under a *future* statute.

The First District majority and the Circuit Court also erroneously discounted Washington's evidence that detectives coerced his confession. The coercion used by the detectives to wrench a false confession out of Washington further undermines any argument that his guilty plea precludes a certificate of innocence. Having given a false confession due to physical abuse, he had little choice but to accept a plea offer.

As Justice Walker correctly explained in his dissent, "Washington proved by a preponderance of the evidence from multiple witnesses . . . that police used physical coercion and threats to obtain [his] wrongful conviction." A.541 ¶ 43 (Walker, P.J., dissenting). Washington presented overwhelming evidence that three notorious former subordinates of John Burge extracted his false confession through physical abuse. This evidence was entirely uncontroverted: the State did not present evidence or witnesses, or even ask a single question at the certificate-of-innocence hearing.

The courts below disregarded Washington's evidence of physical abuse based on transcripts that were not properly in the record and that no party sought to admit as

evidence. Relying on this extra-record material constituted a clear legal error. In addition, both the Circuit Court and the Appellate Court erred by refusing—without explanation—to draw an adverse inference from the detectives’ assertion of the Fifth Amendment in response to all questions about whether they physically abused Washington and Hood.

Finally, even ignoring Washington’s testimony about physical abuse and assuming for the sake of argument that the detectives interrogated him *without* violating the Constitution, Washington still cannot be faulted for giving a false confession in the face of a prolonged police interrogation. “Custodial interrogation is, of course, inherently coercive and ‘trades on the weakness of individuals.’” *People v. Braggs*, 209 Ill. 2d 492, 513 (2003) (quoting *Dickerson v. United States*, 530 U.S. 428, 435 (2000)). In the certificate-of-innocence statute, the General Assembly intended to authorize certificates of innocence for innocent people who were not at fault for causing their own convictions. There is simply no plausible scenario in which Washington can be faulted for giving a statement implicating himself after a prolonged series of interrogations designed to make him do just that.

B. Standard Of Review

This Court’s review is *de novo* because this appeal presents issues of law. *People v. Woodrum*, 223 Ill. 2d 286, 300 (2006).

C. Washington’s Innocence Is Manifest And Unquestioned.

Washington’s innocence is not disputed, nor could it be. The State itself moved to vacate Washington’s conviction and then dismissed the case. A.529 ¶ 6. The State did not oppose the petition for a certificate of innocence, nor did it participate in any way in Washington’s appeal from the Circuit Court’s denial of a certificate of innocence. A.530 ¶ 10, A.531 ¶ 18. In fact, the State wrote a letter to the Appellate Court stating that it would not be “a party to these appeals.” A.520. As the First District majority put it, “this is not an

issue of whether Washington proved by a preponderance of the evidence that he is innocent.” A.535 ¶ 27.

The First District granted a certificate of innocence to Washington’s co-defendant, Hood, summarizing the overwhelming evidence that inculpated Morgan, Sr., and thereby exonerated Washington and Hood: “Although Morgan Sr., was in significant debt and his house was in foreclosure, he had taken a \$50,000 life insurance policy out on Marshall, his healthy 20-year-old, college athlete son. Within months of his insurance application, Marshall was shot to death.” *Hood*, 2021 IL App (1st) 162964, ¶ 8. This was Morgan, Sr.’s modus operandi: “Hood also alleged that Morgan Sr. had previously taken out a life insurance policy on a former girlfriend, who was also murdered and found in the same manner as Marshall—wedged between the front and back seats of an abandoned car.” *Id.* ¶ 9. On top of that, “Morgan Sr. also confessed to murdering another girlfriend in 2001 He shoved her body into the trunk of a car.” *Id.*

D. Washington’s Guilty Plea Does Not Preclude A Certificate of Innocence.

1. The Appellate Court Decision Directly Contradicts Legislative Intent By Categorically Preventing Innocent People Who Plead Guilty From Obtaining Certificates Of Innocence.

“In construing a statute, our primary goal is to ascertain and give effect to the intent of the legislature.” *People v. Schoonover*, 2021 IL 124832, ¶ 39. The Appellate Court’s decision in this case undermines the statute’s purpose in three ways. First, the legislature intended to sweep away “technical obstacles,” 735 ILCS 5/2-702(a), that had prevented innocent people from clearing their names. The Appellate Court, however, turned the statute on its head by creating a new technical obstacle that prevents innocent people from restoring their good names based on the happenstance of how they pled years or decades ago. Second, the legislature intended to deny innocent people a certificate of innocence

only if their conviction was their own fault. The Appellate Court takes fault out of the equation and adopts a categorical rule that a guilty plea prohibits a certificate of innocence, regardless of fault. Third, the legislature intended to provide job training and mental health services to exonerees in need of them. Pleading guilty has nothing to do with whether an innocent person needs job training and mental health access when returning to society after years in prison. Moreover, if the legislature had wanted to prevent all innocent people who plead guilty from obtaining certificates of innocence, it would have done what several other states have done—refer to guilty pleas explicitly in the certificate of innocence statute. The Illinois legislature did not do so because it did not intend to categorically deprive innocent people who plead guilty from obtaining certificates of innocence.

a. The Appellate Court Decision Contradicts Legislative Intent By Creating A New Barrier That Prevents Innocent People From Clearing Their Good Names.

The Appellate Court invented a technical barrier that thwarts innocent people from obtaining a certificate of innocence—the very thing the General Assembly commanded courts *not* to do when it enacted the statute. In this case, there is no need to guess at legislative intent because the legislature wrote its intent into the statute:

The General Assembly finds and declares that innocent persons who have been wrongly convicted of crimes in Illinois and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of *substantive and technical obstacles in the law* and that such persons should have an available avenue to obtain a finding of innocence so that they may obtain relief . . .

735 ILCS 5/2-702(a).

This Court recently described this exact portion of the statute as “a clear statement of legislative intent.” *People v. Palmer*, 2021 IL 125621, ¶ 54. In *Palmer*, the Court rejected a restrictive reading of the certificate-of-innocence statute on the ground that it “would defeat the legislative purpose of section 2-702 by effectively imposing a technical legal

obstacle on a petitioner seeking relief from a wrongful conviction.” *Id.* ¶ 65. This Court explained: “[T]he legislature plainly stated its intent to ameliorate, not impose, technical and substantive obstacles to petitioners seeking relief from a wrongful conviction.” *Id.* ¶ 68.

Less than two months after *Palmer*, the Appellate Court decided this case. The Appellate Court did the very thing to Washington that *Palmer* said not to do—it “impos[ed] a technical legal obstacle on a petitioner seeking relief from a wrongful conviction,” *see id.* ¶ 65, by categorically prohibiting innocent people who pled guilty from obtaining certificates of innocence. The Appellate Court failed to acknowledge *Palmer*, and it also ignored the “clear statement of legislative intent” on which *Palmer* is based. *See id.* ¶ 54.

Exonerating an innocent person of a heinous crime is among the most important decisions a court can make. As the U.S. Supreme Court has stated, “[c]oncern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system.” *Schlup v. Delo*, 513 U.S. 298, 325 (1995). Denying an innocent person a certificate of innocence because they pled guilty years or decades ago is the very definition of an arbitrary “legal obstacle.” *Palmer*, 2021 IL 125621, ¶ 65

This Court said as much in *People v. Reed*. There, this Court held that “a defendant whose conviction is the result of a guilty plea may assert an actual innocence claim.” 2020 IL 124940, ¶ 57. Thus, “[w]hen met with a truly persuasive demonstration of innocence, a conviction based on a voluntary and knowing plea is reduced to a *legal fiction*.” *Id.* ¶ 35 (emphasis added). In fact, “it is well accepted that the decision to plead guilty may be based on factors that have nothing to do with defendant’s guilt.” *Id.* ¶ 33. This is so because “[p]lea agreements . . . are not structured to ‘weed out the innocent’ or guarantee the factual

validity of the conviction.” *Id.* (quoting *Schmidt v. State*, 909 N.W.2d 778, 788 (Iowa 2018)). On the contrary, “horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is.” *Id.* (quoting *Missouri v. Frye*, 566 U.S. 134, 144 (2012)).

The Appellate Court created not only a “legal obstacle” to innocent people clearing their names, *see* 735 ILCS 5/2-702(a); *Palmer*, 2021 IL 125621, ¶ 54, but an entirely new one that upends both precedent and longstanding practice. Illinois courts have previously recognized that a guilty plea does not categorically prohibit issuance of a certificate of innocence. Rather, the Appellate Courts—including the First District—have held that innocent people who plead guilty can obtain certificates of innocence. Consistent with this doctrine, Illinois Circuit Courts have regularly granted certificates of innocence to people who have pled guilty. In this case, the Appellate Court threw out precedent and settled practice to slam the courthouse door on innocent people.

In *People v. Simon*, the circuit court had held that the “petitioner’s guilty plea indicated that he was a willing participant in [a] corrupt scheme” to frame himself in order to free the person who had been convicted of the crime. 2017 IL App (1st) 152173, ¶ 22. The Appellate Court disagreed, “remanding the case for a hearing where petitioner has an opportunity to prove that he did not voluntarily cause his own conviction.” *Id.* ¶ 31. Similarly, in *People v. Glenn*, the Appellate Court granted a certificate of innocence to Clarissa Glenn, an innocent petitioner who had pled guilty. Far from criticizing Glenn and her co-defendant for pleading guilty, the court commended “the sacrifice Glenn and [her co-defendant] made in their effort to bring the rule of law to Chicago.” 2018 IL App (1st) 161331, ¶ 22 (Neville, J.).

Clarissa Glenn is but one of many innocent Illinoisans who cleared their names and restored “the rule of law,” *id.*, by obtaining a certificate of innocence after pleading guilty. At least 77 innocent Illinoisans have done the same.³ By upending this settled practice and barring innocent people who plead guilty from obtaining a certificate of innocence, the Appellate Court did the very thing that the certificate of innocence statute exists to

³ A partial list of those who originally pled guilty but then obtained certificates of innocence since 2016 includes: Demetrius Adams, 04CR17784, Chauncy Ali, 07CR421(03), Landon Allen, 04CR 5700(01), George Almond, 06CR19708(01), Ben Baker, 06CR810(01), Deandre Bell, 06CR22073(01) & 07CR11499(01), Harvey Blair, 04CR18641, Antwan Bradley, 08CR8917(01), Darron Byrd, 07CR10335(02), Raynard Carter, 07CR10335(01) & 06CR6565(02), Bobby Coleman, 03CR2644(01), Jermaine Coleman, 06CR12908(01), Craig Colvin, 04CR14263(01), Milton Delaney, 07CR6264(01), Gregory Dobbins, 04CR8728(01), Christopher Farris, 04CR18418(01), Robert Forney, 07CR3834, Marcus Gibbs, 07CR3741(01), Marc Giles, 03CR02644(04), Leonard Gipson, 03CR2644, 03CR12414 & 07CR20496, Clarissa Glenn, 06 CR 810(02), Cleon Glover, 06CR15063(01), Stefon Harrison, 06CR24269(01) & 07CR421(02), Sydney Harvey, 06CR25232(01), Eveless Harris, 07CR10335(03), Rickey Henderson, 02CR19048, 03CR21058, 05CR7952 & 06CR18229, Tyrone Herron, 07CR00421(04), Kenneth Hicks, 07CR22690(01), David Holmes, 07CR12171(01), Brian Hunt, 08CR5302(01), Allen Jackson, 06CR3375(01), Shaun James, 04CR10615(01), Goleather Jefferson, 06CR23620, Thomas Jefferson, 05CR14701, Zarice Johnson, 06CR18526(01) & 08CR4969(01), Derrick Lewis, 04CR17856 & 07CR22093(01), Robert Lindsey, 09CR20361(02), Larry Lomax, 03CR2644(06), Derrick Mapp, No. 06CR10364(01), Willie Martin, 06CR23620(02), David Mayberry, 06CR9651(03), Octayvia McDonald, 05CR21111(01), Gregory Mollette, 06CR22931(01), James Moore, 05CR28783(01), Jermaine Morris, 05CR2186(01) & 06CR8697(02), Terrence Moye, 08CR15102, Lloyd Newman, 06CR22250(01), Jajuan Nile, 07CR24156(02), George Ollie, 03CR2644(05), Bryant Patrick, 05CR01587(01), 07CR8410(01), Cordero Payne, 05CR28782(01), Mister Pearson, 07CR24156(02), Hasaan Potts, 03CR8635(01), Bruce Powell, 09CR14547, Lee Rainey, 03CR17007(01) & 05CR147, Clifford Roberts, 03CR02644(02), Calvin Robinson, 07CR3834(03), Jamell Sanders, 06CR14950(01), Frank Saunders, 07CR8562(01), Chris Scott, 06CR9651(01), Angelo Shenault, Jr., 06CR9651(02), 08CR6802, 09CR14548, Angelo Shenault, Sr., 04CR28832 & 07CR418, Germain Sims, 09CR20361(01), Taurus Smith, 04CR10615(02), Jabal Stokes, 06CR12908(02), Henry Thomas, 03CR4666(01) & 07CR421(01), Nephus Thomas, 08CR6109, Lapon Thompson, 06CR13950(01), Alvin Waddy, 07CR9386, Gregory Warren, 06CR8697(01), Isaac Weekly, 07CR18861(01), Lionel White, Sr., 06CR12092, Lionel White, Jr., 06CR19188, Kim Wilbourn, 06CR22542(01), Vondell Wilbourn, 04CR20636 & 05CR222312(02), Deon Willis, 02CR82903 & 08CR16767, Martez Wise, 06CR27677.

prevent—the court created a brand new “substantive and technical obstacle[] in the law,” 735 ILCS 5/2-702(a), that bars innocent people from obtaining relief.

b. The Appellate Court’s Decision Undermines Legislative Intent By Denying Certificates Of Innocence To People Who Faultlessly Plead Guilty.

The legislature intended to deny certificates of innocence to innocent people only if their conviction was their own fault. The majority opinion flouts that statutory purpose by inventing a *per se* rule that prevents exonerees who pled guilty from obtaining certificates of innocence, regardless of fault. The dissent understood the proper standard intended by the legislature: “[A] guilty plea should foreclose relief only when the person falsely accused culpably misled police or other officials.” A.543 ¶ 48 (Walker, P.J., dissenting).⁴

As the Second District has explained, the “legislative history” of the certificate-of-innocence statute demonstrates that its purpose “is to benefit ‘men and women that have been falsely incarcerated through no fault of their own.’” *People v. Dumas*, 2013 IL App (2d) 120561, ¶¶ 18-19 (quoting 95th Ill. Gen. Assem., House Proceedings, May 18, 2007, at 12 (statements of Representative Flowers) (hereinafter “House Proceedings”)⁵). In the General Assembly, Representative Mary Flowers, the chief proponent of the legislation, repeatedly stated that the statute aimed to help innocent people clear their name if they were convicted through no fault of their own. She explained that a certificate of innocence “would be a rite of passage, Sir, for men whose lives have been turned upside down *through*

⁴ The dissent’s analysis of fault also tracks the Seventh Circuit’s interpretation of the federal certificate-of-innocence statute, which bars relief only when an innocent person “has it within his means to avoid prosecution but elects not to do so, instead acting in such a way as to ensure it. In that sense, he is responsible for his own prosecution and deserves no compensation for his incarceration . . . [T]here must be either an affirmative act or an omission by the petitioner that misleads the authorities as to his culpability.” *Betts v. United States*, 10 F.3d 1278, 1285 (7th Cir. 1993).

⁵ Available at: <https://www.ilga.gov/house/transcripts/htrans95/09500056.pdf>.

no fault of their own.” See House Proceedings 9-10 (emphasis added). She declared that barriers to compensation are “a disservice to the men and women that have been falsely incarcerated *through no fault of their own.*” *Id.* at 12 (emphasis added).

If the legislature had wanted the categorical rule adopted by the Appellate Court—no certificates of innocence for innocent people who plead guilty—it would have said so in the statute itself. Representative Flowers was clearly aware of other models from other states; she mentioned on the record that other states had enacted certificate-of-innocence laws. House Proceedings 6. Many other states expressly prohibit innocent people who plead guilty from obtaining certificates of innocence or compensation for their wrongful conviction. These states do so with direct language in the statutes themselves, using the words “plead guilty,” “guilty plea,” or “plea of guilty” to exclude people who plead guilty from state statutes authorizing compensation for wrongful convictions.⁶ If the General Assembly had wanted to do that, it would have said so, just as other state legislatures have done. The fact that the legislature took a different path shows that it did not intend guilty pleas to automatically veto certificate-of-innocence petitions.

In addition, the statutory language also focuses on the petitioner’s fault by making an innocent petitioner eligible for a certificate of innocence so long as the petitioner “did not

⁶ See, e.g., Iowa Code § 663A.1(1)(b) (requiring that the petitioner “did not plead guilty to the public offense charged”); Mass. Gen. Laws. ch. 258D, § 1(c)(iii) (requiring that the petitioner “did not plead guilty to the offense charged”); Ohio Rev. Code Ann. § 2743.48(A)(2) (requiring that the petitioner “did not plead guilty to, the particular charge or a lesser-included offense”); Okla. Stat. Ann. 51, § 154(B)(2) (requiring that the petitioner “did not plead guilty to the offense charged”); D.C. Code § 2-425 (requiring that the petitioner’s conviction did not result “from his entering a plea of guilty unless that plea was pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970)”); Fla. Stat. § 961.04 (holding ineligible petitioners who “pled guilty to ... any violent felony”); NJ Stat. Ann. § 52:4C-3(c) (requiring petitioner “did not plead guilty”); Va. Code Ann. § 8.01-195.10 (requiring petitioner to have “entered a final plea of not guilty”).

by his or her own conduct *voluntarily* cause or bring about his or her conviction.” 735 ILCS 5/2-702(g)(4) (emphasis added). Certificate-of-innocence statutes and statutes authorizing compensation for wrongful convictions in other states often omit the word “voluntarily,” thereby denying certificates of innocence to anyone who brings about or causes their own conviction, regardless of volition or fault. *See, e.g.*, NY Ct. Cl. Act § 8-b.4(b) (“[H]e did not by his own conduct cause or bring about his conviction.”); NJ Stat Ann § 52:4C-3(c) (same); D.C. Code § 2-425 (“cause or bring about his or her own prosecution”); Md. State Fin. & Proc § 10-501 (“did not . . . by the individual's own conduct cause or bring about the conviction”); Mont. Code Admin. § 46-32-104 (“did not . . . by the claimant's own conduct cause or bring about the conviction”). By adding the word “voluntarily” to the Illinois statute, the General Assembly rejected this “strict liability” approach, refusing to deny certificates of innocence to innocent people who did not contribute to their own convictions in a volitional or blameworthy manner.

Washington is the archetypal example of someone who pled guilty through no fault of his own. At first, he pled not guilty, but his jury did not reach a verdict. A.421. On the morning of the retrial, Washington spoke to Hood—who had been sentenced to 75 years in prison after being convicted at trial. A.420-21. Washington pled guilty only after seeing his equally innocent co-defendant convicted and sentenced to *de facto* life in prison. Washington accepted a 25-year sentence “because he knew that Hood had been sentenced to 75 years’ imprisonment.” A.531 ¶ 15. To Washington, the plea deal meant he would have “a chance at a life” after serving his sentence for a crime he did not commit. *Id.* Far from blameworthy conduct, taking the plea is what any rational person would have done—or urged a loved one to do—in Washington’s place.

c. The Appellate Court’s Decision Undermines Legislative Intent By Denying Job Training And Mental Health Services To Exonerees Who Need Them.

The legislature enacted the statute in part to provide compensation, job training, and therapy to exonerees. It makes no sense and undermines legislative intent to deny these benefits to innocent people just because they pled guilty through no fault of their own.

As the First District has noted, “[o]ther statutes provide that persons granted certificates of innocence have rights to mental health services, job search and job placement services, and other assistance.” *Glenn*, 2018 IL App (1st) 161331, ¶ 20 (Neville, J.) (citing 20 ILCS 1015/2; 20 ILCS 1710/1710-125; 730 ILCS 5/3-1-2(o)). In the legislature, Representative Flowers stated that exonerees “should have job training,” explaining that “[y]ou’re talking about people that have spent a vast majority of their youth incarcerated. You’re talking about a marked man. You’re talking about a person who still [has] to relearn how to maneuver around the system, who do[es] not know the programs are out there.” House Proceedings 10-11. She continued: “They are entitled to therapy.” *Id.* at 13.

The trauma caused by prolonged, wrongful imprisonment—and the consequent need for mental health services—is no less profound for an innocent petitioner who pled guilty. Nor does a plea determine whether an exoneree who “spent a vast majority of their youth incarcerated,” *id.* at 10-11, needs job training. The appellate majority opinion undermines the statute’s purpose by making one’s plea a condition for access to these services.

2. The Court Should Interpret the Certificate-Of-Innocence Statute To Avoid The Equal Protection Problem That Arises From Denying Certificates Of Innocence To People Who Plead Guilty.

Making an arbitrary distinction between innocent people who plead guilty and innocent people who go to trial would flunk rational basis review under the state and federal equal protection clauses. *See* U.S. Const., amend. XIV, § 1; Ill. Const. 1970, art. I, § 2. The Court

should avoid this constitutional problem by construing the certificate-of-innocence statute to include innocent people who plead guilty in the scope of its protection. In *Glenn*, the Appellate Court interpreted the certificate of innocence statute to extend to people sentenced to non-prison terms because there was no rational basis to provide lesser protection to people sentenced to non-prison terms than people sentenced to prison terms. 2018 IL App (1st) 161331, ¶ 22 (Neville, J.). The Court should follow a similar path in this case.

The Equal Protection Clause “guarantees that similarly situated individuals will be treated in a similar fashion, unless the government can demonstrate an appropriate reason to treat them differently.” *In re Jonathon CB.*, 2011 IL 107750, ¶ 116; *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Equal protection analysis is the same under the Illinois and federal constitutions. *Jacobson v. Dep’t of Pub. Aid*, 171 Ill. 2d 314, 322 (1996). When the challenged statutory classification does not implicate race, national origin, gender, illegitimacy, or fundamental rights, courts assess its constitutionality using rational basis review. *In re Adoption of K.L.P.*, 316 Ill. App. 3d 110, 121 (2000). To pass constitutional muster, the classification at issue must “be rationally related to a legitimate state goal.” *People v. Hunter*, 376 Ill. App. 3d 639, 647 (2007); *Jonathon CB.*, 2011 IL 107750, ¶ 116; *Lyng v. Int’l Union*, 485 U.S. 360, 370 (1988).

A distinction between innocent people who plead guilty and those who plead not guilty is plainly antithetical to the purpose of the statute—and it makes no rational sense. Of course, an innocent person who pleads guilty is no less innocent, and thus no less deserving of a certificate of innocence, than an innocent person convicted after trial. Representative Mary Flowers, the principal sponsor of the legislation, explained: “This legislation is about

men and women who have been wrongfully convicted of a crime; they never should have been in jail in the first place . . . [T]heir name is not cleared [T]hat's the reason why the certificate of innocence is very important." House Proceedings 7-8 (emphasis added). She declared that wrongfully convicted people "are entitled to be completely set free and *given their good name back* for a crime that they did not commit, and I urge your 'aye' vote. These are innocent men and women, innocent, Ladies and Gentlemen of the House. Innocent." *Id.* at 13. Of course, an exoneree who pled guilty is no less innocent than an exoneree who pled not guilty. Distinguishing between the two does not further the statute's purpose, nor any rational and legitimate purpose.

The First District's decision in Hood's case, while correct, also adds to the inconsistency. The same panel granted a certificate of innocence to Hood just three months before denying Washington's, finding that "the preponderance of the evidence established that [Hood] more likely than not did not commit the offenses." *Hood*, 2021 IL App (1st) 162964, ¶ 43. Washington's innocence is no less obvious than Hood's. The only difference between Washington and Hood is that Washington ultimately pled guilty.

At minimum, differentiating between innocent people who plead guilty and not guilty would raise serious constitutional concerns under the state and federal equal protection clauses. The Court should interpret the statute to avoid this constitutional problem by holding that innocent people who plead guilty are not automatically denied the opportunity to obtain a certificate of innocence. *See Glenn*, 2018 IL App (1st) 161331, ¶ 22.

3. Washington's Guilty Plea Cannot Provide A Basis For Denying Him A Certificate Of Innocence Because Vacatur Of His Conviction Made The Plea A Nullity.

Vacating Washington's conviction wiped out the plea and made it a nullity. "When a circuit court vacates and sets aside a judgment . . . , the prior judgment is eliminated, and

the case thereby returns to its status before the judgment was made.” *People v. Shinaul*, 2017 IL 120162, ¶ 14 (citing *People v. Evans*, 174 Ill.2d 320, 332 (1996)). Thus, there is no extant guilty plea in this case. As a result, the guilty plea cannot provide a basis for denying a certificate of innocence because the vacated conviction has the effect of eliminating the plea.

4. Washington Could Not Have Relinquished His Right To A Certificate Of Innocence By Pleading Guilty Before The Certificate Of Innocence Statute Was Enacted.

Washington pled guilty in 1995. A.421. The certificate-of-innocence statute was enacted over a decade later, in 2007. Washington could not have voluntarily waived his right to seek a certificate of innocence by pleading guilty because the law at the time did not recognize any right to seek a certificate of innocence. As this Court has explained, “[t]he requirement of a knowing and intelligent choice calls for nothing less than a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *People v. Lesley*, 2018 IL 122100, ¶ 51. Interpreting *Leslie*, the Appellate Court recently concluded that a plea cannot be “construed as a ‘voluntary, knowing, and intelligent’ waiver of a statutory right that had not yet come into existence.” *People v. Johnson*, 2022 IL App (1st) 201371, ¶ 93. In *Johnson*, the Appellate Court considered whether the appellant’s 1992 guilty plea waived his right to seek postconviction relief under the Torture Inquiry Relief Commission (TIRC) Act, which was enacted in 2009. *Id.* ¶ 88. The Appellate Court held that the guilty plea could not constitute a waiver of that right, because “a waiver is an intentional relinquishment or abandonment of a known right or privilege,” and the appellant “could not possibly have had a ‘full awareness’ that he was abandoning any right under the TIRC Act when he pleaded guilty in 1992, for the simple reason that the TIRC Act was not yet enacted at that time.” *Id.* ¶ 89. So too here.

Just as in *Johnson*, “it cannot be said that [Washington’s] decision to plead guilty was an informed strategic decision to give up his right to relief” under the certificate-of-innocence statute “in order to receive a lesser sentence.” *Id.* ¶ 93.

5. This State Has A Shameful History Of Convicting Innocent People, And The Appellate Court’s Decision Will Make The Situation Even Worse.

Illinois leads the nation in convicting the innocent. In 2019 and 2020, Illinois accounted for more wrongful convictions than any other state.⁷ Washington’s case arose in Chicago, a city dubbed “the wrongful conviction capital of America.”⁸ The last thing the Illinois justice system should do is invent new obstacles to block innocent people from clearing their names. The Appellate Court’s decision, however, does just that by preventing innocent people from obtaining certificates of innocence just because they pled guilty. The decision categorically disqualifies nearly *one-fifth* of wrongfully convicted people from receiving certificates of innocence. *See Reed*, 2020 IL 124940, ¶ 33 (citing Peter A. Joy & Kevin C. McMunigal, *Post-Conviction Relief After a Guilty Plea?*, 35 CRIM. JUST. 53, 55 (Summer 2020)).

Wrongful convictions disproportionately harm Black and Latinx people. According to the National Registry of Exonerations, 64% of people who proved their innocence after being convicted were Black or Latinx.⁹ Black people are seven times more likely to be

⁷ National Registry of Exonerations, ANNUAL REPORT, at 5 (2021), <https://www.law.umich.edu/special/exoneration/Documents/2021AnnualReport.pdf>.

⁸*See, e.g.*, Editorial, *Reforms Would Reduce Number Of Wrongful Convictions*, CHI. SUN-TIMES (Jan. 25, 2021), <https://chicago.suntimes.com/2021/1/25/22249145/wrongful-convictions-police-criminal-justice-reforms-editorial>.

⁹ Nat’l Registry of Exonerations, Exonerations by Race/Ethnicity and Crime, (last visited June 7, 2022) (noting that Black and Latinx people accounted for 2,030 established wrongful convictions), available at <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsRaceByCrime.aspx>.

wrongfully convicted of murder than white people.¹⁰ As Justice Walker asserted, the majority opinion will “continue[] the difficulty associated with the too many wrongful accusations against black and brown people. Wrongful convictions and accusations like these can devastate families, foreclose career opportunities, and undermine the integrity of our justice system.” A.544 ¶ 50 (Walker, P.J., dissenting).

E. Detectives Coerced Washington’s False Confession.

Washington presented uncontroverted evidence that three notorious confederates of John Burge extracted his false confession through physical abuse. As Justice Walker correctly explained in his dissent, “Washington proved by a preponderance of the evidence from multiple witnesses . . . that police used physical coercion and threats to obtain [his] wrongful conviction.” A.541 ¶ 43 (Walker, P.J., dissenting). “[W]hen police questioned Washington, he answered them honestly. He knew nothing about the murder of Morgan. Police beat him and threatened him, just as they beat and threatened their other victims. . . .” A.543 ¶ 49. Washington signed a confession that the police wrote “because police threatened him, beat him, and promised he could go home if he signed the statement.” *Id.*

The courts below made a clear legal error, not only by disregarding this evidence but by doing so on the basis of transcripts that were not properly in the record and that no party sought to admit as evidence. In addition, both the Circuit Court and the Appellate Court erred by refusing—without explanation—to draw an adverse inference from the detectives’ assertion of the Fifth Amendment in response to all questions about physically abusing Washington and Hood.

¹⁰ Nat’l Registry of Exonerations, Race and Wrongful Convictions, available at <https://www.law.umich.edu/special/exoneration/Pages/Race-and-Wrongful-Convictions.aspx>.

Washington's false confession does not preclude a certificate of innocence because it was given under duress. And the coercive interrogation undermines even further any argument that Washington's guilty plea precludes a certificate of innocence. Washington's false and coerced confession left him with little choice but to take the plea.

1. Washington Presented Undisputed Evidence That Detectives Coerced Him To Confess.

The record is replete with evidence that Washington confessed involuntarily. This evidence is entirely undisputed. At the certificate-of-innocence hearing, the State did not call any witnesses, offer any evidence, ask any questions, or contest that Washington gave a false confession due to coercion. A.377, A.402, A.421, A.443.

First, Washington's testimony itself was unequivocal: As detailed above, his confession was extracted through beating and prolonged detention. *See supra* pp. 4-5. The State did not even attempt to rebut Washington's testimony.

Second, there is corroborating testimony from several witnesses in Washington's case—including from Tyrone Hood—that they, too, were physically coerced by the same detectives into giving false statements. *See supra* p. 5 Here again, the State did not challenge this evidence in any way.

Third, there is vast evidence that the detectives involved in this case—Boudreau, Halloran, and O'Brien—made a habit of coercing false confessions. Former Chicago Police Superintendent Richard Brezezek concluded that a “pattern of investigative malpractice on the part of these detectives [Boudreau, Halloran, and O'Brien] is significantly and obviously present in this investigation.” A.94, 95, 97. According to Superintendent Brezezek: “Kenneth Boudreau, John Halloran and/or James O'Brien . . . have been

previously identified as engaging in patterns of similar coercive conduct.” A.95. The State did not respond to this evidence.

Fourth, Washington’s submissions included specific, detailed allegations of abusive conduct by Detectives Boudreau, Halloran, and O’Brien in over twenty cases. *See supra* p.6. The State did not question any of this evidence, either—nor could it have, given that the detectives’ history of physical abuse is documented in several judicial opinions. In *People v. Plummer*, 2021 IL App (1st) 200299, for instance, the Appellate Court documented evidence that six teenagers were “handcuffed to the wall, smacked, beat with fists, punched in the neck, beat with flashlights, shocked with electricity, had their hair pulled, [and] had their fingers pulled back” by Boudreau; that Boudreau subjected another teenager “to beatings which included being kicked in the wrist that was handcuffed to the wall”; and that Boudreau beat another teenager “for hours” and then beat him with a blackjack and put a pistol in his mouth and pulled the trigger. *Id.* at ¶¶ 89-90, 93. Likewise, in *People v. Tyler*, 2015 IL App (1st) 123470, the Appellate Court recognized that detectives including Boudreau, Halloran, and O’Brien had engaged in “a troubling pattern of systemic abuse,” including beating suspects, threatening to send one suspect’s wife to jail if he did not confess, and denying a teenager food or access to a parent or attorney for 24 hours. *Id.* ¶¶ 183-85, 189. In sum, Washington demonstrated with overwhelming evidence that the detectives extracted his false confession with physical coercion.

2. The Circuit Court And Appellate Court Erred By Relying On Evidence Outside The Record.

Aside from ignoring evidence supporting Washington, both the Circuit Court and the Appellate Court took it upon themselves to consider materials outside the record in an attempt to discredit him. In so doing, the lower courts both violated the law and assumed

the role of advocate for the prosecution, despite the fact that the State itself took no position in the case, did not call any witnesses or present any evidence, and did not participate in the appeal.

“In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we . . . rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.” *People v. Givens*, 237 Ill.2d 311, 323–24 (2010) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243–44 (2008)). When a court strays from these “well-established principles” by raising an issue *sua sponte*, it commits reversible error because courts must “refrain from [raising unbriefed issues] when it would have the effect of transforming the court’s role from that of jurist to advocate.” *Givens*, 237 Ill. 2d at 324.

After the close of evidence in Washington and Hood’s certificate-of-innocence hearing, the Circuit Court demanded that they provide extra-record materials from the original trial, including the transcript of Hood’s trial and the transcript of Washington’s suppression hearing. A.448; A.257. Over the objection of Washington and Hood, the Circuit Court *sua sponte* announced its intention to take judicial notice of these materials after the close of evidence, even though no party had submitted these materials into evidence. A.448.

Relying on these materials constituted legal error and warrants reversal. *People v. Smith*, 2021 IL App (1st) 190421, ¶ 83 (“[A] trial court is prohibited from taking judicial notice of facts *sua sponte* after the close of evidence.”). The dissent below properly recognized this error. “Washington deserves an answer as to why the circuit court may find him not credible based on evidence no party presented, where the circuit court does not

even permit Washington to respond to the evidence the circuit court found.” A.540-41 ¶ 42 (Walker, P.J., dissenting).¹¹

3. The Appellate Court Erred By Entirely Disregarding The Detectives’ Invocation Of The Fifth Amendment When Questioned About Beating Washington.

In addition to the testimony and evidence discussed above, Washington introduced evidence that Detectives Halloran and O’Brien *themselves* do not deny the abuse alleged in this case. When questioned about beating Washington and others in this case, they have refused to answer, asserting the Fifth Amendment. *See supra* pp. 6-7. The Circuit Court and the Appellate Court erred in failing to draw an adverse inference against the detectives. As Judge Walker rightly argued in dissent, the Circuit Court “should have drawn a negative inference from [the] invocation of the fifth amendment, and that inference strongly corroborates the testimony of Washington and other witnesses to police coercion.” A.540 ¶ 40 (Walker, P. J., dissenting). At a bare minimum, the lower courts erred by wholly

¹¹ The obvious legal error of relying on extra-record materials alone warrants reversal, but the lower courts further compounded the error by using those materials as the principal basis for discounting Washington’s credibility. No party in this case challenged Washington’s credibility—the Circuit Court did so all on its own. Based solely on those erroneously-considered materials, the Circuit Court asserted: “Washington’s credibility cannot go without mention based upon the differing versions that he gave under oath at various hearings.” A.257.

The Circuit Court held, inexplicably—and based on unadmitted transcripts that it ordered *sua sponte* but did not enter into the record—that Mr. Washington’s 2016 testimony was not credible because he testified in 2016 that officers made up his confession for him whereas his testimony in 1995 and 1996 had been to the contrary. *Id.* In fact, his 1995 testimony was completely consistent; he testified that an assistant state’s attorney wrote out a statement that he signed because he had been told he could go home if he did so. And while he did testify on cross-examination in 1996 that he made up the confession himself, he did so in the context of testifying that the detectives had slapped him and told him he could go home if he gave a statement. Certainly, that single inconsistency, in an improperly considered transcript, could not suffice to deem Mr. Washington not credible.

disregarding, and failing even to mention, the detectives' refusal to answer questions at the heart of this case.

“[T]he decision of government actors to invoke their fifth amendment privilege against self-incrimination is judicially deafening,” *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 66, and a court should attribute “special significance” to such invocations by law enforcement officers, *People v. Gibson*, 2018 IL App (1st) 162177, ¶ 105. Judges “should take careful note” when “an officer of the court is unwilling to assure the court that he and his colleagues did not physically coerce a confession.” *Wilson*, 2019 IL App (1st) 181486, ¶ 66 (quoting *Gibson*, 2018 IL App. (1st) 162177, ¶108). It is particularly problematic when an officer invokes the Fifth Amendment in response to questions about physically torturing suspects, because “the law reserves a special place for physically coerced confessions, not only because they pervert the truth-seeking function but because they undermine the overall integrity of the trial process.” *Gibson*, 2018 IL App (1st) 162177, ¶ 106.

“[A] failure to draw an adverse inference may be error, even though the inference is permissive, if there is no good reason why the inference should not have been drawn.” *Id.* at ¶ 86. Here, the Circuit Court and the Appellate Court did not merely fail to give a good reason for refusing to draw an adverse inference—they gave no reason whatsoever. At minimum, it was error to wholly disregard the detectives' invocation of the Fifth Amendment when they were questioned about matters at the core of this case.

F. Even Assuming For The Sake Of Argument That Detectives Did Not Coerce Washington's False Confession In The Legal Sense, The False Confession Still Does Not Preclude A Certificate Of Innocence.

Even if one entirely disregards Washington's evidence that he confessed involuntarily, he still cannot be faulted for giving a false confession in the face of a prolonged police interrogation. Again, the General Assembly intended to eliminate barriers that had

prevented innocent people from obtaining certificates of innocence. *See supra* pp. 16-20. The certificate-of-innocence statute precludes certificates of innocence for innocent people only when they are at fault for causing their own convictions. *See supra* pp. 20-23. There is simply no plausible scenario in which Washington is at fault for giving a false confession because he did not “culpably misle[a]d police or other officials.” A.543 ¶ 48 (Walker, P.J., dissenting).

First, as the Seventh Circuit explained, “the clearest example” of someone culpably giving a false confession would be “one who ‘takes the fall’ for someone else.” *Betts*, 10 F.3d at 1285. In this case, there is no possibility that Washington intended to take the fall for Morgan, Sr. It is undisputed that that the two did not even know each other. A.406.

Second, based entirely on an officer’s testimony—and giving no weight to Washington’s account—it is obvious that Washington did not confess immediately and faced a prolonged series of interrogations designed to make him confess. The “length of questioning is strongly associated with the rate of false confession.” *See* Gisli J. Gudjonsson, *The Science-Based Pathways to Understanding False Confessions and Wrongful Convictions*, 12 *Front. Psychol.* 63393, at *3 (2021). As an officer testified, when Washington agreed to speak to detectives, it was to provide an alibi for Hood, not to confess. A.340. That officer also testified that Washington was held for over 24 hours during the period in which he is supposed to have confessed. A.314, 318, 320, 324, 346-47. He was brought to the first precinct around 2:30 p.m., held there for hours, moved to another precinct around 5 p.m., interrogated, held in that precinct overnight, interrogated twice the next day, and at 5 p.m. that next day was still in custody when he was taken to

examine the victim's vehicle. A.314, 318, 320, 324, 346-47. He did not provide a statement until hours later.

“Custodial interrogation is, of course, inherently coercive and ‘trades on the weakness of individuals.’” *People v. Braggs*, 209 Ill. 2d 492, 513 (2003) (quoting *Dickerson v. United States*, 530 U.S. 428, 435 (2000)). Prolonged accusatory interrogations by the police, even when they remain within constitutional bounds, are designed to elicit confessions, not to be pleasant or easy on murder suspects. Washington cannot be faulted for eventually claiming guilt after a series of lengthy, accusatory interrogations designed to make him do just that.

Moreover, Washington was a nineteen-year-old facing an interrogation by a cadre of notorious Burge henchmen. Even ignoring the reality that these detectives physically coerced his confession, at best they would have used psychologically coercive interrogation tactics involving excessively long interrogations, lies about evidence, promises of leniency and threats of harm and other methods of pressuring suspects heavily relied on by Chicago police detectives during the 1990's. “Interrogation is designed to be stressful and unpleasant,” and the predominant interrogation techniques are meant to encourage a suspect to “perceive that he has no choice but to comply with the detectives’ wishes.” Richard A. Leo, *False Confessions: Causes, Consequences, and Implication*, 37 *J. Am. Acad. Psychiatry Law* 332, 335 (2008). Predictably, “threatening harsh punishment if the suspect does not confess and/or promising leniency if he does” has “played a major role in precipitating a false confession in several cases.” Welsh S. White, *What Is an Involuntary Confession Now?*, 50 *Rutgers L. Rev.* 2001, 2050 (1998). There is no question that interrogation techniques are good at producing confessions because human nature

inclines the hapless suspect toward confessing out of “compliance with authority, conformity, and obedience.” Igor Areh, *Police interrogations through the prism of science*, 25 *Horizons of Psychology* 18, 21 (March 2016) (citations omitted). However, empirical research has demonstrated that these standard interrogation techniques are so coercive that they increase the inclination to confess in the innocent as much as they do in the guilty.¹²

The reality of this case is that Washington confessed because detectives beat him. But even if one ignores that reality, he is still entitled to a certificate of innocence because he confessed and pled guilty through no fault of his own.

CONCLUSION

This Court should reverse the Appellate Court and grant Washington the certificate of innocence that he deserves.

Respectfully submitted,

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¹² Douglas Starr, *This psychologist explains why people confess to crimes they didn't commit*, *Science* (June 13, 2019), available at <https://www.science.org/content/article/psychologist-explains-why-people-confess-crimes-they-didn-t-commit>.

Case No. 127952

**IN THE
SUPREME COURT OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal
	)	from the Appellate Court of Illinois,
Respondent-Appellee,	)	First Judicial District, No. 1-16-3024
	)	There heard on Appeal from the
v.	)	Circuit Court of Cook County,
	)	Illinois, No. 93 CR 14676
WAYNE WASHINGTON,)	
	)	The Honorable Domenica Stephenson,
Petitioner-Appellant.	)	Judge, presiding.
)	
)	

CERTIFICATE OF COMPLIANCE

I, David M. Shapiro, certify that this brief conforms to the requirement of Rule 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 36 pages.

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.

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Case No. 127952**IN THE
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)	Circuit Court of Cook County,
WAYNE WASHINGTON,)	Illinois, No. 93 CR 14676
)	
Petitioner-Appellant.)	The Honorable Domenica Stephenson,
)	Judge, presiding.
)	

CERTIFICATE OF SERVICE

I, David M. Shapiro, an attorney, certify that on June 8, 2022, the foregoing OPENING BRIEF was filed by electronic means with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701. I further certify that the same were served by electronic transmission on:

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) Illinois, No. 93 CR 14676
WAYNE WASHINGTON,)
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**APPENDIX OF PETITIONER-APPELLANT WAYNE WASHINGTON
VOLUME I OF II**

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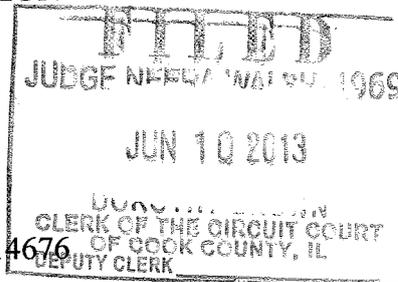
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

TYRONE HOOD,)
)
Petitioner-Defendant)
)
v.)
)
PEOPLE OF THE STATE OF ILLINOIS,)
)
Respondent-Plaintiff)



No. 93 CR 14676

Hon. Neera Walsh

**PETITIONER TYRONE HOOD AND VICTIM MICHELLE SOTO'S JOINT
REQUEST FOR DNA TESTING**

NOW COME Petitioner, Tyrone Hood, and ~~Michelle Soto~~ and jointly move for DNA testing under 725 ILCS 5/116-3 and/or the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1.

Introduction

1. For the past 20 years, Tyrone Hood has alleged that he is absolutely innocent of the murder of Marshall Morgan, Jr., for which he was convicted. Mr. Hood has also consistently argued that the murder was committed by someone else – Morgan, Jr.'s then-estranged father, Marshall Morgan, Sr.

2. During his criminal trial, Mr. Hood sought to present *modus operandi* evidence to show that the murder of Marshall Morgan, Jr. bore a striking similarity to the murder of Morgan, Sr.'s then-fiancé, Michelle Soto. (Mr. Hood could not have committed Ms. Soto's murder because he was incarcerated at the time.) The similarities between the two murders are striking. Both Ms. Soto and Mr. Morgan, Jr. were shot and left to die – nude or partially nude – in the rear of their own, abandoned car, for financial gain to Morgan, Sr. Although Judge Bolan believed

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that Morgan, Sr. “bears watching,” he found the evidence available in 1996 too speculative to warrant admission at Mr. Hood’s criminal trial.

3. In filing this successive post-conviction petition, Mr. Hood has again argued that Morgan, Sr. is responsible for the murder of his son. In doing so, he presented significant **new** evidence of Morgan, Sr.’s *modus operandi* that was not available in 1996; notably, Morgan, Sr.’s confession to and conviction of murdering his then-fiancé Deborah Jackson in 2001, who, like Marshall Morgan, Jr. and Ms. Soto, was shot and left to die, partially nude, inside the rear of her own car.

4. In addition, in his successive post-conviction petition, Mr. Hood presented **new** evidence relating to the Michelle Soto murder demonstrating Morgan, Sr.’s responsibility for that murder. That evidence included an affidavit from Ms. Soto’s daughter, Micaela Soto, describing Morgan, Sr.’s culpability for her mother’s murder; evidence showing that Morgan, Sr. was financially destitute at the time of Ms. Soto’s murder but nonetheless that he took out a life insurance policy on Ms. Soto; evidence that despite his dire financial situation, Morgan, Sr. told family and friends that he was going to be coming into some money shortly; and evidence that Morgan, Sr. collected on Ms. Soto’s life insurance policy and also fraudulently transferred the deed to Ms. Soto’s house into his name after her death.

5. Despite this new evidence of Morgan, Sr.’s culpability, this Court found that the evidence of Morgan, Sr.’s *modus operandi* was “insufficient” because it was still too “speculative.” Opinion, *People v. Hood*, No. 93 CR 14676 (02), at 9 (Aug. 11, 2011).

6. With the instant motion for DNA testing, Mr. Hood hopes to cure this Court’s concerns, and in particular, to identify **physical evidence** linking Morgan, Sr. to Ms. Soto’s murder. Because Morgan, Sr. has neither been arrested nor convicted of Ms. Soto’s murder,

tying Morgan, Sr. to Ms. Soto's murder through physical evidence is of paramount importance: It will further demonstrate and cement Morgan, Sr.'s *modus operandi* of using a .38 caliber handgun to shoot friends and family for financial gain, leaving the victims to die, partially or fully nude, in the rear of their own vehicle.

7. Moreover, this request for DNA testing is particularly unique because it is brought not only by Mr. Hood, but also by Michelle Soto's daughter, Micaela Soto. Micaela has sought justice for her mother ever since she learned of her mother's death. In 1995, she asked the police to investigate Morgan, Sr. and did so again when she recently met with the State. Nonetheless, no action has been taken and the murder of Michelle Soto remains an "open" case to date. *See, e.g.,* CBS2 Chicago, "2 Investigators: Was the Father of Three Wrongfully Convicted of Murder," available at <http://chicago.cbslocal.com/2013/01/22/2-investigators-was-wrong-man-convicted-for-serial-killers-crime/> (last accessed June 6, 2013). DNA testing may help solve the Soto murder and hold Morgan, Sr. accountable for this heinous crime.

SUMMARY OF RELEVANT FACTS

8. As stated above, Tyrone Hood has been steadfast in maintaining his innocence throughout the criminal proceedings against him.

9. At trial, and again in his post-conviction petition, Tyrone Hood sought to introduce evidence to show that someone other than him committed the murder of Marshall Morgan, Jr. – namely, Morgan, Sr. To demonstrate Morgan, Sr.'s culpability, Mr. Hood relied on *modus operandi* evidence.

10. "[M]odus operandi refers to a pattern of criminal behavior so distinctive that separate crimes are recognized as the handiwork of the same wrongdoer." *People v. Cruz*, 162 Ill.2d 314, 349 (1994). Although a "high degree of identity" between the facts of the crime

charged and the other offense is required for the presentation of *modus operandi* evidence, the Illinois Supreme Court has recognized that “some dissimilarity will always exist between independent crimes.” *Id.* (quoting *People v. Taylor*, 101 Ill.2d 508, 521 (1984)); *see also People v. Phillips*, 127 Ill.2d 499, 520-21 (1989) (“test is not one of exact, rigorous identity.”). The crime need not be charged to be admissible *modus operandi* evidence. *People v. Hildreth*, 2011 IL App (1st) 092988-U, at ¶ 28 (Oct. 26, 2011) (“Evidence of a culpable act or uncharged offense can be used to show *modus operandi*.”).

11. Although the threshold for introducing *modus operandi* evidence is significant even when it is the defendant and not the State that seeks to present the evidence, Mr. Hood has far surpassed that threshold here.

12. There are four murders at issue: The first is the murder of William Hall in 1977. Morgan, Sr. confessed to killing his friend Mr. Hall over \$700 that Mr. Hall owed him. Mr. Hall was shot inside a car with a .38 caliber weapon and left to die in an abandoned alley. Morgan, Sr. was convicted of Mr. Hall’s murder. *See Exhibit A, Group Exhibit Relating to Murder of William Hall.*

13. The second is the murder of Marshall Morgan, Jr., who is Morgan, Sr.’s estranged son. Like the murder of Mr. Hall, Marshall Morgan, Jr. was killed with a .38 caliber weapon inside his car and left to die in that abandoned vehicle. Marshall, Morgan, Jr.’s dead body was found partially nude, wedged between the front and back seats of his car. Seven months before his murder, Morgan, Sr. took out a life insurance policy on his 18-year-old estranged son, after Morgan, Sr. had come into some significant financial problems of his own, including a pending eviction and litigation over child support and alimony. Morgan, Sr. collected on that policy following his son’s death. *See Group Exhibit B, Documents Relating to Murder of Morgan, Jr.*

14. The third murder is of Michelle Soto, Morgan, Sr.'s then-fiancé. Like Marshall Morgan, Jr. and Mr. Hall, Ms. Soto was shot and killed in her own car, and left to die in that abandoned vehicle. Ms. Soto's dead body was found nude, wedged between the front and back seats of her car. Five months before her murder, Morgan, Sr. took out a life insurance policy on his Ms. Soto, again while Morgan, Sr. was dealing with his own financial destitution. Morgan, Sr. collected on that life insurance policy after his fiancé's death; he also fraudulently transferred the deed to Ms. Soto's home into his name just prior to her death. Ms. Soto's death remains unsolved. *See* Group Exhibit C, Documents Relating to Murder of Michelle Soto.

15. The fourth murder is of Deborah Jackson, Morgan, Sr.'s then-girlfriend. Like Mr. Hall, Marshall Morgan, Jr. and Ms. Soto, Ms. Jackson was shot and killed with a .38 caliber handgun in her own car, and left to die in that abandoned vehicle. Ms. Jackson's dead body was found partially nude, in the trunk of her car. Morgan, Sr. confessed to killing Ms. Jackson and was convicted of first-degree murder. *See* Group Exhibit D, Documents Relating to Murder of Deborah Jackson.

16. While the parallels among all of these murders are striking, the commonalities between the murder of Marshall Morgan, Jr. and of Michelle Soto are so similar and so distinct that they bear the same criminal fingerprint. In particular:

- a. **Identity of the victim:** In both the murder of Marshall Morgan, Jr. and of Ms. Soto, the victims were close family of Morgan, Sr. – the former his son and the latter his then-fiancé. *See* Group Exhibits B at 20-22 & C at 17.¹ The courts have held that the identity of the victim is important in determining whether two

¹ Micaela remembers her mother as only Morgan, Sr.'s girlfriend. Nonetheless, and perhaps to further legitimize his request to be the beneficiary on Ms. Soto's life insurance policy, Michelle Soto is listed as Morgan, Sr.'s "fiancé" on the life insurance policies. For that reason, she will be referred to as Morgan, Sr.'s fiancé throughout this brief.

crimes constitute a distinctive pattern. *See People v. Robinson*, 167 Ill.2d 53, 65 (1995) (finding admissible other offense where “[i]n both attacks, the assailant covered his face, **selected older women as his targets**, and attacked them as they exited their garage.”) (emphasis added).

- b. **Location of victim’s body:** In both the murder of Marshall Morgan, Jr. and of Ms. Soto, the victims’ bodies were found wedged between the front and back seats of their own cars. The descriptions in the police reports of the bodies of the two victims are nearly identical: For Marshall Morgan, Jr., the police stated that the “[v]ictim was found on the floor between the front and back seats of a 1986 blue four door Chevy Cavalier.” Group Exhibit B at 39. Similarly, for Michelle Soto, the police explained that the victim’s body “was discovered wedged between the front and rear seats of her 1994 Chrysler LeBaron.” Group Exhibit C at 8. The courts have repeatedly found that the location of the victim’s body can be a distinctive feature of crime sufficient to help demonstrate a particular *modus operandi*. *See People v. Lloyd*, No. 1–09–0332, 2011 WL 9670118, at *11 (1st Dist. Sept. 30, 2011) (finding it important and sufficiently distinctive that “[t]he two offenders in each incident attempted to place the male victim in the trunk of the stolen car.”).
- c. **Location of offense & manner of death:** In both the murder of Marshall Morgan, Jr. and of Ms. Soto, the victims were shot and left to die in their own abandoned cars. Indeed, in both cases, after their death, the victims were left in their cars for some significant period of time before they were discovered; when their bodies were found, they were in an advanced state of decomposition. *See*

Group Exhibit B, at 43; Exhibit C, Soto at 12 (describing the “advanced state of decomposition” of Ms. Soto’s body). The courts have held that the location of the offense and the appearance of the victim can be unique features of a crime. *See People v. Hayes* (1988), 168 Ill.App.3d 816, 819-20 (1st Dist. 1988) (enough that armed robberies occurred in same shopping plaza, about same time of evening, and assailant used a silver-colored gun); *see also Robinson*, 167 Ill.2d at 65 (finding relevant that in both offenses, assailant “attacked [the victims] as they exited their garage.”); *Spurlin v. Cowan*, No. 99-3523, 2001 WL 468250, at *3 (7th Cir. May 1, 2001) (“The robberies that occurred on August 3 and August 14 presented compelling similarities: the robberies took place at the same bank, with a gun, and late at night/early in the morning.”).

- d. **Clothing found on victim:** In both the murder of Marshall Morgan, Jr. and of Ms. Soto, the victims’ bodies were found nude. For Marshall Morgan, Jr., he was nude from the waist down. *See* Group Exhibit B at 43. Similarly, when Ms. Soto was found, she was nude. *See* Group Exhibit C at 8, 12. The courts have repeatedly found that whether a victim is clothed or covered with clothing or other materials can be a distinctive feature of a crime, contributing to a criminal fingerprint. *See People v. Cruz*, 162 Ill.2d 314, 351 (1994) (finding “distinctive” the fact that both victims were covered with something when found – one with a sheet and the other with a sleeping bag).
- e. **Motive:** Prior to the murders of Marshall Morgan, Jr. and of Ms. Soto, Marshall Morgan, Sr. took out life insurance policies on both victims, which he then collected on following their deaths. In particular, in October 1992, Morgan, Sr.

took out a life insurance policy on his then-20 year-old, estranged son. *See* Group Exhibit B, p. 20-22. Seven months later, Marshall Morgan, Jr. was killed.

Morgan, Sr. collected on the life insurance policy. *See* Group Exhibit B, at 46.

Similarly, in February 1995, Morgan, Sr. took out a life insurance policy on his then-fiancé, Michelle Soto. *See* Group Exhibit C, at 2-4. Five months later, Michelle Soto was killed. Morgan, Sr. collected on the life insurance policy. *See* Group Exhibit C, at 17.

The life insurance policies on their own are striking evidence of the identity of these crimes. *See, e.g., Davidson v. State*, 558 N.E.2d 1077 (Ind.1990) (defendant drowned two of her children after taking out life insurance policies on each, indicating common motive and modus operandi); *Buenoano v. State*, 527 So.2d 194, 197 (Fla. 1988) (finding that where all three victims had close relationship with defendant, same method used to kill each and where the defendant was a beneficiary under life insurance policies on victims, evidence was admissible to prove *modus operandi*). That is particularly true given Morgan, Sr.'s near bankruptcy at the time that he took out these policies, as described below. Morgan, Sr.'s financial destitution reinforces Mr. Hood's inference that the life insurance policies were taken out for nefarious purposes.

- | | |
|-----------------|---|
| 6/9/92 | Marshall Morgan, Sr. avers under oath in divorce proceedings that he has a net monthly loss of \$2,108.95 |
| 9/16/92 | Morgan, Sr. is served with a mortgage foreclosure action on his home |
| 10/20/92 | Morgan, Sr. takes out a life insurance policy on his estranged son, Marshall Morgan, Jr. |

- 1/8/93** Angela Griffin files an action against Morgan, Sr. to establish parentage over her child and to secure **child support**
- 5/17/93** Marshall Morgan, Jr.'s body was found shot dead, wedged between the front and back seats of his abandoned car
- 6/9/93** **Morgan, Sr. collected \$44,593.43** on Marshall Morgan, Jr.'s life insurance policy
- 10/6/93** Morgan, Sr. is **ordered to pay child support** to Angela Griffin.
- 2/4/95** Morgan, Sr. takes out a **life insurance policy** on his then-fiancé, Michelle Soto. Shortly thereafter, Morgan, Sr. told his family and friends that he "was about to come into some money."
- 7/17/95** Michelle Soto's body was found shot dead, wedged between the front and back seats of her abandoned car. When the police questioned Morgan, Sr. about the murder, **he initially lied and denied having a life insurance policy on Ms. Soto.**
- 8/28/95** Morgan, Sr. makes a claim on Ms. Soto's life insurance policy.
- 6/17/97** Morgan, Sr. finally collects on Ms. Soto's life insurance policy following litigation filed by her estate. Under the settlement, **Morgan, Sr. received \$107,000** and Ms. Soto's estate collected \$60,000.

See Group Exhibits B & C.

17. Despite the similarities between the two murders, when this Court reviewed Mr. Hood's post-conviction petition, it found the link between the two crimes too "speculative." As a result, Mr. Hood seeks DNA testing of forensic evidence in Ms. Soto's murder to nudge his allegations across the line of speculation into admissible evidence. The DNA testing requested has the ability to demonstrate Morgan, Sr.'s culpability for Ms. Soto's murder. If that testing links Morgan, Sr. to Ms. Soto's killing, then Mr. Hood believes the evidence of Morgan, Sr.'s *modus operandi* is so strong as to warrant post-conviction relief. See *Cruz*, 162 Ill.2d at 349-51.

18. Micaela Soto, the daughter of Michelle Soto, also joins this motion for DNA testing. Since her mother's death, Micaela Soto has repeatedly asked the police and the State to investigate Morgan, Sr. Having been told that without additional evidence the State's hands are tied, she hopes that the instant motion and attendant testing will provide the necessary link to prosecute Morgan, Sr. for killing her mother.

FORENSIC EVIDENCE AVAILABLE FOR TESTING

19. There are "hair-like fibers" that Mr. Hood and Micaela Soto seek to test. These fibers were collected by the Chicago Police Department during the investigation into Ms. Soto's murder.

20. When the police investigated Ms. Soto's death, Marshall Morgan, Sr. was one of the early suspects. For example, when Micaela Soto "spoke to the detectives after [her] mom's murder, [she] told them that [she] thought Morgan, Sr. was responsible." Group Exhibit C, at 5, Soto Aff. At ¶ 9. Indeed, Morgan, Sr. was the last person to see Ms. Soto alive. Group Exhibit C, at 16 (Morgan, Sr. says the last time he saw her was when she left for Reynaldo Soto's home) and 15 (Reynaldo Soto called the police because Michelle Soto never arrived at his home as she was scheduled to). Moreover, Ms. Soto's sisters reported to the police that Ms. Soto was having problems with Morgan, Sr. and that Ms. Soto had given one of her sister's papers to keep in case anything happened to her, and instructed that sister not to ever give any of the papers to Morgan, Sr. *Id.* at 14.

21. As a result, the police not only spoke to Morgan, Sr., but also searched his car and Ms. Soto's home, which he shared with her at the time.

22. Inside Morgan, Sr.'s trunk, the police found "a black piece of tape with hair-like fibers adhering to the tape's surface and a white cord." Group Exhibit C, at 27, 30; Inventory

No. 1537658. Morgan, Sr. alleged that the tape had been in the trunk since he purchased the car and that the rope was used when he “transported ferrets.” Group Exhibit C, at 31. The police also took a “sealed vial of unknown substance” from Morgan, Sr.’s car. Group Exhibit C, at 27; Inventory No. 1537657.

23. When the police searched the home that Morgan, Sr. shared with Ms. Soto, the police found and inventoried a white hairbrush, a blue clear, plastic hairbrush and an “envelope containing hair-like fibers.” Group Exhibit C, at 26; Inventory No. 153755.

ARGUMENT

I. Mr. Hood’s And Ms. Soto’s Request For DNA Testing Should Be Granted

24. Tyrone Hood now brings this request for DNA testing pursuant to 725 ILCS 5/116-3.

25. The statute provides that a petitioner must be granted DNA testing when the following conditions are met:

- a. The evidence to be tested was “secured in relation to the trial which resulted in [petitioner’s] conviction.” 725 ILCS 5/116-3(a);
- b. The evidence “was not subject to the testing which is now requested at the time of trial,” 725 ILCS 5/116-3(a)(1), or although previously subject to testing, “can be subjected to additional testing utilizing a method that was not scientifically available at the time of trial that provides a reasonable likelihood of more probative results.” 725 ILCS 5/116-3(a)(2);
- c. “[I]dentity was the issue in the trial which resulted in [petitioner’s] conviction.” 725 ILCS 5/116-3(b)(1);

- d. The chain of custody is sufficient to establish that the evidence to be tested “has not been substituted, tampered with, replaced, or altered in any material aspect.” 725 ILCS 5/116-3(b)(2);
- e. Testing has the potential to produce “new, noncumulative evidence materially relevant to the defendant’s assertion of actual innocence.” 725 ILCS 5/116-3(c)(1);
- f. The requested testing “employs a scientific method generally accepted within the relevant scientific community.” 725 ILCS 5/116-3(c)(2); and
- g. Reasonable notice of the motion is served upon the State. 725 ILCS 5/116-3(a)(2).

26. Here, Mr. Hood requests testing of the “hair-like fibers” that were found on the duct tape in Morgan, Sr.’s trunk. The testing that Mr. Hood seeks satisfies all of the requirements of Section 116-3.²

A. The Evidence to be Tested Was Collected in Relation to the Soto Investigation and Its Existence was Disclosed During Mr. Hood’s Trial

27. Although the evidence to be tested was admittedly not collected in relation to Mr. Hood’s case, reports describing it were turned over to Mr. Hood during the pendency of his criminal case. Indeed, a number of police reports relating to Michelle Soto’s murder were disclosed to Mr. Hood, and Mr. Hood sought to present evidence relating to the Soto murder at his criminal trial. Although Mr. Hood has yet to locate a case where this factor was at issue, given the purpose of the DNA testing statute, it should not be a basis on which to deny this

² Mr. Hood and Ms. Soto may also need to test the hairs found in the house Morgan, Sr. shared with Ms. Soto so that any DNA recovered can be compared against Michelle Soto’s DNA. Alternatively, mitochondrial DNA testing could be performed on the “hair-like fibers”: Because mitochondrial DNA is maternally inherited, Micaela Soto and Mr. Hood can compare any DNA profile recovered from the fibers on the duct tape to Micaela Soto’s DNA.

motion. *People v. Moore*, 377 Ill.App.3d 294, 298 (1st Dist. 2007) (finding that the purpose of Section 116-3 “is to provide an avenue for convicted defendants who maintained their innocence to test genetic material capable of providing new and dramatic evidence materially relevant to the question of the defendant’s actual innocence”) (quoting *People v. Henderson*, 343 Ill.App.3d 1108, 1114 (1st Dist. 2003)).

28. That is particularly true where Ms. Soto’s daughter, Micaela Soto, has joined this motion and is also seeking DNA testing to determine the identity of the person who murdered her mother. Like Mr. Hood, Micaela Soto believes that Morgan, Sr. is responsible for her mother’s death: When she recently met with the State regarding this case and her mother’s case, she was told that the State could not take any further action in identifying her mother’s murderer because there was no physical evidence tying Morgan, Sr. – or anyone else – to the crime. Ms. Soto asked the State to look for and test the fibers on the duct tape, but no action has thus far been voluntarily taken by the State. Ms. Soto, therefore, seeks to cure this alleged deficiency through the instant motion for DNA testing.

B. The Evidence to be Tested Was Not Subject of Testing at the Time of the Trial

29. The evidence to be tested was not previously subjected to the testing that Mr. Hood and Ms. Soto are requesting here. Indeed, there has been no forensic testing whatsoever of this evidence.

C. Identity Was the Issue at Trial

30. Identity was the central issue at Mr. Hood’s trial. Mr. Hood has never disputed that Marshall Morgan, Jr. was shot and killed, but Mr. Hood maintained at trial, and at all times both before and after trial, that he was not involved in Marshall Morgan, Jr.’s death. Therefore, Mr. Hood has satisfied the requirements of Section 116-3(c)(1). See *People v. Johnson*, 205

Ill.2d 381 (2002) (finding that identity was a central issue at defendant's trial within the meaning of 725 ILCS 5/116-3 where there was a single assailant, the only direct evidence of guilt was an identification by the victim, and the defendant never admitted to being at the scene of the crime).

D. The Evidence Was Subject to a Proper Chain of Custody

31. Neither Mr. Hood nor Ms. Soto has a complete set of police reports for the investigation into the murder of Michelle Soto. Nonetheless, what Mr. Hood has secured is a police report indicating that the material to be tested was collected by the Chicago Police Department and properly inventoried under Inventory No. 1537658 *See* Group Exhibit C, at 27. At this juncture, that is sufficient to establish a *prima facie* case that the evidence was subject to a proper chain of custody. *People v. Bailey*, 386 Ill.App.3d 68, 74-75 (1st Dist. 2008) (finding that conclusory assertion that evidence kept pursuant to a proper chain of custody sufficient); *see also Johnson*, 205 Ill.2d at 394 (finding that defendant had presented a *prima facie* case that evidence had been under a secure chain of custody because even “[t]hrough the State contends that the defendant has presented no evidence of the kit’s location since his 1984 trial, such evidence would not be available to the defendant.”); *People v. Travis*, 329 Ill.App.3d 280, 285 (1st Dist. 2002) (noting that “[i]t asks too much to require petitioning defendant in these cases to plead and prove proper chain of custody at the outset, for the evidence at issue will undoubtedly have been within the safekeeping of the State, not the defendant. A trial court may allow limited discovery in an appropriate case”); *People v. Sanchez*, 363 Ill.App.3d 470, 478 (1st Dist. 2006) (relying on *Johnson* and *Travis*, finding that the defendant's motion, which simply stated that the evidence to be tested had been in the continuous possession of law enforcement agencies “is facially sufficient with respect to the chain-of-custody requirement”).

32. To the extent that the State contests the chain of custody, this Court should order discovery to clear up any dispute. *See Sanchez*, 363 Ill. App. 3d at 480-81 (remanding case to determine, with the aid of discovery if necessary, whether the chain of custody and other statutory requirements were satisfied).

E. DNA Testing Has the Scientific Potential to Produce New and Non-Cumulative Evidence of Actual Innocence

33. Perhaps most importantly, DNA testing has the scientific potential to produce new and non-cumulative evidence of Mr. Hood's innocence. As described above, the testing requested will cure this Court's concerns that Mr. Hood's *modus operandi* allegations are too speculative to demonstrate that Morgan, Sr. – and not Mr. Hood – is responsible for the murder of Marshall Morgan, Jr.

34. As the courts have held, a petitioner need not show that the results of DNA testing alone would exonerate him. *People v. Savory*, 197 Ill.2d 203, 214 (2001); *People v. Price*, 345 Ill. App.3d 129, 134-35 (2d Dist. 2003) (cautioning courts not to “collapse” the consideration of a Section 116-3 motion into post-conviction claims a petitioner plans to make based on the results); *People v. Henderson*, 343 Ill. App. 3d 1108, 1117 (1st Dist. 2003) (holding that DNA testing is not limited to cases “where the proposed scientific testing will, by itself, completely vindicate a defendant”). Instead, a petitioner need only show that the testing would produce evidence that would tend to “significantly advance” a claim of actual innocence. *Savory*, 197 Ill.2d at 214. At minimum, the testing Mr. Hood seeks would achieve that goal.

35. A criminal defendant can try to prove that someone else committed the crime for which he has been charged and convicted. *See Holmes v. United States*, 547 U.S. 319, 329-31 (2006); *People v. Beaman*, 229 Ill.App.3d 56, 75-80 (1st Dist. 2008). Using *modus operandi* evidence is one way to do this.

36. On that score, *People v. Cruz* is instructive. In *Cruz*, the defendant sought to admit evidence concerning a nontestifying, third party's "other crimes" to show that party's *modus operandi* and demonstrate the defendant's innocence. 162 Ill.2d at 347, 350-51. The Court found that evidence relating to another murder allegedly committed by the third party was admissible under a theory of *modus operandi*. *Id.* at 351. In particular, *Cruz* found that the following distinctive facts demonstrated a "substantial and meaningful link" between the crime with which the defendant was charged and the crime that the third party had supposedly committed:

- a. **Identity of the victim:** Both victims were Caucasian children;
- b. **Planning:** For both murders, there was a lack of premeditation;
- c. **Location of offense:** Both abductions occurred inside the perpetrator's car;
- d. **Time of offense:** Both crimes took place during daylight hours;
- e. **Victim's body:** Each of the victims in the two crimes was found covered with something, either a sheet or sleeping bag; and
- f. **Method of offense:** Both crimes were committed by tying the victim's hands and performing anal sex.

Id. at 351.

37. So too here. Both the Hood and Soto murders involved:
- a. **Identity of victim:** Both victims had close relationships to Marshall Morgan, Sr. (his son and then-fiancé);
 - b. **Planning:** Both murders were premeditated insofar as Morgan, Sr. took out a life insurance policy on each of Morgan, Jr. and Soto just months before each was killed;

- c. **Location of offense:** Both occurred (or at least the bodies were found) inside the victims' own, abandoned cars;
- d. **Time of offense:** Both murders occurred long before the bodies were found; both bodies were discovered in advanced stages of decomposition;
- e. **Victim's body:** Both bodies were found nude or partially nude, and both were found wedged between the front and back seats of their own, abandoned cars; and
- f. **Method of offense:** Both victims were shot.

See Group Exhibits B & C. As such, the *modus operandi* evidence for the murder of Ms. Soto is sufficient under *Cruz*.

38. The same finding obtains for the relationship between Morgan, Jr.'s murder and the murder of Deborah Jackson:

- a. **Identity of victim:** Both victims had close relationships to Marshall Morgan, Sr. (his son and then-girlfriend respectively);
- b. **Location of offense:** Both occurred (or at least the bodies were found) inside the victims' own cars;
- c. **Time of offense:** Both murders occurred long before the bodies were found; both bodies were discovered in advanced stages of decomposition;
- d. **Victim's body:** Both victims were partially nude; and
- e. **Method of offense:** Both victims were shot in the chest with a .38 caliber gun.

See Group Exhibits B & D.

39. Thus, Mr. Hood submits that the Court's prior ruling stating that his *modus operandi* allegations were "speculative" and "cumulative" of what he presented at trial can only be explained as concerns that (a) there is no physical evidence linking Morgan, Sr. to Ms. Soto's

murder (Morgan, Sr. confessed to and was convicted of the murders of Mr. Hall and Ms. Jackson only); and that (b) Mr. Hood already tried to present this *modus operandi* evidence at his criminal trial in 1996.

40. The requested DNA testing cures both of the Court's concerns. First, if the DNA on the fibers on the duct tape found in Morgan, Sr.'s car immediately after Ms. Soto's death matches Ms. Soto, that physical evidence would undoubtedly link Morgan, Sr. to her death. *See People v. Griffin*, No. 1-09-1004, 2011 WL 9687810, at *7 (1st Dist. March 11, 2011) ("Even though [DNA testing of] the bag, on its own, may not be sufficient to support a guilty verdict, it is still entitled to sufficient weight when it tends to be corroborative of other evidence."); *People v. Saxon*, 374 Ill.App.3d 409, 418 (3rd Dist. 2007) (finding that jury "could base [its verdict] on inferences derived from the evidence . . . Defendant was in the victim's house that night, was familiar with the victim's house and the property where the body was found, and admitted to having sex with an underage girl around the time of [the victim's] disappearance. Defendant had motive, opportunity, and access to commit the crimes of which he is accused.").

41. Second, the DNA evidence requested would indisputably amount to "new" evidence that could not – and was not – raised or presented at Mr. Hood's criminal trial. Moreover, because DNA evidence is physical evidence that can link Morgan, Sr. to the crime it is not "cumulative" because it is qualitatively different than the other circumstantial evidence presented. *See, e.g., Williams v. Illinois*, 132 S.Ct. 2221, 2224 (2012) ("In some cases, a DNA profile may provide powerful incriminating evidence against a person who is identified either before or after the profile is completed. But in others, the primary effect of the profile is to exonerate a suspect who has been charged or is under investigation."); *District Attorney's Office for the Third Judicial Dist. v. Osborne*, 557 U.S. 52, 97 n.7 (2009) (Stevens, J., dissenting)

(“While no form of testing is error proof in every case, the degree to which DNA evidence has become a foundational tool of law enforcement and prosecution is indicative of the general reliability and probative power of such testing.”).

42. Indeed, if the fibers on the duct tape in Morgan, Sr.’s car are linked to Ms. Soto’s DNA, then allegations of Morgan, Sr.’s culpability for her murder are no longer “speculative,” but rather admissible evidence at a retrial. *See Cruz*, 162 Ill.2d at 351.

F. DNA Testing Is Widely Accepted in the Relevant Scientific Community

43. DNA testing is both widely accepted by the scientific and legal communities as a method of determining the source of physical evidence.

G. The State Has Been Given Reasonable Notice of This Motion

44. This motion serves as reasonable notice to the State that Mr. Hood is seeking the testing identified in this Motion.

II. Even if Tyrone Hood and Micaela Soto Do Not Satisfy the Statutory Requirements for DNA Testing, This Court Should Grant it Because They Have Demonstrated “Good Cause” For the Same

45. Even if this Court does not find that Mr. Hood and Ms. Soto have met the requirements for DNA testing under 725 ILCS 5/116-3, this Court can still order the testing under the ordinary rules for discovery in post-conviction cases. The standard for such discovery – good cause – has clearly been met here.

46. A trial court has the inherent authority to order discovery in post-conviction proceedings where the petitioner has shown “good cause.” *See People v. Johnson*, 205 Ill.2d 381, 408 (2002); *see also People ex. rel. Daley v. Fitzgerald*, 123 Ill.2d 175, 183-83 (1988). To make that determination, a court evaluates: (1) the issues presented in the petition; (2) the scope of the requested discovery; (3) the burden of discovery on the State and on any witness; and (4)

the availability of evidence through other sources. *Johnson*, 205 Ill.2d at 408. Mr. Hood and Ms. Soto's request satisfies the standard for "good cause."

A. The DNA Testing Requested Relates Directly to the Issues in Mr. Hood's Petition

47. Mr. Hood has alleged that he is actually innocent of the murder for which he was convicted and that Morgan, Sr. is the real offender. Mr. Hood based this assertion, in part, on evidence of Morgan, Sr.'s culpability for other, strikingly similar murders. As described more fully above, the requested DNA testing is directly related to the issues in Mr. Hood's petition because it addresses Morgan, Sr.'s involvement in one of those similar murders – the murder of Michelle Soto.

48. The fact that this Court has dismissed Mr. Hood's actual innocence claim should not be a bar to this discovery because this Court can permit Mr. Hood to amend his pleadings at any time. *See* 725 ILCS 5/122-5; *People v. Washington*, 256 Ill.App.3d 445, 449-50 (1st Dist. 1993) (allowing defendant to amend the pleadings to conform to the proof offered at an evidentiary hearing by "adding a claim of newly discovered evidence that would exonerate [him]"). Such re-pleading is particularly appropriate here because the testing Mr. Hood seeks would cure the deficiencies identified by the Court in Mr. Hood's prior pleadings.

49. Moreover, the testing has the potential to help identify whether Morgan, Sr. killed Ms. Soto. For that reason, Michelle Soto's daughter, Micaela Soto, has joined this petition.

50. It is well known that a prosecutor has a duty "to seek justice." Ill. R. Prof. Conduct 3.8. This State's Attorney has also asserted that "[s]erving victims is our highest priority and our most important obligation." Cook County State's Attorney's Office *at* www.sttaesattorney.org/index2/victimservices.html (last accessed June 6, 2013). Given that backdrop and the important role that the criminal justice system plays in identifying and

prosecuting perpetrators of crime, it is hard to fathom how the instant request could be objectionable on any basis, let alone because it is somehow outside of the scope of the current proceedings.

B. The Requested DNA Testing is Limited in Scope

51. Because Mr. Hood and Micaela Soto are requesting DNA testing solely on available evidence collected by the Chicago Police Department in Michelle Soto's murder, it is clearly limited in scope and narrowly tailored to both Mr. Hood's allegations of innocence and Micaela Soto's request that her mother's murder be fully investigated.

C. The Testing is Not Burdensome

52. DNA testing is routinely requested and performed by the State. As such, any burden from this request to test the fibers collected from Morgan, Sr.'s car immediately after Ms. Soto's body was discovered is minimal.

D. Availability Through Other Sources

53. Finally, there can be no dispute that this evidence is not available through other sources. Mr. Hood tried to present the evidence of Morgan, Sr.'s *modus operandi* that he has been able to cull on his own in his post-conviction petition, and this Court deemed those allegations too speculative. Likewise, Ms. Soto has pleaded with the State to test the forensic evidence at issue here and to investigate Morgan, Sr. for the murder of her mother, but so far neither any testing nor investigation has been conducted.

54. For both Mr. Hood and Ms. Soto, this request is one that they do not take lightly and one that is of last resort: They have tried on their own to present and collect evidence of Morgan, Sr.'s guilt, but are now relying on the Court to see that justice is done.

CONCLUSION

55. For all of the reasons stated above, Mr. Hood and Micaela Soto respectfully request that this Court order DNA testing on the hair-like fibers collected by the Chicago Police Department during the investigation into Michelle Soto's death.

WHEREFORE, Tyrone Hood and Micaela Soto respectfully request that this Court order the discovery and the testing sought herein. All such testing should be conducted pursuant to a protocol for testing approved by this Court, after the parties have had the opportunity to confer and advise the Court on conditions that will ensure the integrity of the samples and the testing.

Respectfully submitted,



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To: The Honorable Judge Presiding

Re: Report of Richard J. Brzeczek in Support of the
Post-Conviction Petition of Tyrone Hood

Date: July 28, 2013

INTRODUCTION OF MR. BRZECZEK

I, Richard J. Brzeczek, am the former Superintendent of Police of the Chicago Police Department. Having served in that capacity for 3+ years, I was responsible for the entire operation and functioning of the Department as its chief executive. Appointed Superintendent of Police on January 11, 1980, I resigned from that position on April 29, 1983 and entered the private practice of law concentrating my practice in the area of criminal defense. Prior to being appointed Superintendent, I held all career service ranks in the Chicago Police Department. I held supervisory and command positions supervising detectives in the Detective Division and the Organized Crime Division. As Counsel and Executive Assistant to the Superintendent, I had the responsibility, *inter alia*, of reviewing approximately 3,000+ internal investigations of allegations of police misconduct annually beginning in December, 1973 and continuing until my appointment as Superintendent of Police in January, 1980.

From 1977 thru 2011, I have taught at law enforcement seminars throughout the United States, including, but not limited to, the Federal Bureau of Investigation Academy, the Southern Police Institute at the University of Louisville, and the Northwestern University Traffic Institute (as it was then called). My primary topic of instruction was the techniques, procedures and *case law* regarding investigations of police misconduct.

From approximately 1982 and continuing until the present day, I have been qualified and have testified as an expert witness in the United States District Court for the Northern District of Illinois and the Circuit Court of Cook County, including its Criminal Division on matters involving police procedures and practices, and in cases involving issues that I will generically call "wrongful convictions." I have also been qualified and have testified as an expert witness in both Federal and State courts other than those specifically identified above.

In addition to in-court testimony, I have given numerous depositions on the subject matters described above and in some of those prior cases have had an opportunity to review the work of at least some of the detectives involved in the investigation and prosecution of Tyrone Hood.

I have been asked to review police reports, the Post-Conviction Petition and Exhibits, and the State's investigative reports to offer an expert opinion as to whether there is sufficient evidence to support a *modus operandi* and whether that sufficient evidence would cause a reasonable police officer, detective and/or investigator to undertake a re-investigation of the murders of Marshall Morgan, Jr. and Michelle Soto. Having reviewed that material as aforesaid, I strongly support and urge a significant and legitimate re-investigation to determine whether Marshall Morgan, Sr. and not Tyrone Hood, was responsible for these murders. The re-investigation must go beyond a brief, feeble and superficial conversation with Marshall Morgan, Sr.

Among the matters that I must consider in addition to my experience as a police officer, police supervisor and police executive, is my experience of examining these types of cases as an expert witness. Fortunately, for my experience but unfortunately for the integrity of our system of criminal jurisprudence and criminal justice, I have seen a sufficient number of cases that tell me that the detectives engaged in inappropriate conduct, especially as that conduct relates to the obtaining of a confession, thereby violating an arrestee/defendant's rights. In addition, I have reviewed cases wherein the detectives engaged in inappropriate conduct and it appears that the same detectives with whose work I am familiar from previous cases are involved in this case.

Based on the previously established questionable conduct of these detectives and based upon my almost 19 years in law enforcement, I can state that the issue of *modus operandi* is sufficiently strong and supports the relief sought in the Post-Conviction Conviction.

FACTUAL BACKGROUND ON MARSHALL MORGAN, SR.

Tyrone Hood has alleged that Marshall Morgan, Sr., and not Mr. Hood, is responsible for the death of Marshall Morgan, Jr. Marshall Morgan, Sr. has a history of criminal violence and also had a financial motive for the murders of Marshall Morgan, Jr. and Michelle Soto.

History of Criminal Violence

Marshall Morgan, Sr. has been convicted of two murders. The first occurred in 1977. He shot his friend, William Hall, inside Morgan Sr.'s car with a .38 caliber weapon after Hall could not repay Morgan, Sr. the sum of \$700 that Hall owed him. Morgan, Sr. then dumped Hall's body in an alley and drove away. Marshall Morgan, Sr. confessed to the murder, pled guilty and was sentenced to seven years in the Illinois Department of Corrections.

In 2001, Marshall Morgan, Sr. shot and killed his girlfriend, Deborah Jackson, with a .38 caliber revolver over \$25,000 that she allegedly owed him or took from him. Morgan Sr. dumped Jackson's body in the trunk of her car, partially nude, and walked away. He confessed to the murder of Deborah Jackson. He went to trial before a jury and was convicted in 2008. He was sentenced to 75 years in the Illinois Department of Corrections.

In addition to these convictions, in 1992, Delores Morgan who was then married to Morgan, Sr. filed a Petition for an Order of Protection against Morgan, Sr. In the petition for an order of protection, Delores Morgan alleged that Morgan, Sr. "... choked petitioner almost to unconscious", "... slammed her into walls many times", and "... put a gun to petitioner's head." She also alleged that Morgan, Sr. had been repeatedly abusive to her about seven times in a single year.

By comparison and in contrast, Tyrone Hood has a minor criminal background and no history of violence. Hood's only prior conviction is a misdemeanor from 1982 (when he was a teenager) and for which he received probation.

Marshall Morgan, Sr.'s Financial Motive

In addition to his history of violence, background information on Marshall Morgan, Sr. shows that he had a financial motive for killing his son, Marshall Morgan, Jr. and Michelle Soto because at the time of each of those murders Marshall Morgan, Sr. was experiencing financial problems.

- On June 9, 1992, Marshall Morgan, Sr. filed an affidavit of income and expenses in connection with divorce

proceedings brought by Delores Morgan. His monthly income as recited in the affidavit (\$927.85) was far outweighed by his net monthly expenses (\$2576.80).

- On September 16, 1992, a foreclosure action was filed against Morgan, Sr. by Independence One Mortgage. Two weeks later, on September 30, 1992, Morgan Sr., was personally served with that complaint and summons.
- On October 20, 1992, Morgan Sr., took out a life insurance policy on his son, Marshall Morgan, Jr., who was then 19 years old. Marshall Morgan, Sr., was listed as the sole beneficiary on that life insurance policy.
- On January 6, 1993, Marshall Morgan, Sr., was served with a petition and summons to establish paternity and secure child support. The petition was filed by Angela Griffin.
- On April 23, 1993, a judgment of foreclosure was entered against Marshall Morgan, Sr.
- On May 17, 1993, Marshall Morgan, Jr.'s body was found partially nude, having been shot and killed with a .38 caliber weapon. His body was found wedged between the front and back seats of his abandoned car. The sole beneficiary of the life insurance policy which had been taken out on Morgan Jr.'s life just seven months earlier, Marshall Morgan, Sr., was the last person to see Marshall Morgan, Jr. alive on May 8, 1993.
- On June 8, 1993, Marshall Morgan, Sr. collected \$44,593.43 from the insurance policy he took out on Marshall Morgan, Jr.'s life.
- On October 6, 1993, an order was entered in the Circuit Court of Cook County directing Marshall Morgan, Sr. to pay Angela Griffin child support.

- On January 5, 1994, Marshall Morgan, Sr. was served with an eviction notice. His house had been sold and he was ordered to vacate the premises.
- On February 4, 1995, Marshall Morgan, Sr. took out a life insurance policy on his fiancée, Michelle Soto. Marshall Morgan, Sr. was the sole beneficiary of the life insurance policy. According to police reports, at a time immediately before the murder of Michelle Soto, Marshall Morgan, Sr. told his ex-wife, Delores Morgan, that he was "... about to come into some money."
- On July 17, 1995, just five months later, Michelle Soto's body was found nude, fatally wounded by a gunshot, wedged between the front and back seats of her abandoned car. Marshall Morgan, Sr. was the last person to see Michelle Soto alive on July 8, 1995.
- In 1997, following litigation, Marshall Morgan, Sr. collected \$107,000 from Michelle Soto's life insurance policy. There was also an allegation that he fraudulently transferred ownership of Michelle Soto's house to himself shortly before Michelle Soto's murder.

Similarities Between the Murders of Marshall Morgan Jr. and Michelle Soto

In determining whether there is a *modus operandi* that can tie or correlate two or more crimes with each other, detectives would look for and evaluate, *inter alia*, the following factors: the relationship, if any between the victim(s) and the offender; the location of the crime; the weapon/manner by which the crime was committed; motivation to commit the crime; and any other unique or "defining" feature or characteristic of the crime. The murders of Marshall Morgan, Jr. and Michelle Soto clearly satisfy the criteria to establish a *modus operandi* because of the existence of factors common to both murders and to factors common to two other murders committed by Marshall Morgan, Sr. and for which he was

convicted and sentenced to the Illinois Department of Corrections.

Relationship Between the Victims and the Offender

Marshall Morgan, Jr. was the son of Marshall Morgan, Sr. Michelle Soto was the fiancé of Marshall Morgan, Sr. Each victim had a close, familial relationship with Marshall Morgan, Sr. Deborah Jackson was the fiancé of Marshall Morgan, Sr. at the time of her murder. William Hall was sufficiently close to Marshall Morgan, Sr. that a personal creditor-debtor relationship had been established between them.

Location of the Crime

While the precise locations of the murders may not or cannot be established, there is a rule of thought that absent any evidence to the contrary the murder took place where the body was found. The bodies of Marshall Morgan, Jr. and Michelle Soto were found in virtually identical circumstances. The body of Deborah Jackson was also found in her car, shot to death, but in a different location in her car than the previous murder victims found in their cars.

Weapon/Manner by Which the Crime was Committed

Both Marshall Morgan, Jr. and Michelle Soto were shot. The investigation of the murder of Michelle Soto was not able to establish the caliber of the weapon used to kill her. Marshall Morgan, Jr. was shot and killed with a .38 caliber weapon. This is the same caliber weapon used in the murders of William Hall and Deborah Jackson.

Motive (Motivation to Commit the Crime)

In each of the four murders, there is the common factor of financial motivation on the part of Marshall Morgan Sr. In two of the murders, those for which he confessed, there appears to be a frustration on his part to collect a debt. In the other two

murders for which he has not been held accountable, Marshall Morgan, Sr. received substantial amounts of money from insurance policies that he took out on the lives of the victims and for which he was the sole beneficiary.

Other Unique or Defining Factors

Unique or Defining Factors such as the state of undress of the victims need to be also considered. Although these factors may not be common to all victims, these factors are common to a majority of the victims.

RE-INVESTIGATION WARRANTED

The similarities between the murders of Marshall Morgan, Jr. and Michelle Soto coupled with similar and common factors in the Hall and Jackson murders require, in the interest of justice, a thorough, objective and fair re-investigation of the case for which Tyrone Hood is incarcerated. The evidence upon which the state prosecuted Tyrone Hood is not persuasive and definitely not sufficient to support a finding of guilty beyond a reasonable doubt.

Evidence Against Tyrone Hood

The evidence against Tyrone Hood is conspicuously suspect. From what I can determine, the evidence consisted of fingerprints left on beer bottles in a pile of trash that was placed inside the victim's car. The identity of the person putting the trash into the victim's car is unknown. The evidence against Mr. Hood also includes statements that were procured by certain highly controversial detectives* (see footnote and attachment) whose integrity and methodology are suspect and questioned. These alleged statements have since been recanted. There is also the testimony of a questionable witness who was "found" on the eve of trial. This questionable witness who purportedly saw Mr. Hood with the victim's car at night from a second story window obscured by a tree never reported the sighting until detectives located him by "Divine Providence" three years later.

Mr. Hood's fingerprints were found on two beer bottles in the victim's car which bottles were strewn among a pile of trash. Some of the trash included fingerprints from other people who were identified. For

example, Joe West's fingerprints were also found on beer bottles. Laron Hyde's prisoner property envelope was found in the victim's car. No fingerprints were found on any part of the actual car. A simple explanation is that the real offender threw trash in the car knowing that the trash contained fingerprints of other people in an attempt to cover up his involvement and deflect attention from him. The fact that Marshall Morgan, Sr. was a janitor at Corliss High School at the time of the murder which high school was close to where Hyde, Hood and West lived, he could have thrown the trash in the car to deflect attention to someone other than himself. This is a more plausible explanation than the one proffered by the State that the perpetrator took the time and effort to carefully wipe all fingerprints from the car itself but inexplicably left the beer bottles with his fingerprints on them in the rear seat.

With regard to the statements that were taken from two brothers, Jody and Michael Rogers, as well as Joe West and Tyrone Hood's co-defendant, Wayne Washington, each of these inculpatory statements was disavowed as untrue prior to trial. The aforementioned people from whom these statements were obtained all allege that the statements were the product of police coercion. Those allegations of coercion are directed at Detectives* (see footnote and attachment) Kenneth Boudreau, John Halloran and/or James O'Brien who have been previously identified as engaging in patterns of similar coercive conduct and two of whom have asserted their Fifth Amendment right against self-incrimination when questioned under oath, in civil proceedings, about coercing witnesses into giving statements. For example, Detective Kenneth Boudreau (who has since been promoted to sergeant) who has been named a defendant in numerous Civil Rights suits as a result of other cases, and other detectives have been identified in reports arising out of an extensive investigation by the *Chicago Tribune* of cases that have failed to pass judicial muster and for being the very reason why these case have fallen apart. In those investigative reports, Boudreau has been accused of physically mistreating arrestees by punching, slapping and kicking them; taking advantage of arrestees with reduced mental and cognitive capacities; and interrogating juveniles without youth officers being present.

Also in this case involving Mr. Hood, there was a "witness" name Emanuel Bob who detectives located on the eve of trial, three years after the murder occurred. This "witness" allegedly told the detectives that he remembered seeing Mr. Hood outside of his girlfriend's house on the evening that Marshall Morgan, Jr. disappeared. The "witness" purportedly saw Mr.

Hood with Marshall Morgan, Jr.'s car. The "witness" testified that he saw Mr. Hood from a position in a second story window late in the evening. This same "witness" admitted that his view was at least partially obscured by a large tree and that he never reported this sighting to the police.

Mr. Hood has at all times denied any involvement in or knowledge of the murder of Marshall Morgan, Jr. and has been steadfast in his denials since his arrest.

Deficiencies of the Recent Reinvestigation

Given the paucity of evidence against Mr. Hood and the existence of multiple factors to establish a *modus operandi* a reasonable detective or investigator would recognize that there is compelling reason and evidence to warrant a re-investigation of the murder of Marshall Morgan, Jr.

I have reviewed the reports of the recent re-investigation undertaken by the Cook County State's Attorney's Office and particularly the report of the interview of Marshall Morgan, Sr. that was conducted on October 3, 2012. That re-investigation fails to meet the minimum threshold required of investigations conducted by competent detectives or investigators.

The interview of Marshall Morgan, Sr. was superficial, cosmetic and perfunctory, at best. He was not confronted with any of the inconsistencies or falsehoods he previously related and there has been nothing provided to me to demonstrate that any follow-up investigation was conducted to corroborate or disprove anything he said in the interview.

Some of these issues, in summary fashion are listed below:

- Obvious inconsistencies between Morgan, Sr.'s statements and what actually happened in the distribution of the money from Michelle Soto's life insurance policy.
- Obvious inconsistencies between Morgan, Sr.'s statements about his financial situation at the time of Morgan Jr.'s death and actual, legitimate evidence to the contrary such as his Affidavit of Assets and Liabilities, the financial evidence in the Paternity action and the foreclosure of and his subsequent eviction from his residence.

- Obvious inconsistencies about his relationship with Deborah Jackson prior to her death, i.e. was he in fact married to Jackson?
- Obvious failure to question Marshall Morgan Jr.'s mother about her knowledge of the events, facts and circumstances surrounding the life insurance policy on Morgan Jr.'s life.
- Obvious failure to question Marshall Morgan, Sr. about similarities among the murders, his denial to detectives about the existence of the insurance policy on Morgan, Jr.'s life, or DNA testing.

DNA Testing

It appears from the materials provided to me that DNA testing would be helpful especially with the possible resolution of the Soto Murder. Tying Morgan, Sr. into the Soto murder with DNA further strengthens the *modus operandi* theory that Morgan, Sr. is responsible for all four murders.

CONCLUSION

The foremost function of a detective is to investigate crimes. This includes, but is not necessarily limited to, arresting and participating in the prosecution of the correct offender responsible for the crime. This function does not necessarily end when an arrest is made and a conviction secured. The detective has an ethical and legal responsibility to ensure that the responsible person is being prosecuted for the crime. The detective must gather legitimate and admissible evidence obtained during an objective and scrupulous investigation. The evidence must support the allegations against the arrestee. The arrestee can never be "fitted" into evidence that is either not connected to the arrestee or inappropriately and illegally obtained.

A reasonable detective or investigator would approach an investigation objectively and without bias and definitely without making a premature determination that someone is responsible for the crime even though the evidence does not

support that determination. The same reasonable detective would examine factors common to other similar crimes, solved or unsolved, to determine if a pattern or *modus operandi* exists. Especially in murder investigations that begin as a "mystery" (as opposed to those that are considered "smoking gun" or "known but flown"), DNA can be considered a virtually mandatory investigative tool.

The detectives involved in the investigation that led to the arrest and prosecution of Tyrone Hood have been previously accused of inappropriate investigative work. Proceeding to look at what was done concerning the investigation of the Marshall Morgan, Jr. murder, I learned that the pattern of investigative malpractice on the part of these detectives is significantly and obviously present in this investigation.

** In addition to my personal prior exposure to the investigative behavior of some of these detectives while examining cases as a hired expert witness in other matters, during my review of this case I was made aware of a breaking story by an electronic news alert from the Chicago Tribune that some of these same detectives had other cases of theirs reviewed by the Illinois Torture and Relief Committee and that there was evidence of police misconduct on the part of some of these same detectives. The news alert to which I refer is attached to this report.*

Respectfully submitted,



Richard J. Brzeczek

www.chicagotribune.com/news/local/ct-met-burge-torture-20130726,0,5484418.story

chicagotribune.com

Commission finds evidence of police torture in 5 convictions

Judge to decide whether defendants will be retried

By Jason Meisner

Chicago Tribune reporter

6:33 AM CDT, July 26, 2013

It was almost 30 years ago when five Chicago police detectives working under disgraced former Cmdr. Jon Burge burst into Jerry Mahaffey's South Side apartment to question him in the home invasion, rape and slaying of a Rogers Park couple and near-fatal beating of their son.

When Mahaffey denied knowledge of the attack, one detective punched him in the nose and another threw him into a wall and put a gun to his head, according to a court records. The detectives allegedly pummeled Mahaffey, nearly suffocated him with a plastic garbage bag and threatened to put his children in an orphanage. Mahaffey eventually confessed, was convicted and is serving life in prison.

On Thursday, the Illinois Torture Inquiry and Relief Commission found credible evidence that Chicago detectives had tortured Mahaffey — as well as four others sentenced to lengthy prison terms — into confessing to murder. Each of the five cases will now be assigned to a Cook County Criminal Court judge to decide whether a new trial is warranted.

The commission has found 17 credible instances of torture since it began inquiries in 2011, and investigations into more than 100 additional claims continue, said David Thomas, the commission's executive director. New claims continue to come in "at a fairly steady trickle," he said Thursday.

Four of the five cases filed Thursday involved Burge or detectives who worked on his infamous "midnight crew." Burge is serving a 41/2-year sentence in federal prison for lying under oath about his knowledge of the torture.

Among the alleged torture victims is Anthony Jakes, who was 15 when Detectives Michael Kill and Ken Boudreau allegedly punched and kicked him and threatened to throw him out a window during a 16-hour interrogation for a 1991 armed robbery and slaying, according to the commission's report.

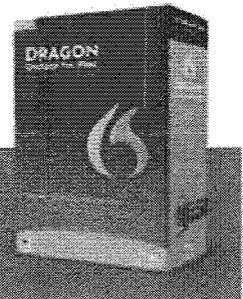
Finally, in the early morning hours and without a parent or lawyer present, Jakes signed a four-page confession to the murder. He was convicted at trial and sentenced to 40 years in prison. Records show he

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was paroled last month.

By the time Scott Mitchell was allegedly beaten and threatened into confessing to a murder in 1996, Burge had been forced out of the Police Department because of mounting evidence of torture, according to the commission's court filing.

But one of the detectives on the case, Joseph Danzl, had worked under Burge, and the interrogation of Mitchell — who had been in psychiatric treatment since he was a toddler and was diagnosed with paranoid schizophrenia — bore many of Burge's hallmarks, according to the torture commission.

"One characteristic of the Burge cases ... is the coercion of confessions from the mentally handicapped and psychologically vulnerable," said the court filing in Mitchell's case. Another notable Burge pattern was that detectives threatened to lock up Mitchell's mother and have state welfare workers take away his siblings, according to the filing.

Other cases filed Thursday include that of Robert Smith, who allegedly was beaten by Burge subordinates and confessed to a 1987 double murder, and Kevin Murray, who claimed that two West Side detectives slapped him and punched him in the ribs during an interrogation into another double homicide that same year.

The crime for which Mahaffey was convicted was by far the most notorious, a double murder that shocked Chicago in 1983 not only because of its brutality but because the victims appeared to have been chosen randomly.

According to his confession, Mahaffey and his younger brother, Reginald, had driven to the North Side to burglarize a clothing shop. But when their borrowed van broke down, they started walking until they saw an open window and crawled into the West Rogers Park apartment of Dean Pueschel and his wife, Jo Ellen.

Prosecutors alleged at trial that the Mahaffeys beat the couple's sleeping 12-year-old son, Ricky, with his own Little League bats and stabbed him in the back with a kitchen knife. Jo Ellen Pueschel, 30, was raped before being pistol-whipped and clubbed to death with a baseball bat in the living room. Her 26-year-old husband was beaten to death in his bedroom.

Ricky miraculously survived the attack and identified the Mahaffeys as the assailants in court, though he had failed to pick them out of a police lineup shortly after the arrests.

Jerry and Reginald Mahaffey were convicted and are serving terms of life without parole.

According to the torture commission's report, Jerry Mahaffey was treated at the Cook County Jail hospital for bruises and scrapes after he was charged. As part of an effort by his lawyers to have his confession thrown out before trial, Mahaffey's wife testified that she had witnessed the beating at their home. A neighbor, Charles Patterson, gave a sworn statement that he heard Mahaffey getting "the (expletive) beat out of him" for five minutes after police had surrounded the apartment with guns drawn.

"I asked a white plainclothes officer what was going on and he told me that they had just arrested the '(expletive)' who had killed the North Side couple," Patterson said in his statement.

Mahaffey's confession was allowed in after all five detectives denied any misconduct, according to the commission's finding.

imeisner@tribune.com

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COUNTY OF COOK

SS

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

PEOPLE OF THE STATE OF ILLINOIS

Tyrone Hood vs

No 93C 14676

DISCOVERY RECEIPT

ITEM(S)	PAGE(S)	INITIAL(S)
Inv. Report - Rosemary Hall	4	
Inv. Report - Kenneth Crossley AKA Mike Rogers	3	
Inv. Report - Allen "Jody" Rogers	4	
Inv. Report - Carol Hall	3	
Inv. Report - Tyrone Hood	6	
Inv. Report - Wayne Washington	2	
Inv. Report - Marshall Morgan, Sr.	4	
Inv. Report - Emmanuel Bob	2	
Inv. Report - Marcia Escobar	2	

THE BELOW SIGNED ATTORNEY HEREBY ACKNOWLEDGES RECEIPT OF THE ABOVE LISTED ITEMS.

SIGNED _____

C354

Cook County State's Attorney's Office
Investigations Bureau

Investigative Report

93 CR 14676

FILE/CONTROL#	DOCKET#	REPORT#
Laron HYDE		March 30, 2012
SUBJECT:	DATE DRAFTED:	
Interview relatives of deceased circumstantial witness	Thomas McGreal#543 Joanne Ryan#470	
SYNOPSIS OF REPORT	INVESTIGATORS	

Date Assigned:

Tuesday, February 21, 2012

Date and Time and Location of Interview

Thursday, March 29, 2012, 10:25 a.m. at 700 East 79th Street.

Requesting Assistant State's Attorney:

Assistant State Attorney James Papa
2650 S. California, room 12 B 13
Office: (773) 674-7701

Assigned Investigators

Thomas F. McGreal #543
2650 S. California, room 12 D 42
Office: (773) 674-4090

Defendant:

Tyrone HOOD M/B, SS# 328-88-0345, IR#103932

Person Interviewed:

Rosemary Hall F/B, (mother of Laron Hyde - deceased)

Summary:

On May 17, 1993, at 8:35 a.m. the body of Marshall Morgan Jr. was discovered, by the police, in a vehicle parked at 5709 S. Michigan Ave, Chicago, Illinois. After the investigation, Tyrone Hood was arrested, charged, tried and convicted of the occurrence. He was sentenced and incarcerated in the Illinois Department of Corrections. Subsequent to his incarceration, a Post Conviction Motion and investigation was initiated.

On February 21, 2012; Cook County Assistant State Attorney Papa requested an investigator be assigned to verify the death of Laron Hyde. Cook County State Attorney Investigator Thomas McGreal was assigned to the investigation.

A check of available records showed 6939 S. Bishop Street to be a previous address of Laron Hyde. On Friday, March 16, 2012, Assistant State Attorney James Papa and Investigator McGreal went to that location and found 6939 S. Bishop to be a vacant building. An unidentified female neighbor said the building has been unoccupied for two years. The neighbor did not know of anyone named Laron Hyde but said that she heard two persons were found dead in a car parked in the garage behind the building at 6939 S. Bishop.

A further check of available records showed Raylon Hyde of 413 Berkshire Drive, apartment 12, Crystal Lake, Illinois, telephone number: 224-535-0944 to be a possible relation of Laron Hyde. On Tuesday, March 7, 2012, Investigator McGreal called that telephone number seeking information regarding Laron Hyde. A message was left on the answering machine identifying the investigator and seeking contact.

On this same date, Raylon Hyde contacted Investigator McGreal, informing McGreal that Laron Hyde is his brother who died, by accident, on August 6, 2006 as he sat in a closed garage with the car engine running. Raylon Hyde was informed that Laron Hyde was being sought for an interview regarding an old case.

Soon after ending the conversation with Raylon Hyde, Investigator McGreal was contacted by Rosemary Hall, the mother of Raylon Hyde. Rosemary Hall inquired about the nature of the investigation and asked if it involved the case of Tyrone Hood. Investigator McGreal confirmed that this was the reason for seeking Raylon Hyde and informed Rosemary Hall that the case could not be discussed on the telephone. Rosemary Hall stated that she is an administrative assistant in the office of Congressman Bobby Rush and assigned to the case of Laron Hyde. She added that newswoman Renee Ferguson is also working in the Office of Bobby Rush and involved in this same case.

After ending the conversation with Rosemary Hall, investigator McGreal contacted Assistant State Attorney James Papa and informed him of the circumstances. Assistant State Attorney Papa requested that an in-person interview be arranged with Rosemary Hall.

Investigator McGreal re-contacted Rosemary Hall and an interview was arranged for March 29, 2012, 10:30 a.m. at 700 East 79th Street, the Office of Congressman Bobby Rush.

Investigator McGreal obtained the police reports regarding the death investigation of Laron Hyde and Patricia Dorsey. The bodies of the deceased were discovered on August 02, 2006 at 6939 S. Bishop (garage). The incident is recorded under Chicago RD HM515568. The reports will be submitted with this report to become part of the case file. After completion of the death investigation, Assistant Medical Examiner Kided #6 determined the Cause of Deaths to be Carbon Monoxide Intoxication and the Manner of Deaths to be Accident.

On March 29, 2012, 10:25 a.m., Cook County State Attorney James Papa and Investigator Thomas McGreal drove to 700 East 79th Street and met with Rosemary Hall. The investigator and Assistant State Attorney identified themselves, displaying official photographic identification. James Papa and Thomas McGreal were directed to a conference room where the interview was conducted. No other persons were present at this time. A short time after being directed to the conference room, a woman entered the room and identified herself as Renee Ferguson, the media person for Congressman Bobby Rush. She exchanged greetings with Rosemary Hall and left the room, saying she may return later. The following is a summary of the interview between Assistant State Attorney James Papa, Investigator Thomas McGreal, and Rosemary Hall:

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Rosemary Hall said her son Laron Hyde accidentally died as he and another person sat in a garage with the car motor running. Laron Hyde was 30 years of age when he died and she called him "Petey".

Rosemary Hall recalled an incident when Laron Hyde was approximately 17 years of age and possibly a junior at Corliss High School. At the time, Laron lived at 1155 E 101st Street. Rosemary received a telephone call from a member of the school staff. She was informed that Laron had been arrested at school, handcuffed, and taken to Area One Police Station regarding a murder. Rosemary went to the police station to see her son. She was not allowed to go to the second floor where the investigation was being held. She remained downstairs and spoke with police officers over the telephone. An unidentified policeman told her that police officers were returning to the scene of a homicide to see if Laron's fingerprints could be located. If they were found, Laron would be charged with First Degree Murder. She was also told, by an unidentified detective, that Laron would be taken to a polygraph examination.

Rosemary Hall said the police kept Laron at the police station for two days. He was released after his alibi checked out. She added that Laron was "paranoid" after the incident. He kept receipts for everything explaining to her that he always had to have an alibi proving where he has been. After he was released, Laron Hyde told his mother Rosemary Hall that he had failed the polygraph examination because he was nervous.

Rosemary Hall became aware that a prisoner property bag of Laron's was found at the scene of the crime. She said Laron had previously been arrested for loitering and had left the prisoner bag at his dad's house. Rosemary Hall said August Hyde is her ex-husband and Laron's dad. A woman identified only as "Carol", was living with August Hyde at his residence when Laron was arrested for loitering. Rosemary heard that "Carol" threw the prisoner property bag in the garbage. Laron had no idea how the bag got to the scene of the murder. Rosemary was unsure of the residence of August Hyde at the time the bag was disposed. She believed it to be near 50th Street and would re-contact the Assistant State Attorney and Investigator later with the information.

Rosemary Hall said she has no firsthand knowledge about the murder of Marshall Morgan Jr or the arrest of Laron Hyde at Corliss School. She was aware that another person was arrested for the murder. She saw some accounts of the incident on the television. Approximately two to three years after Laron had been arrested, just before that person went to trial, Rosemary was visited by a public defender that was defending the person arrested. The person arrested is now known as Tyrone Hood. The public defender told Rosemary that the wrong person was arrested for the murder. The public defender told Rosemary that the victim's father killed his own son to collect the insurance money. The public defender also told Rosemary that the victim's father worked at Corliss High School as a janitor. Rosemary Hall said she believes this to be true because she is aware how detectives operate and make people confess to something they didn't do. After his arrest, Laron Hyde told Rosemary that the detectives didn't believe him. He wasn't allowed to eat, drink or go to the bathroom. They handcuffed him to a chair and "smacked" him in the face. Assistant State Attorney Papa asked Rosemary if she saw any marks or bruises on Laron when he was released from the police station. She said she did not see any marks or bruises and only knows what she was told by her son.

Rosemary Hall said subpoenas were left in her mailbox. The public defender wanted her to appear in the court case of Tyrone Hood. Laron was also subpoenaed by the defense, but he did not go to court. He never received the subpoena. Neither she nor Laron Hyde testified in the court case. They did not go to court. Rosemary said that her uncle died on the same date as the court appearance.

Rosemary Hall said that Tyrone Hood requested that The Office of Congressman Bobby Rush help him in his attempt to be released from jail. The Congressman's Office accepted and is working on the

assignment. In the recent past, Renee Ferguson has been hired by the Congressman's Office as a medial person. Rosemary spoke with Renee Ferguson and learned that she is also conducting an investigation regarding the arrest of Tyrone Hood. Renee Ferguson told her that the victim's father killed his son for insurance money and he has killed other people in the same manner. He is a serial killer. Rosemary was also told that another woman disappeared from Corliss High School during the same period of time that the victim's father was a janitor at Corliss High School

Rosemary Hall said she did not know either Tyrone Hood or Wayne Washington. At the time of the murder, she had never heard of their names. Rosemary Hall did not know of any persons named Terry Keane or David Carter. Rosemary said she does not know if her son Laron Hyde was in a street gang. Rosemary Hall said her deceased son used to play baseball, when he was younger, with the victim Marshall Morgan Jr. Rosemary Hall added that her son Laron did not know that Marshall Morgan Jr.'s father was the janitor at their school.

Rosemary Hall contacted her son Raylon Hyde on her cell phone. She put the telephone in speaker mode and asked her son to describe for the Assistant State Attorney Papa and Investigator McGreal Laron Hyde's demeanor after he was brought to the police station regarding the murder investigation. Raylon Hyde responded that Laron Hyde was paranoid and destroyed all of his receipts after the incident. He didn't want anything connecting him to anything. Raylon Hyde said his brother Laron told him, after his arrest, that the police were trying to wear him down. They deprived him of sleep and threatened him with jail if he didn't confess.

Upon completion of the interview, Media Person Renee Ferguson returned to the conference room and exchanged greetings with Rosemary Hall, the Assistant State Attorney, and Investigator. Renee Ferguson explained that she has been working on this case for many years and documented her findings in the media. She believes video clips of her news coverage would still be available through NBC News casts.

Assistant State Attorney James Papa and Investigator McGreal thanked Rosemary Hall for her time and Investigator McGreal left a contact card with her. The interview was completed.

After the interview of Rosemary Hall and returning to 2650 S. California, Investigator Thomas McGreal received a telephone call from Rosemary Hall. She informed Investigator McGreal that her ex-husband August Hyde lived at 5027 S. Shields when his girlfriend Carol Hall (same surname as Rosemary) disposed of Laron Hyde's prisoner property bag. She added that August Hyde currently lives in Mississippi and his telephone numbers are (662) 889-5736 and (662) 364-6064. Carol Hall still lives at 5027 S. Shields.

Thomas A. McGreal #843 *04/11/2012*

INVESTIGATORS _____ DATE _____
[Signature] *4-11-12*

APPROVED: _____ DATE _____
[Signature]

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Cook County State's Attorney's Office
Investigations Bureau

Investigative Report

93 CR 14676

FILE/CONTROL# Kenneth CROSSLEY AKA Michael ROGERS	DOCKET#	REPORT# April 11, 2012
SUBJECT: Interview		DATE DRAFTED: Thomas F. McGreal #543

SYNOPSIS OF REPORT

INVESTIGATORS

Date Assigned:

Friday, March 16, 2012

Date and Time and Location of Interview

Wednesday, April 4, 2012, 1:07 p.m. at 1345 N. Keeler

Requesting Assistant State's Attorney:

Cook County Assistant State Attorney (ASA) James Papa

Assigned Investigators

Cook County State Attorney Investigator Thomas McGreal #543

Defendant:

Tyrone Hood M/B, SS# 328-88-0345, IR# 103932

Person Interviewed:

Kenneth Crossley AKA Michael Rogers M/B, 42 years, 11/25/1967, 6'4", 240 lbs., IR#842915

Persons Present for Interview

ASA James Papa

Investigator Thomas McGreal

Kenneth Crossley AKA Michael Rogers

F/B, identified only as wife of Michael Rogers

Summary:

On May 17, 1993, at 8:35 a.m. the body of Marshall Morgan Jr. was discovered, by the police, in a vehicle parked at 5709 S. Michigan Ave, Chicago, Illinois. After the investigation, Tyrone Hood was arrested, charged, tried and convicted of the occurrence. He was sentenced and incarcerated in the Illinois Department of Corrections. Subsequent to his incarceration, a Post Conviction Motion and investigation was initiated.

On February 21, 2012, Cook County Assistant State Attorney (ASA) Papa requested an investigator be assigned to locate the residence of Kenneth Crossley and assist in the investigation regarding the arrest and incarceration of Tyrone Hood. Kenneth Crossley previously submitted an affidavit regarding this

Post Conviction Motion. A copy of this affidavit will be submitted with this report to become part of the case file. Cook County Investigator Thomas McGreal was assigned to the investigation. Investigator McGreal checked with available records and learned Kenneth Crossley used 11214 S. Langley and 10440 South Maryland as addresses where he may reside. He was not located at either of these addresses. ASA Papa and Investigator McGreal were able to speak with an elderly woman at 11214 S. Langley who identified herself, only, as the mother of Kenneth Crossley. She did not know where he could be located and said she hasn't spoken with her son since the past New Years Eve. No further information was obtained from this woman.

On Tuesday, March 27, 2012, a further check was made of available records and the address 1345 N. Keeler was found for the residence of Kenneth Crossley. On Wednesday, April 4, 2012, ASA James Papa and Investigator Thomas McGreal went to the 2nd floor apartment at 1345 N. Keeler, Chicago, Illinois. Alice Howell and Kenneth Crossley were listed, on the first floor, as the residents of the second floor apartment. The Assistant State Attorney and Investigator knocked on the door of the second floor apartment. An unidentified female and a male who identified himself as Michael Rogers responded to the door. ASA Papa and Investigator McGreal recognized Michael Rogers, from CB photograph 17910929, as Kenneth Crossley AKA Michael Rogers.

Investigator McGreal identified himself and Assistant State Attorney James Papa, displaying official photographic identification. ASA Papa requested an interview regarding Michael Roger's (Kenneth Crossley's) knowledge regarding a homicide that occurred in 1993. Michael Rogers agreed to be interviewed. James Papa and Thomas McGreal were allowed into the second floor apartment. The unidentified identified only as the wife of Kenneth Rogers, remained for the following interview:

Michael Rogers said he has been sick and on medication. He doesn't remember much about something that happened so long ago. He did not specify an illness or what type of medication. Michael Rogers said he does not remember the name Marshall Morgan. Michael Rogers did recall receiving a visit by a "lady lawyer", while he was in prison, who wanted to talk about this same topic. Michael Rogers recalls signing some papers, while in prison, but did not remember the content of the papers. Rogers was allowed to view a copy of an affidavit previously submitted in his name. Upon looking at the affidavit, Rogers said he doesn't read too well. He said the signature was his own, but he did not print the content. He added that he only signed the papers because he thought he was going to get out of prison soon. He said, after he signed the papers, the lady spoke with the "police" and he was given four extra trays of food. The lady told Rogers that he would never bother him again after he signed the papers. Michael Rogers said the printing on the affidavit was not his own, but he did sign the affidavit. Michael Rogers repeated that he does not remember much about the incident in 1993 and he has been sick and on medication. The medication is affecting his memory

ASA James Papa asked Michael Rogers if any one, in the past, gave him anything to testify regarding the murder of Marshall Morgan Jr. . Rogers responded by asking Papa "What are you talking about". ASA James Papa directed Michael Rogers to a paragraph in the affidavit of Kenneth Crossley stating that said Crossley was given close to \$1,000, by either the police or a state attorney, when he came to court regarding this incident.

After viewing the affidavit, Michael Rogers said "Get the Fuck out of here. That is a damn lie. No one gave me no \$1,000. ASA James Papa continued to ask Rogers for specifics regarding this incident. Rogers continued to respond by saying that he is on medication and unable to remember. No further information was obtained and the interview was completed.

C360

Thomas A. McCreel # 543 04/11/2012
INVESTIGATORS DATE

[Signature] 4/11/2012
APPROVED: DATE

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Cook County State's Attorney's Office
Investigations Bureau

Investigative Report

93 CR 14676

FILE/CONTROL#

Allen "Jody" ROGERS

DOCKET#

REPORT#

June 5, 2012

SUBJECT:

Witness Interview (Inmate)

DATE DRAFTED:

Thomas F. McGreal #543

SYNOPSIS OF REPORT

INVESTIGATORS

Date Assigned:

Wednesday, May 23, 2012

Date and Time and Location of Interview

Wednesday, May 30, 2012, 11:15 a.m., at Robinson, Illinois Correctional Center interview room.

Requesting Assistant State's Attorney:

Assistant State Attorney James Papa
2650 S. California - room 12 B 13
Phone: (773) 706-7835

Assigned Investigators

Thomas F. McGreal #543
2650 S. California - room 12 D 42
Phone: (773) 674-4090

Defendant:

Tyrone HOOD M/B, SS# 328-88-0345, IR#103932

Person Interviewed:

ROGERS, Allen aka ROGERS, "Jody" M/B, September 6, 1973, of Robinson, Illinois Correctional Center, 13423 E. 1150th Ave, Robinson, Illinois, 62454, Inmate Number: B13133, IR#925691

Persons Present for Interview"

Assistant State Attorney James Papa
Investigator Thomas F. McGreal #543
Allen "Jody" Rogers

Summary:

On May 17, 1993, at 8:35 a.m. the body of Marshall Morgan Jr. was discovered, by the police, in a vehicle parked at 5709 S. Michigan Ave, Chicago, Illinois. After the investigation, Tyrone Hood was arrested, charged, tried and convicted of the murder of Marshall Morgan Jr. He was sentenced and incarcerated in the Illinois Department of Corrections (IDOC). Subsequent to his incarceration, a post

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different types of drugs, including crystal meth, cocaine, heroin, mushrooms, medications and alcohol. He added "I don't remember nothing". Assistant State Attorney Papa and Investigator McGreal observed Allen Rogers to be clear and coherent as he spoke, but he was rocking back and forth as he sat in his chair. Allen Rogers was asked if he was currently on any kind of medication. Allen Rogers said he is currently on psychotropic medications.

Thomas A. McGreal # 543 06/06/2012
INVESTIGATORS DATE

[Signature] 06/10/12
APPROVED: DATE

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Cook County State's Attorney's Office
Investigations Bureau

Investigative Report

93 CR 14676

FILE/CONTROL#	DOCKET#	REPORT#
Carol HALL		May 23, 2012
SUBJECT: Interview Circumstantial Witness		DATE DRAFTED: Thomas F. McGreal #543
SYNOPSIS OF REPORT		INVESTIGATORS

Date Assigned:
Thursday, May 17, 2012

Date and Time and Location of Interview
Thursday, May 17, 2012, 1600 hours, at 5027 S. Shields

Requesting Assistant State's Attorney:
Assistant State Attorney James Papa
2650 S. California, room 12 B 13
Office: (773) 674-7701

Assigned Investigators
Thomas F. McGreal #543
2650 S. California, room 12 D 42
Office: (773) 674-4090

Defendant:
Tyrone HOOD M/B, SS# 328-88-0345, IR#103932

Person Interviewed:
Carol HALL F/B dob: 06/02/1957, of 5033 S. Shields, 773-383-2839, employed: Victory Center of South Chicago, 3251 E 92nd Street. (Assisted Care)

Summary:

On May 17, 1993, at 8:35 a.m. the body of Marshall Morgan Jr. was discovered, by the police, in a vehicle parked at 5709 S. Michigan Ave, Chicago, Illinois. After the investigation, Tyrone Hood was arrested, charged, tried and convicted of the occurrence. He was sentenced and incarcerated in the Illinois Department of Corrections. Subsequent to his incarceration, a Post Conviction Motion and investigation was initiated.

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A.47

On Thursday, March 29, 2012, Investigator Thomas McGreal and Assistant State Attorney James Papa received information that Carol Hall of 5027 S. Shields may have information regarding a prisoner property bag that was found in the victim's car at the time his remains were discovered in that same car (see report drafted on March 30 2012 under this same docket number of report).

Assistant State Attorney James Papa was able to speak with Carol Hall, on the telephone. An interview was arranged for Thursday, March 29, 2012, at her home 5033 S. Shields. Assistant State Attorney Papa and Investigator McGreal arrived at this location at 4:00 p.m., introduced themselves and displayed official photographic identification. An interview was requested regarding Laron Hyde, the son of her friend August Hyde. Carol Hall agreed and invited the Assistant State Attorney and investigator into the living room of her home. The following is a summary of the conversation.

Carol Hall said that Laron Hyde is deceased. She did not know of the facts regarding his death but heard that he and a female were found dead in a garage. Laron Hyde, who was called Petey, was the son of her former boyfriend August Hyde. August Hyde, Carol Hall and her two sons lived together for over ten years. She could not be certain if she and August lived in a nearby home at 5027 S. Shields or her current home at 5033 S. Shields. Carol said that she and August Hyde dated but were not legally married. Laron Hyde lived with his mother Rosemary. He never lived with herself and August. Laron Hyde lived, with his mother Rosemary Hyde, in the area of 103rd and Cottage Grove. She is uncertain of the actual address.

Carol Hall said she did not know any of Laron's friends or activities. She has no reason to remember. Laron was friendly with Carol's two sons and daughter, but she does not believe they hung together in the area of Laron's house (103rd and Cottage Grove). Laron had no obvious wealth for a boy in high school. As far as she knew, he was a good boy. He attended Corliss High School. If he got into any trouble, he would have called his mother Rosemary. He would not have called her (Carol).

Carol Hall was asked if she recalled when Laron Hyde was arrested in May of 1993. Carol Hall said that she recalled a time when Laron was picked up by the police and brought to a police station, although she never had a conversation with Laron about the incident. Laron may have been attending Corliss High School at the time of his arrest. She can't remember any of the particulars regarding the incident. She did not know which police station he was taken to, but said she is pretty sure that it was not the station at 51st and Wentworth. August needed a car to get to the station. If Laron was at 51st Street, August could have walked. The station is just over the bridge. Carol explained, Laron called, wanting his father August Hyde to pick him up at the police station. August Hyde told Carol Hall that he had to pick Laron up at the police station, nothing more. At the time, August Hyde drove a green colored, Chevrolet Van. The van was not working and August and someone else had to drive August to the station to get Laron. Carol does not know who drove August to the station. Laron drove a car when he got older, but Carol does not remember any particular car he drove.

Carol Hall was asked if she recalled throwing a plastic prisoner bag away during the period of time after Laron was arrested. Carol responded, she recently received a call from both Rosemary Hall. Carol informed Assistant State Attorney Papa and investigator McGreal that she and Rosemary were never friends and barely cordial. August had first called Rosemary, then Rosemary called Carol on the telephone. Rosemary told Carol that people were going to speak with her about a property bag she threw away. Carol did not remember throwing a property bag in the garbage.

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Carol Hall said she recently spoke with August Hyde on the telephone, after she received the call from Rosemary. Carol wanted to know why Rosemary Hall was calling her. August asked Carol if she remembered throwing Laron's prisoner property bag the garbage. Carol did not remember seeing a prisoner property bag or throwing it in the garbage. August told Carol that he told her to throw the bag away after she asked August what she should do with the bag. She still did not remember. Carol told Assistant State Attorney Papa and Investigator McGreal that she has no memory of seeing a prisoner property bag or throwing it away.

When Carol spoke with August on the telephone, he spoke with her about a homicide that occurred around the time that she threw the prisoner property bag in the garbage. She did not remember anything about a homicide. August said he told her about the incident. Carol said she doesn't remember and does not believe August spoke with her about a homicide. Carol said a homicide is a major crime that she would have remembered. August told Carol Hall that Rosemary Hall was trying to help a young boy get out of jail because the young boy did not kill anyone. August told Carol that the father of the young boy is the actual killer. August kept repeating, the boy didn't do it. The father did it.

Assistant State Attorney Papa asked Carol Hall if she could explain why August Hyde thought she threw a prisoner property bag in the garbage. She responded that she did all of the cleaning. Carol repeated she did not remember throwing out any plastic bag.

Assistant State Attorney Papa asked Carol Hall if she was aware of a basketball player at Illinois Institute of Technology (IIT) disappearing in May of 1993. Rosemary said she did not remember.

Carol Hall was asked if she recalled any conversation with August or Laron about the disappearance of a basketball player from IIT. She said no. She did not remember any of this.

Carol Hall was asked, by Assistant State Attorney Papa, if she recalled any person named Tyrone Hood, Wayne Washington, or Marshall Morgan. She said "No."

Thomas A. McGreal #543
INVESTIGATORS

May 31, 2012
DATE

[Signature] 361
APPROVED:

DATE

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Cook County State's Attorney's Office
Investigations Bureau

Investigative Report

FILE/CONTROL#	93 CR 14676	REPORT#
Tyrone HOOD	DOCKET#	August 21, 2012
SUBJECT:		DATE DRAFTED:
Inmate Interview		Thomas F. McGreal #543
SYNOPSIS OF REPORT		INVESTIGATORS

Date and Time and Location of Interview
Tuesday, August 21, 2012, 9:40 a.m., at Branch 66 Interview Room

Requesting Assistant State's Attorney:
ASA James Papa
2650 S. California – room 12 B 13
Phone: (773) 674-7701

Assigned Investigators
Thomas F. McGreal #543
2650 S. California – room 12 D 42
Phone: (773) 674-4090

Person Interviewed:
Tyrone HOOD M/B, 10 July 1963, SS# 351-62-2403, IR# 589321, B78329

Persons Present for Interview
Assistant State Attorney James Papa,
Investigator Thomas F. McGreal,
Karl Leonard of Winston and Strawn, attorney for Tyrone Hood,
Tyrone Hood

Transporting Department of Corrections Officers:
D Miller #3245 and
R. Medearis #3233
Officers Miller and Medearis viewed Tyrone Hood from an adjoining room, separated by a partially open door.

Summary:

On May 17, 1993, at 8:35 a.m. the body of Marshall Morgan Jr. was discovered, by the police, in a vehicle parked at 5709 S. Michigan Ave., Chicago, Illinois. After the investigation Tyrone Hood was arrested, charged, tried and convicted of the murder of Marshall Morgan Jr. He was sentenced and incarcerated in the Illinois Department of Corrections (IDOC). Subsequent to his incarceration a post conviction motion and investigation were initiated. Cook County Assistant State Attorney James Papa and Investigator Thomas McGreal were assigned to the investigation.

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On Monday August 13, 2012 ASA James Papa requested that Tyrone Hood be writ to 2650 S. California for the purpose of an interview. Tyrone Hood was transported to Court Room 101, 2650 S. California on Tuesday, August 21, 2012, 9:40 a.m. Illinois Department of Corrections Officers D Miller #3245 and R. Medearis #3233 turned Tyrone Hood over to Investigator Thomas McGreal and ASA James Papa at an interview room just outside of Court Branch 66, 2650 S. California. IDOC Officers Miller and Medearis viewed the inmate from an adjoining room, separated by a partially closed door. Tyrone Hood's attorney Karl Leonard was present for the interview which is summarized below.

Assistant State Attorney James Papa and Investigator Thomas McGreal introduced themselves to Tyrone Hood and requested an interview with Tyrone Hood regarding the events that led to his arrest and incarceration. Tyrone Hood agreed to be interviewed and related the following summary of events:

Tyrone Hood said he is currently forty-nine (49) years of age. At the time of his arrest he was twenty-nine (29) years of age. He was living with his wife and three children in the area of 10500 S. Maryland. Maryland is one block east of Corliss. Tyrone Hood said he used to work at the Shell Gas Station at 7800 South Lafayette. Tyrone Hood became unemployed but made money doing carpentry work and fixing cars in the neighborhood. He would do car repairs, mostly in the rear of his own house, at the rear of the customer's house, or on the street.

Tyrone Hood recalled the time of the police investigation regarding the murder of Marshall Morgan Jr. Tyrone Hood was picked-up, by the police, on two separate occasions, the first being May 20th (1993). Tyrone had just dropped his kids off at school and was walking down the street. He saw an unmarked police car containing three detectives pass him by. The police car stopped, backed up, and called for him to come over by the police car. Tyrone Hood said he never saw the detectives prior to this time but now knows two of them as "Ryan" and "Lenihan". He was unsure of the third detective but described him as short and named either "John Halloran" or "Boudreau".

Detective Ryan wanted to know Tyrone Hood's name and where he was going. He asked Tyrone Hood if he was selling drugs, if he had drugs on him, and where are the guns? Detective Ryan then asked Hood; "Who has the guns"? Tyrone Hood was then searched and asked to accompany the detectives to the police station for questioning. Tyrone Hood asked why he was going to the station, and the detective responded that he would find out later. Detective Lenihan handcuffed Tyrone's hands behind Tyrone's back. Tyrone Hood was aware that he had an outstanding warrant when he was stopped by the detectives.

Tyrone Hood was transported to the police station at 51st Street (Wentworth). He was taken upstairs where his picture and fingerprints were taken. He was placed into a room and questioned about a murder. He was told his fingerprints were found near a scene. Tyrone Hood said he had not previously heard of Marshall Morgan's murder. While he was in the room of the police station, Tyrone heard someone in a room next door repeating over and over; "I didn't kill him". Tyrone Hood said he believed the police were trying to get the person in the room to confess to a crime he did not do. Tyrone remained in another room and did not see the person he heard.

Tyrone Hood said he did not believe the detectives when they told him that his prints were found near the scene of the murder. The detectives showed Tyrone Hood pictures of the car used in the murder. He told the detectives that he never saw that car before, and he did not know Marshall Morgan. Tyrone said he was thrown around by a lot of different police detectives, including but not only O'Brien, Halloran, "Kenneth", and Ryan.

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Tyrone said each time he was questioned, at least eight (8) to ten (10) detectives bunched up on him in the interview room. Each time asking; do you know him, have you seen him? Tyrone Hood said he kept telling the detectives he did not know Marshall Morgan. The detectives kept telling Tyrone Hood that he knew Marshall Morgan and he shot Marshall Morgan. The detectives kept asking Tyrone Hood how many times he shot Marshall Morgan. They also asked where Marshall Morgan was shot. During this period of time, Tyrone Hood was slapped to his head, with an open hand, by Halloran and Ryan. Tyrone Hood refused to answer any of the detective's questions. During this same period of time, Lenihan put a gun in the face of Tyrone Hood. Lenihan then kicked a gun towards Tyrone Hood's leg, telling Hood to grab the gun. At the same time another gun was on the table. Lenihan told Tyrone Hood that he could go home if he signed "the papers". Tyrone Hood refused to sign a statement at which time Lenihan told him that he was going to put five (5) slugs in him and say that Tyrone Hood attacked him.

Lenihan then put a leather wallet near Tyrone Hood, telling hood to smell the wallet. Lenihan asked Hood to tell him what the wallet smelled like. When Tyrone Hood refused to smell the wallet, Lenihan threw the wallet near Hood, telling him the wallet smelled like a dead dog. Tyrone Hood said Lenihan wanted Tyrone Hood to touch the wallet, but Tyrone Hood refused.

Tyrone Hood was then taken to 11th and State to take a lie detector test. Tyrone Hood said he was pushed up the stairs by the detectives and told; "it's time to die". Both Detectives O'Brien and Lenihan were in the room at the time of the test. After the test was over, the man who took the test said Tyrone Hood lied on every question asked. Tyrone Hood asked the man with the machine if he lied about his name and the man said "Yes".

Tyrone Hood recalled the questions asked during the test:

- He was asked his name,
- He was asked where he lived,
- He was asked if he knew Marshall Morgan,
- He was asked if he was in Marshall Morgan's car,
- He was asked if he saw Marshall Morgan's car,
- He was asked if he killed Marshall Morgan.

Tyrone Hood said he does not understand how he failed the whole test.

Tyrone Hood said he told the detectives that he was with relatives at the time of the murder. He was with his wife, sister and mother Martina Cheney. His mother lived at 73rd and Dorchester. Tyrone Hood also remembered telling the detectives that Lamont and Shurron Hawkins could have killed Marshall Morgan. Tyrone Hood said he did not tell the detectives that Wayne Washington killed the victim. Tyrone Hood does not know how Washington's name came into the investigation. Tyrone Hood said that Lamont and Sharon Hawkins are members of the Black Stone Street Gang.

After leaving the lie detector test, Tyrone Hood was transported back to 51st and Wentworth. He was released on May 20th (1993). The detectives gave him \$2.00 bus fare to his mother's house. He then went home to 104th and Corliss. Tyrone Hood told his family members of what happened and attempts by the detectives to arrest him for the murder of Marshall Morgan. His sister told him to call the News Media and Internal Affairs. He did not call, although his sister called after he was arrested and charged with murder. Tyrone Hood said he received a cut to his head during the abuse by the police. He said he later got a cyst on his head as a result of the abuse by Detective Lenihan. He said that his ribs still hurt to this very day because of the abuse received during his questioning. Tyrone Hood said that he never told

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anyone about the abuse at the time of occurrence, although he had a scar on his forehead, from the injury by Lenihan, when he was first brought to Cook County Jail after being charged with murder.

Tyrone Hood said he did not mention anything about the abuse to the man at the lie detector test, because Tyrone believed him to be on the side of the police. He did not tell the State's Attorney for the same reason. Tyrone Hood said he did not tell anyone at Cook County Jail of his abuse by Chicago Detectives because he was also "whooped" by the guards at Cook County Jail. Officer's at the Cook County jail spit on him and kicked him. Tyrone Hood said he heard Marshall Morgan had friends who worked in Cook County jail. He did not want the abuse to continue.

Tyrone Hood recalled the second time he was arrested for the murder of Marshall Morgan. He went to Corliss High School to pick up his daughter from the day care program. He dropped her off at 8:00 a.m. and was to pick her up at 11:00 a.m. He stopped at a candy store and was going to wait until 11:00 a.m. Tyrone Hood knew the owner of the store. Wayne Washington came into the store and placed a telephone call. Tyrone Hood does not know who he called. A few minutes later, approximately 10:30 a.m. Detectives Ryan and Lenihan came to the store. Ryan asked Tyrone Hood, "What time is it?" Hood responded 11:00. Ryan then replied "time to go to jail". Tyrone Hood was handcuffed and placed in the police car. Ryan then went back into the candy store. A short time later, Wayne Washington was also placed in the police car, without being handcuffed. Tyrone Hood said he does not believe Wayne Washington called the police, telling the police that Tyrone Hood was in the store. There wasn't enough time. The detectives arrived only minutes after Washington entered the store. Wayne Washington knew Tyrone Hood for approximately two years prior to his (Tyrone Hood's) arrest. He (Wayne Washington) was homeless and had no place to stay. Tyrone Hood used to give Wayne Washington change, but he and Wayne Washington were not friends. Wayne Washington was younger than Tyrone Hood. Tyrone Hood was more of a friend with Wayne's wife. Tyrone Hood and Wayne Washington's wife frequented the same neighborhood. Tyrone Hood said Wayne Washington is a member of the Black Stone Street Gang.

Between May 21st and May 27th, Tyrone Hood remained at his house and 104th and Corliss or on his front porch. During that period of time he saw the police detectives repeatedly drive past his house. The police detectives drove Wayne and the defendant to the police station on 111th Street. Tyrone Hood and Wayne Washington were put in separate rooms. Tyrone Hood remained in the room for hours. He was never questioned.

Tyrone Hood and Wayne Washington were transported from the police station at 111th Street to the police station at 51st Street. The beatings began again. Tyrone Hood said he was choked, kicked, his life was threatened, and other "stuff like that". He was abused by O'Brien, John Halloran, and Boudreau. Lenihan and Ryan were there but not involved in the abuse. The questioning continued and Tyrone Hood was told that Wayne Washington signed a statement against him (Tyrone Hood). Hood said he never saw a copy of Wayne Washington's statement.

Tyrone Hood said he saw a prosecutor at the police station. Hood described her as a white female who had weight on her. She advised Tyrone Hood of his rights. Tyrone Hood refused to give her a statement. Tyrone Hood said he never told her of the abuse by the detectives, because he thought they were all working together.

Tyrone Hood said his family hired an attorney for Tyrone after he was charged with murder. Tyrone Hood described the attorney as a "Jewish guy" named Gary with a big black hat. Tyrone Hood could not afford to pay Gary. He then obtained an attorney named "Malyneaux". After Tyrone Hood was charged

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he was sent to the Cook County Jail and sent directly to "Seg" (segregation). He remained in "Seg" for 11 days. Tyrone Hood said he believes his segregation was ordered by the detectives. He offered no reason for this belief. Tyrone Hood said in he learned in 1995, from his lawyer Malyeneaux, that Marshall Morgan Sr. took an insurance policy out on his son prior to his death. Marshal Morgan Sr. also killed someone else in the same manner that the victim was killed.

ASA James Papa asked Tyrone Hood to explain how his fingerprints were discovered in the victim's car. Tyrone Hood said he was told his fingerprints were found on a beer bottle in the car. He does not know how his prints were found to be in the car. He does not know Marshall Morgan and had never seen him in his life. Tyrone Hood said the detectives showed him a picture of Marshall Morgan's car. Tyrone Hood said he never seen the car in his life. Tyrone Hood said he drinks Miller Beer.

Tyrone Hood said is aware that fingerprints belonging to Joe West were also found on bottles in the victim's car. Tyrone Hood said he did not know Joe West at the time of this incident. There was no connection between Tyrone and Joe West. Later, after Tyrone Hood's arrest, Joe West came to Hood's family and told them of his own experiences with the police. Joe West told Tyrone Hood's family that the police made him (Joe West) testify against Tyrone Hood. Tyrone Hood is aware that Joe West gave an affidavit prior to his death. Tyrone Hood said he has read the police reports in this case, and he is also aware of the court testimony by the police. He has copies of the police reports with his paperwork at Pontiac. Tyrone Hood said he was stopped by the police and taken to the police station on May 20th. He was in police custody at 3:00 p.m. There was testimony in court that his fingerprints came back at 10 minutes after 6 p.m. on May 20th and passed to Lenihan. "How could this be if he (Tyrone Hood) was already in custody at 3:00 p.m.," Tyrone Hood believes he was arrested and charged because the police were under political pressure to make an arrest.

Tyrone Hood said he did not know Laron Hyde. Tyrone Hood is aware that the police found a prisoner bag belonging to Laron Hyde in the victim's car.

Tyrone Hood said he knows Jody Rogers and Michael Rogers only because Tyrone used to work on the car of Jody's father. Michael Rogers is also known as "Twinkie". Jody, Michael, and their father lived in the 10400 block of Maryland. Tyrone Hood said he did not socialize with Jody and Michael. At times, Jody and Michael were in the area when Tyrone was working on their father's car. Tyrone would drink Budweiser beer with the old man. Tyrone Hood never drank beer with Jody and his brother Michael. The Roger brothers were younger than Tyrone. They were around the same age as Wayne Washington. Tyrone Hood said he believe Jody and Michael Rogers were threatened by the police to testify against him or they would get charged with the murder. He offered no other reason for this belief.

Tyrone Hood said he is aware of a person named Emanuel Bob from the neighborhood. Hood may have seen Bob a couple of times on Bob's porch. Tyrone Hood knew Bob's girlfriend "Tammy" who is friends with Tyrone Hood's wife.

Tyrone Hood recalled that he spoke with female prosecutor a couple of years ago about this case. Tyrone Hood said he spoke with the attorney for approximately thirty (30) minutes. He said he did not know Marshall Morgan or his father. Tyrone Hood was asked questions about the murder. He was asked if he knew Marshall Morgan Jr. He said "No". He was asked if he ever met Marshall Morgan Sr. He said "No, Never".

C373

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Tyrone Hood said he obtained a copy of Wayne Washington's statement to the police. Tyrone Hood compared Washington's signature on the statement with Washington's signature on Washington's commissary slip. The signatures were the same. Tyrone Hood said he has seen Wayne Washington since his (Tyrone Hood's) arrest. He (Tyrone Hood) does not hold a grudge against Wayne Washington. The police choked, kicked, punched, and threatened Wayne Washington, forcing him to sign a statement. The police told Wayne Washington that they would let him go home if he signed the statement. Tyrone Hood said he hasn't seen Wayne Washington since Wayne was released from prison.

Tyrone Hood said he spoke with Renee Ferguson in 2007. Tyrone Hood said he does not know Marshall Morgan Sr. He was not aware that he worked at Corliss High School and never saw him at Corliss High School. The name means nothing to him. Tyrone Hood said that Corliss High School is located between 104th and 105th Street and between Corliss and Maryland Streets. Tyrone Hood said his only connection to Corliss High School is dropping his daughter off at the day care center at that location.

Tyrone Hood said he was not employed at the time the murder occurred. He was doing odd jobs and paid in cash. Tyrone Hood said his wife was not working, but receiving public aid. At the time of occurrence he smoked some "weed". He drank mostly Miller products or rum. At the time of the occurrence, Tyrone Hood recalls telling the police he was with his wife, on Mother's Day, throughout the entire day. Tyrone Hood said he was never a member of a street gang. He grew up in the area of 5300 S. Michigan. Tyrone Hood asked the interviewing Assistant State Attorney and Investigator if they were aware that Marshall Morgan, at one time, lived in the area of 56th and Wolcott.

Thomas A. McGee # 5413 August 30, 2012
INVESTIGATORS DATE

[Signature] 361 8-30-2012
APPROVED: DATE

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A.55

Cook County State's Attorney's Office
Investigations Bureau

Investigative Report

93 CR 14676

FILE/CONTROL#	DOCKET#	REPORT#
Wayne WASHINGTON		September 7, 2012
SUBJECT: Attempt to interview co-defendant		DATE DRAFTED: Thomas F. McGreal #543
SYNOPSIS OF REPORT		INVESTIGATORS

Date Assigned:

Wednesday, September 5, 2012

Date and Time and Location of Interview

Wednesday, September 5, 2012, approximately 12:55 p.m. Eastern Standard Time, at 717 E. State Street, Cassopolis, Michigan.

Requesting Assistant State's Attorney:

Assistant State's Attorney James Papa
2650 S. California - room 12 B 13
Phone: (773) 674 -7701

Assigned Investigator

Thomas F. McGreal #543
2650 S. California - 12 D 42
Phone: (773) 674-4090

Defendant:

Tyrone HOOD M/B, 10 July 1963, SS# 351-62-2403, IR# 589321, Illinois Department of Corrections #B78329

Subject to locate and Interview:

Wayne Washington M/B, 17 March 1973, IR# 1038158 (Co-defendant in murder of Marshall Morgan Jr) of 20117 Brownsville, Cassopolis, Michigan, employed: McDonalds Restaurant - 717 E State Street, Cassopolis, Mi.

Summary:

On Wednesday, August 29, 2012 Assistant State's Attorney (ASA) James Papa and Cook County Investigator Thomas McGreal #543 continued the Post Conviction Investigation regarding the arrest and incarceration of Tyrone Hood for the Homicide Murder of Marshall Morgan Jr. The case is documented under Docket Number 93 CR 14676. ASA Papa and Investigator McGreal prepared to locate and interview Co-defendant Wayne Washington. A background check of available records revealed that Wayne Washington may reside at 701 S. Broadway St. Apt. 203S, Cassopolis, Michigan.

C375

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On Wednesday, September 5, 2012 ASA James Papa and Investigator McGreal drove to 701 S. Broadway Street, Cassopolis, Michigan in an attempt to locate and interview Wayne Washington. At 11:33 hours, Eastern Standard Time, the ASA and Investigator spoke with Mr. Mickie L. Lundy, Resident Manager of the Lake Wind Apartments at this location. Mr. Lundy said Wayne Washington frequented the complex in the past and even attempted to obtain an apartment at this location. He did not obtain an apartment but currently lives at an address on Brownsville Road in Cassopolis, Michigan (unidentified). He (Washington) drives a small, black, 4 door car and currently works at a nearby McDonald's.

ASA James Papa and Investigator Thomas McGreal were aware that Wayne Washington had a past address of 20117 Brownsville Road, Cassopolis, Illinois. ASA Papa and Investigator McGreal drove to this location, arriving at 12:05 Eastern Standard Time. No response was received at the door. A black 4 door, Nissan Max with Michigan License Plate CME8042 was seen alongside the house.

On Wednesday, September 5, 2012, ASA James Papa and Investigator Thomas McGreal drove to a nearby McDonalds at 57983-M 62, arriving at 12:30 Eastern Standard Time. The ASA and Investigator spoke with the store manager identified as "Seth". Seth said Wayne Washington is employed at another McDonalds and directed the ASA and Investigator to 717 E. State Road, Cassopolis Michigan.

On Wednesday, September 5, 2012, approximately 12:55 Eastern Standard Time, ASA Papa and Investigator McGreal arrived at the McDonalds at 717 E. State Road, Cassopolis, Michigan and requested to speak with the store manager. The ASA and Investigator were directed to a man who identified himself as Wayne Washington. ASA Papa and Investigator McGreal identified themselves to Wayne Washington, produced identification and requested an interview regarding the circumstances regarding the arrest of Tyrone Hood. Wayne Washington said he would have to speak with his attorney and made a cellular telephone call. Upon terminating the call he said his attorney advised that he not speak with the ASA and Investigator. Wayne Washington identified his attorney as Steven Greenberg. Wayne Washington returned to work and the ASA and Investigator returned to Chicago, Illinois.

Thomas A. McGreal #543
INVESTIGATORS

September 10, 2012
DATE

[Signature] 301
APPROVED:

9-10-2012 945 AM
DATE

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A.57

Cook County State's Attorney's Office
Investigations Bureau

Investigative Report

FILE/CONTROL# Marshall Morgan Sr.	93 CR 14676 DOCKET#	REPORT# October 16, 2012
SUBJECT: Inmate Interview at Stateville Correctional Center		DATE DRAFTED: Thomas F. McGreal #543
SYNOPSIS OF REPORT		INVESTIGATORS

Date Assigned:
Monday, October 1, 2012

Date and Location of Interview
Wednesday, October 3, 2012
Stateville Correctional Center,
16830 S. Broadway, Lockport, Illinois

Requesting Assistant State's Attorney:
Assistant State's Attorney
James Papa
2650 S. California- Rm. 12B13
Office: (773) 674-7701

Assigned Investigators
Cook County State's Attorney Investigator
Thomas F. McGreal #543
2650 S. California - Rm. 12D42
Office: (773) 674-4090

Defendant:
Tyrone Hood M/B, SS# 328-88-0345, IR# 103932, Inmate Number: B78329

Person Interviewed:
Marshall Morgan Sr. M/B, Stateville Inmate: A81377

Persons Present for Interview:
Assistant State's Attorney James Papa
Investigator Thomas McGreal #543
Inmate Marshall Morgan Sr.

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Summary:

On May 17, 1993, at 8:35 a.m. the body of Marshall Morgan Jr. was discovered, by the police, in a vehicle parked at 5709 S. Michigan Ave, Chicago, Illinois. After the investigation, Tyrone Hood was arrested, charged, tried and convicted of the occurrence. He was sentenced and incarcerated in the Illinois Department of Corrections. Subsequent to his incarceration a Post Conviction Investigation was initiated.

On Tuesday, October 2, 2012, Cook County Assistant State's Attorney (ASA) James Papa contacted the Illinois Department of Corrections and arranged for an interview with Marshall Morgan Sr. IDOC # A81377 at Stateville Correctional Center. Marshall Morgan Sr. is incarcerated for a crime non-related to the murder of Marshall Morgan Jr. The interview was scheduled for Wednesday, October 3, 2012 at 10:00 a.m.

On Wednesday, October 3, 2012, Cook County Assistant State's Attorney (ASA) James Papa and Cook County State's Attorney's Investigator Thomas McGreal spoke with the victim's father Marshall Morgan Sr. The conversation was conducted at Stateville Correctional Center in Lockport, Illinois. Upon arrival at the correctional facility, ASA Papa and Investigator McGreal were directed to an interview room by Illinois Department of Corrections Staff. Staff members also brought Marshall Morgan Sr. IDOC # A81377 to the same room. ASA Papa, Investigator McGreal and Marshall Morgan were present for the interview. The following is a summary of the conversation:

Cook County State's Attorney Investigator Thomas McGreal introduced himself and James Papa to Marshall Morgan Sr. and displayed official photographic identification. Marshall Morgan Sr. responded that he was represented by attorney Gayle Henderson and she advised him not to speak with anyone about his case. Assistant State's Attorney Papa asked Marshall Morgan Sr. if he would speak with Gayle Henderson about arranging an interview. Marshall Morgan Sr. said Gayle Henderson mostly represented him regarding his cases at the Federal Dirkson building. He said he would have to find another attorney if she did not want to represent him.

ASA Papa informed Marshall Morgan Sr. he did not want to discuss the case that resulted in his current incarceration. ASA Papa said he had wanted to discuss the death of Marshall Morgan Sr.'s son Marshall Morgan Jr. Marshall Morgan Sr. responded that he did not oppose speaking about his son's death, but he did not trust the police. The police did not tell the truth when he was arrested for his current case. Marshall Morgan Sr. volunteered he is guilty for his current case of incarceration. He admitted he gave a statement to the investigating detectives voluntarily and told the police the truth as documented in his statement to the police and assistant state's attorney. He added that he is not mad about his arrest. He did the crime and is now doing his time. Marshall Morgan Sr. said he is upset because of the testimony of one of the detectives in his trial. The detective "Bock" testified that Marshall Morgan Sr. was advised of his rights, from a book, each and every time he was interviewed. Marshall Morgan said this is a lie. The detective did not advise him of his rights. The unidentified State's Attorney went along with the lie. It is for this reason Marshall Morgan does not trust speaking with the police without an attorney present.

Marshall Morgan Sr. volunteered he is incarcerated for killing his wife Deborah. She took \$25,000 from him. He also found out she was married to someone else when he was married with her. He lost control and killed her. During the trial, it was said that he shot her with a gun he brought to the scene of the crime. She brought the gun and threatened to shoot him. He took the gun away from her and the gun went off, killing her.

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ASA Papa asked Marshall Morgan Sr. if he had been visited by anyone representing the person incarcerated for killing his son.

Marshall Morgan Sr. said he was incarcerated in 2008. During his incarceration, he received visits from a lawyer and investigator representing Tyrone Hood, accompanied by a stenographer. Marshall Morgan said the investigator displayed a badge and represented himself as a Chicago Police Officer during one of the visits. Hood's lawyer and investigator told Marshall Morgan Sr. that he knows Tyrone Hood. Marshall Morgan Sr. denied this is true. He did not speak with the investigator or stenographer and never met Tyrone Hood in his entire life. After the first visit, the investigator and stenographer returned two more times. On the third occasion, Marshall Morgan refused to come down and meet them.

ASA Papa asked Marshall Morgan Sr. if he ever heard the names Tyrone Hood or Wayne Washington prior to his son's death. Marshall Morgan Sr. said he did not hear of either name prior to his son's death.

ASA Papa asked Marshall Morgan Sr. about his prior employment. Marshall Morgan Sr. responded he worked for two (2) years as an engineer at Barton School located at 7600 S. Wolcott. He also spent eighteen (18) years as a janitor at the Chicago Public Corliss High School between 1983 and 2001. Corliss High School is located at 10300 S. Corliss. During this period of time he was employed as a janitor, fireman, and engineer. ASA Papa asked Marshall Morgan Sr. if there was a day care program at Corliss High School and Marshall Morgan responded, "No".

Marshall Morgan Sr. said he was upset with the judge who sentenced him in the case he is currently incarcerated. He had been released on forty thousand dollar (\$40,000) bail for the murder of his wife, Deborah. (It should be noted that Marshall Morgan Sr. became emotional at this time in the interview. He began to cry and took approximately fifteen (15) to thirty (30) seconds to compose himself). He said he jumped bail because his former wife Deloris had cancer. They had married in 1985 and had two children together. Marshall Morgan Sr. said he wanted to be with his wife during her illness. He was finally arrested in Michigan. The judge added additional ten (10) years on his sentence because he jumped bail. He wouldn't have minded if she gave him an extra five (5) years, but ten (10) years was too much. Marshall Morgan Sr. explained he and Deloris were divorced when she learned she had cancer. Deloris had learned that Marshall Morgan Sr. had a relationship with another woman named Angela. Marshall Morgan Sr. explained that it was only a one night stand, but Angela became pregnant. Angela and Marshall Morgan Sr. had a child together.

ASA Papa asked Marshall Morgan Sr. to describe his financial status at the time of his arrest. Marshall Morgan Sr. responded he had the money in the bank to pay for bail. At the time, he and Deloris were going through a divorce. Their home in Country Club Hills had no equity and was in foreclosure. According to Marshall Morgan Sr., Deloris' lawyer told Deloris to take him (Marshall Morgan Sr.) for everything. Marshall Morgan Sr. recalled the Judge in divorce court was Susan Snow.

Marshall Morgan Sr. said he realizes he is being questioned by the Assistant State's Attorney and Investigator, but that is OK. He said he has nothing to hide. He denied being in financial trouble at the time of his son's death. He told ASA Papa and Investigator McGreal that they had permission to check his tax returns. Marshall Morgan Sr. said he gave most of his money to people who were in need. He added that money did not mean anything to him. He gave the money to people who needed medication or groceries and couldn't afford to pay themselves. Marshall Morgan Sr. said he heard the allegations about his son's death. He knew the issue would come up, but he had nothing to do with his son's death.

ASA Papa informed Marshall Morgan Sr. that there are allegations that he killed his son in order to

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collect an insurance policy he purchased prior to his son's death. ASA Papa said people found it unusual that a policy would be taken out on a healthy nineteen (19) year old male. Marshall Morgan said he is aware of the allegations. He responded by asking ASA Papa if he (ASA Papa) has an insurance policy on his own family members. Marshall Morgan Sr. said it is a normal practice and not unusual for a father to purchase an insurance policy on family members. Marshall Morgan Sr. said the insurance policy on his son was from All State Insurance. He gave the investigators permission to obtain the All State Records regarding the policy and payment. Marshall Morgan Sr. said his son was a rider on another policy. Marshall Morgan Sr.'s first wife Marcia wanted a separate policy taken out on Marshall Morgan Jr. that he could have for himself. Marshall Morgan Sr. purchased the policy but Marshall Morgan Jr. chose to list Marshall Morgan Sr. as a beneficiary. To list Marshall Morgan Sr. as a beneficiary was his son's decision.

After the death of Michelle Soto, Marshall Morgan Sr. said he received, as a beneficiary, one hundred and sixty eight dollars (\$168,000) from the insurance policy of Michelle Soto. It was a one hundred and fifty thousand dollar policy (\$150,000) with interest added. Marshall Morgan Sr. said he paid taxes on the total amount. Out of the sum remaining, Marshall Morgan Sr. said he gave sixty thousand dollars (\$60,000) to Tammy Soto. The policy was tied to the house and went to probate court. The attorney was Ted Green.

Investigator McGreal asked Marshall Morgan Sr. if he killed his son. Marshall Morgan Sr. responded. "No, I did not". He added that he loved his son and "You have the right guys". Marshall Morgan Sr. continued saying that he had no reason to kill his son. "You can take a look at me all you want - I don't care, I am at peace with myself". Marshall Morgan Sr. said he admits to his current crime and is paying for what he did. He is not going to let anyone tell him he did what he did not do. His conscience is clear and he can sleep at night. Marshall Morgan Sr. said if he killed his son he would feel guilty. He doesn't feel guilty, because he didn't kill his son. Marshall Morgan Sr. continued, "I killed Deborah. I felt guilty because I left a little girl at her house, without a mother".

ASA Papa asked Marshall Morgan Sr. about his current relationship with his former wife Marcia. Marshall Morgan Sr. responded that Marcia was his "teen sweetheart" and his "first love". She was also his first wife. Marshall Morgan Jr. was born in 1972. Marshall Morgan Sr. said Marcia does not believe he killed Marshall Morgan Jr. After she and Marshall Morgan Sr. broke up, Marcia began dating a Chicago Cop named Jerry Johnson. He worked in the 008th. Police District, but is now deceased.

ASA Papa asked Marshall Morgan Sr. about the death of Michelle. Marshall Morgan Sr. said he is aware that Michelle's daughter alleged he had something to do with her death. Marshall Morgan Sr. denies having any knowledge about her death.

The interview of Marshall Morgan Sr. was completed. Investigator McGreal notified Stateville Correctional Officers that the interview was ended and the ASA and Investigator was escorted from the area of interview.

INVESTIGATORS	<i>Thomas A. McGreal #543</i>	DATE	<i>10/26/2012</i>
	<i>[Signature]</i>		<i>10/26/2012</i>
APPROVED:		DATE	

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Cook County State's Attorney's Office
Investigations Bureau



INVESTIGATIVE REPORT

FILE/CONTROL#:	DOCKET#:	REPORT#:
	93 CR-14676	1
SUBJECT:		DATE DRAFTED:
EMMANUEL BOB		28 August 2012
SYNOPSIS OF REPORT:	PERIOD COVERED:	INVESTIGATOR(S):
Interviewed Witness		B. LEE #404

Date of Assignment: August 9, 2012

Assignment: Interview Witness

Subject Information: BOB, EMMANUEL
2518 MOUNT DORA FLA
352-729-2142
DOB02/21/1949 M/B

Present for interview: ASA J. PAPA
INV BRADFORD LEE
DET. SGT. WADE of the MT DORA POLICE DEPT

Also Present: Unknown female present at interview, did not participate

Assigned Personnel: Reporting Investigator Bradford Lee #404

Investigation: On May 17, 1993, at 8:35am the body of Marshall Morgan Jr. was discovered by the police in a vehicle parked at 5709 S. Michigan Ave., Chicago, Illinois. After the investigation, Tyrone Hood was arrested, charged, tried and convicted of the murder. He was sentenced and incarcerated in the Illinois Department of Corrections. Subsequent to his incarceration, a Post Conviction Motion and investigation was initiated.

On August 9, 2012 at approximately 11:00am, R/I and ASA James Papa arrived at the Orlando Florida International Airport and drove to the Mount Dora Police Station, there met with Detective Sergeant Wade of the Mount Dora Police Department. The R/I and James Papa then proceeded to follow Sgt Wade to 2518 Spring Harbor Circle apt 2 in Mount Dora, Fla. This is the residence of Emmanuel Bob.

R/I identified myself displaying an Official Photographic Identification and introduced Assistant State Attorney James Papa and Detective Sgt Wade of the Mount Dora Police Department to Emmanuel Bob. R/I and ASA James Papa walked over to the kitchen table and sat down while Sgt Wade stayed by the front door. After we sat down, an unidentified woman came out of the side bedroom and stood in the kitchen along side of Emmanuel Bob.

Emmanuel Bob was asked to recall events surrounding the investigation and trial of Tyrone Hood and Wayne Washington.

In summary, Emmanuel Bob stated that he has not been in Chicago for about 12 years and no one has been in touch with him concerning the case. Emmanuel Bob stated that he used to live in Altgeld Gardens. Emmanuel

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Bob stated that he has known Brenda Cage and Tammy Cage for about 8 or 9 years.

Emmanuel Bob stated that on Mother's Day night of 1993 he was upstairs in his residence, second floor, looking out of the window to see if Tammy Cage's ex-boyfriend was coming over. During this time period, Emmanuel Bob said he was dating Tammy Cage. A car pulled up and Tyrone "Tony" Hood got out of the driver's side of the car. Emmanuel Bob stated that he remembered it was a blue Chevrolet but could not remember the year of the car. He stated that he could only see one person in the car. Emmanuel Bob was asked how he knew Tyrone "Tony" Hood. Emmanuel Bob stated that he knew "Tony" Hood through the neighborhood because Tyrone "Tony" Hood used to fix cars. Emmanuel Bob stated he did not see Wayne Washington, who he knew from the neighborhood, in the car. He stated that at the time he saw Tyrone "Tony" Hood pull up, he noticed Wayne Washington sitting on the front porch of the residence with some other people celebrating Mother's Day. Emmanuel Bob stated that he then began to watch television.

Emmanuel Bob went on to state that several years later he was visiting Tammy Cage at her residence and observed Brenda Cage, Tammy Cage's sister, talking with two Chicago Police Detectives in the kitchen. Emmanuel Bob saw several photos on the kitchen table and he walked over to the table to get a closer look. Upon looking closer, he recognized photos of Tyrone "Tony" Hood and Wayne Washington. He told the Detectives he recognized Hood and Washington. He also recognized a photo of a blue car that looked like the car that he saw Hood driving on Mother's Day years prior. The Detectives asked how he knew Hood and Washington and Emmanuel Bob told them he knew them from the neighborhood.

Emmanuel Bob was asked if anyone ever threatened, forced or told him what to say regarding what he saw and testified to in court. Emmanuel Bob said no threats or promises were ever made to him regarding his testimony and added that "nobody could ever put words in my mouth."

Emmanuel Bob was asked if he knew Joe West, Laron Hyde or Allen Rogers. Emmanuel Bob said he did not know Joe West or Laron Hyde. He stated that he knew Allen Rogers from the neighborhood.

Emmanuel Bob was asked if he recalled anything else regarding the case and he replied that he did not. At this time the interview was ended.

INVESTIGATOR(S)

SUPERVISOR'S APPROVAL

28 Aug 2012
DATE

8-28-2012
DATE

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Cook County State's Attorney's Office
Investigations Bureau

Investigative Report

FILE/CONTROL# Marcia ESCOFFERY	DOCKET# 93 CR 14676	REPORT# August 21, 2013
SUBJECT: Interview	DATE DRAFTED: Thomas F. McGreal #543	
SYNOPSIS OF REPORT	INVESTIGATORS	

Date Assigned:

Tuesday, January 22, 2013

Date and Time and Location of Interview

Wednesday, January 23, 2013, 1135 hours

Requesting Assistant State's Attorney (ASA):

ASA James Papa/ ASA Kurt Smitko

Assigned Investigators:

Thomas F. McGreal #543

Defendant:

Tyrone Hood M/B, July, 10, 1963, SS# 351-62-2403, IR# 589321, B78329

Person Interviewed:

Marcia Escoffery F, May 2, 1957, of 9533 S. Oakley, , 773-665-5158

Persons Present for Interview:

Inv. Thomas McGreal
ASA Kurt Smitko
ASA James Papa

Summary:

On May 17, 1993, at 8:35 a.m. the body of Marshall Morgan Jr. was discovered, by the police, in a vehicle parked at 5709 S. Michigan ave., Chicago, Illinois. After the investigation, Tyrone Hood was arrested, charged, tried and convicted of the murder of Marshall Morgan Jr. He was sentenced and incarcerated in the Illinois Department of Corrections (IDOC). Subsequent to his incarceration a post conviction motion and investigation was initiated.

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On Tuesday, January 22, 2013, 4:34 p.m , Investigator Thomas McGreal received a telephone call from Marcia Escoffery the mother of victim Marshall Morgan. Marcia Escoffery informed Investigator McGreal that she had just been contacted by representatives from the law firm of Loevy & Loevy. These persons asked Marcia Escoffery if she was aware Tyrone Hood was going to court on January 28 and he was going to get a new trial. The people from Loevy & Loevy told Marcia to watch the channel 2 news at 10:00 p.m. this night (January 22, 2013). The representatives from Loevy & Loevy told Marcia Escoffery they did not want her to be shocked when she learned Tyrone Hood was going to receive a new trial. Marcia Escoffery told these persons she did not want them coming to her home, and they left.

Investigator McGreal asked Marcia if she would be available for an interview regarding this visit by the defense. Marcia said she would be available, at her home, on Wednesday, January 23, 2013, after 11:00 a.m.

On Wednesday, January 23, 2013, 11:35 a.m. Cook County Assistant State's Attorneys Kurt Smitko, James Papa, and investigator Thomas McGreal drove to 9533 S. Oakley, the home of Marcia Escoffery. The investigator and Assistant State's Attorneys were allowed into her home where the following interview was conducted.

Marcia Escoffery repeated the same summary of events as previously told to Investigator McGreal and has been documented in this report. Marcia Escoffery allowed the investigator and Assistant State's Attorneys to look at a business card left by the representatives of Loevy & Loevy. The typed business card identified Julie Thompson of Loevy & Loevy, 312 N. May, Suite 100, phone: 312 243-5900. The names Anne Gottschalk and Gayle Horn were handwritten on the card.

Attorney Julie Thompson identified the two visiting persons as Anne Gottschalk and Julie Thompson. Marcia Escoffery said the women came to her home at approximately 3:00 and remained for approximately fifteen minutes. The person identified as Anne Gottschalk did all the talking. The other visitor did not speak. Marcia described the second visitor as "a real small girl" Marcia was told that Tyrone Hood was going to get a new trial. He has a real solid case. Marcia Escoffery told the women she did not want them coming to her house in the future. They apologized for bothering her and left.

Thomas A. McGreal #543 January 25, 2013
INVESTIGATORS DATE

[Signature] 1-28-13
APPROVED DATE

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At around two-thirty in the afternoon on May 8, 1993, Marshall Morgan left his mother's house, on the South Side of Chicago, and drove off in her light-blue Chevrolet Cavalier. Morgan was borrowing the car and, in return, had agreed to get it washed. It was a warm day, and he wore denim shorts, a black-and-white pin-striped shirt, and black sneakers. After he got the car cleaned, he planned to return home and spruce himself up: he had a date with his girlfriend that night.

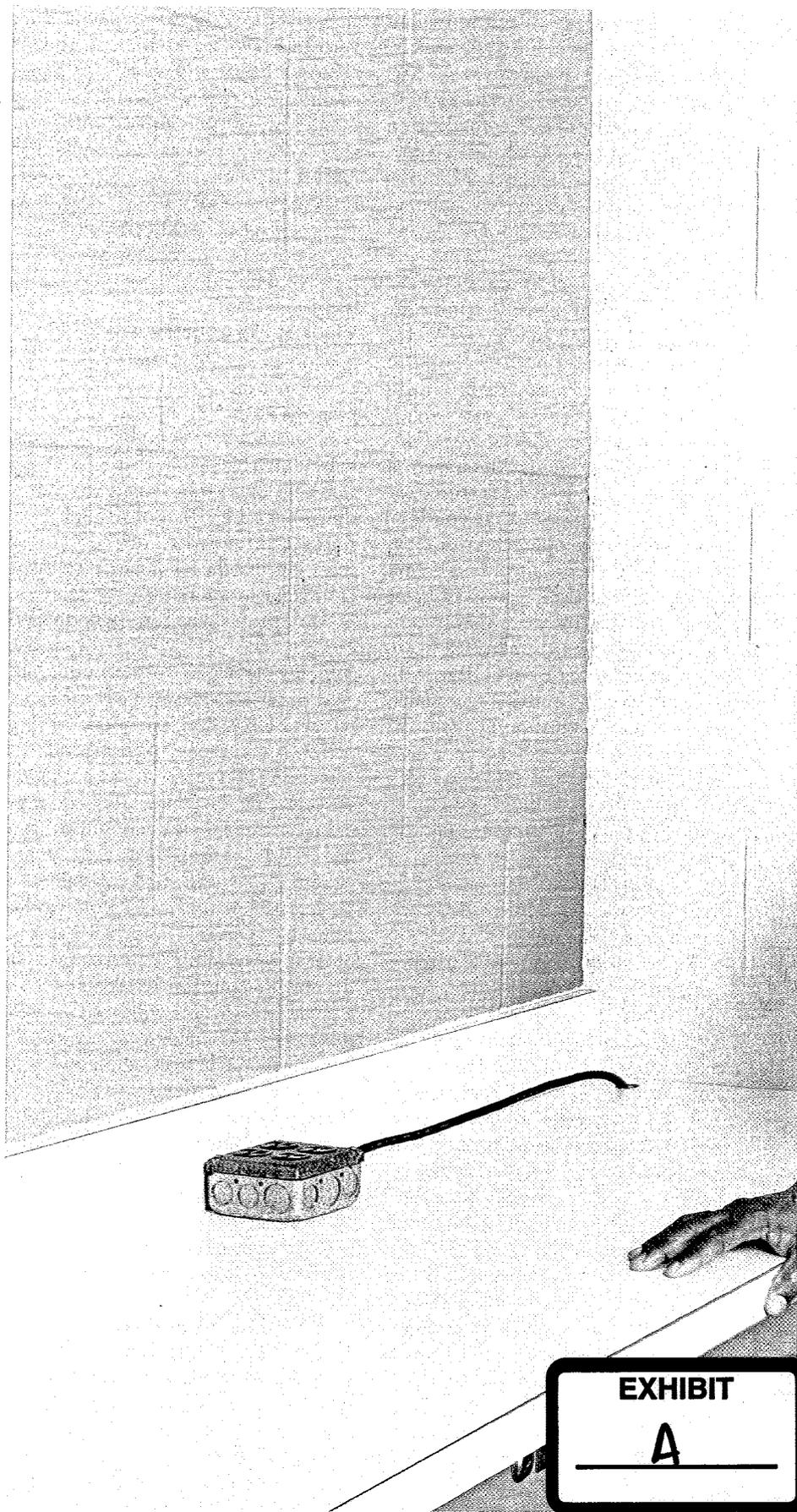
Morgan was a twenty-year-old sophomore at the Illinois Institute of Technology, where he played point guard on the basketball team. The season had just ended, and he had performed notably well, averaging eighteen points and three steals a game; he had been the runner-up for the Chicagoland Collegiate Athletic Conference's most-valuable-player award. His coach, Ed McQuillan, told me recently that Morgan was a "great kid" and a complete player, who was "quicker than hell, great on defense—he could shoot long, and he could drive and penetrate."

When Morgan didn't come home, his mother, Marcia Escoffery, grew worried. She and Morgan were close: she became pregnant at fifteen and brought him up, an only child, on her own. "All we had was each other," Escoffery told me.

Morgan's father, Marshall Morgan, Sr., had recently come back into his life, after an absence of seventeen years. He had attended his son's basketball games and made other efforts at reconciliation: that day, he had booked a room for Morgan and his girlfriend, Lorena Peete, at a local Days Inn. Escoffery had warned her son to be wary of such gestures, but he welcomed them. "He would never back off from family," Peete told me.

Escoffery stared at the phone for hours. Morgan always called to say that he'd be late. After nightfall, she notified the police that her son was missing.

Morgan's disappearance made the Chicago evening news. Police created a toll-free number to encourage leads and plastered the South Side with photographs of him. Nine days after Morgan disappeared, the Cavalier was found parked in front of a run-down building on South Michigan Avenue, near Fifty-eighth Street. Neighbors had



EXHIBIT

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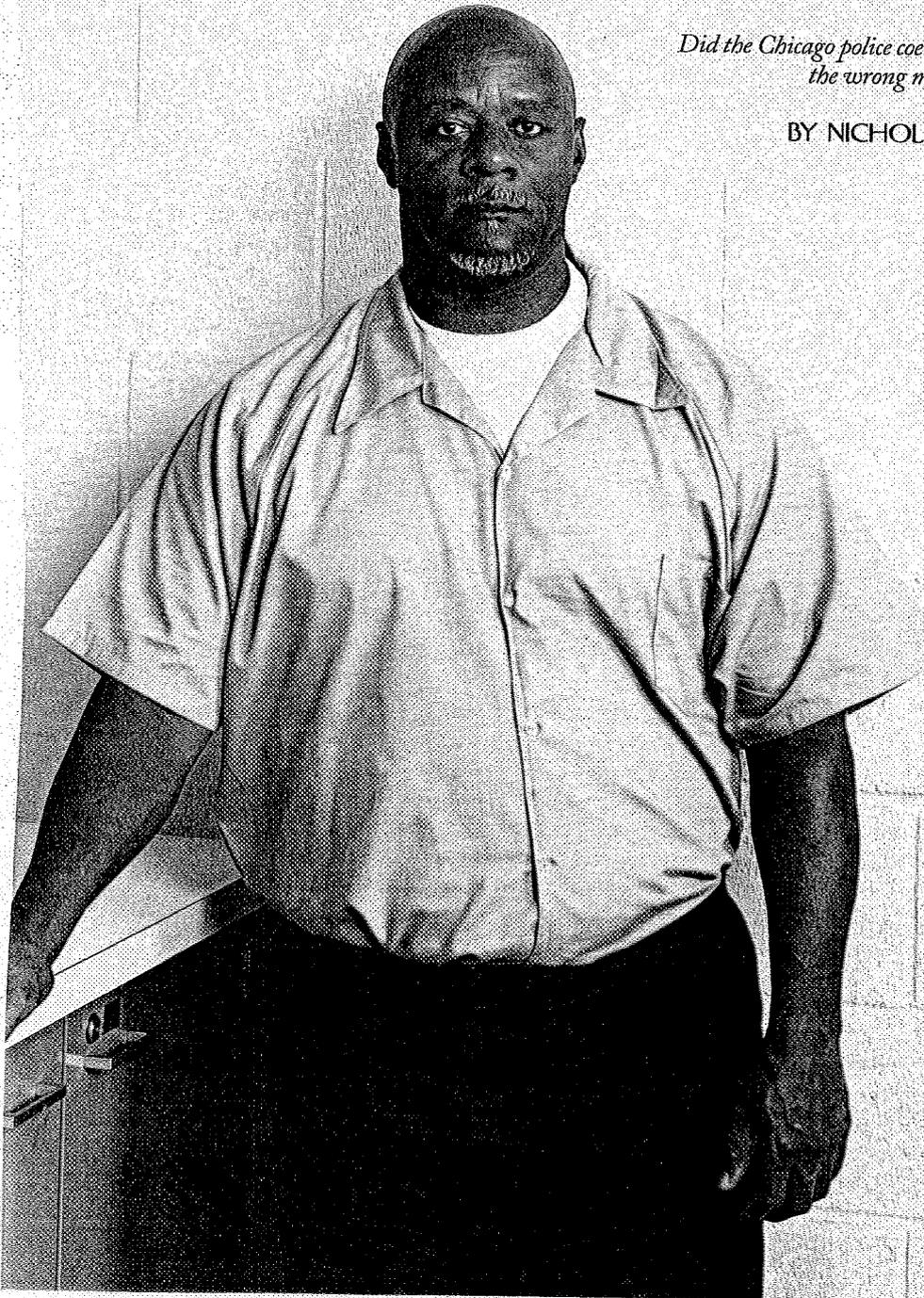
Tyrone Hood has been in prison for twenty-one years, and could be up for parole in 2030.

A REPORTER AT LARGE

CRIME FICTION

*Did the Chicago police coerce witnesses into pinpointing
the wrong man for murder?*

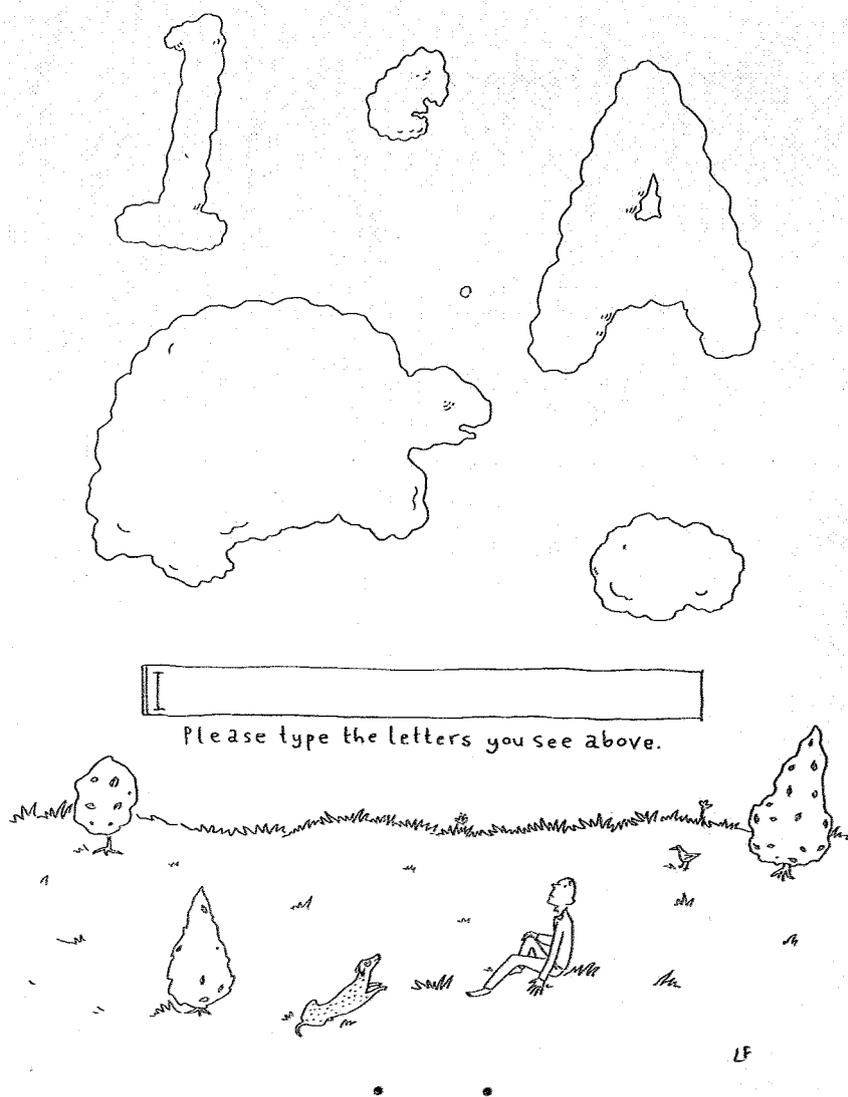
BY NICHOLAS SCHMIDLE



He has always maintained his innocence. "This thing is bigger than me," he said. "There's a chain of corruption."

PHOTOGRAPH BY STEFAN RUIZ

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reported a putrid smell escaping from a cracked rear window. A forensic team arrived to find a decomposing male corpse on the floor, between the front and back seats, with a .38-calibre gunshot wound in the stomach and two more in the back. The body was naked, except for a black-and-white pin-striped shirt. Dental records confirmed that it was Morgan.

Homicide investigators from Area One, the branch responsible for the neighborhood around Fifty-eighth and Michigan, took up the case. Even in a city that was averaging three murders a day, Area One detectives were exceptionally busy. Their territory included the notorious Robert Taylor Homes, twenty-eight public-housing towers whose stairwells were controlled by drug gangs. Robbery, rape, and murder were commonplace. "They were killing people left and right," Kenneth Boudreau, a veteran detective

who served in Area One, told me. The neighborhood was overwhelmingly black, but the police force was overwhelmingly white, and it struggled to establish authority. Tenants, seeing police below, sometimes threw trash from their windows. Many crimes went unsolved.

Cases that attracted significant media attention, however, often became known as "heaters," drawing the resources necessary to make arrests and secure convictions. According to a 1992 article by Myron W. Orfield, Jr., a law professor at the University of Minnesota, heater cases were diverted to "judges statistically far more likely to convict." Some cops tried to avoid the stress of such cases: in 2005, a retired detective told the *Chicago Tribune*, "You pray to God not to give you a heater case." Others, like Boudreau, didn't shirk the challenge.

Morgan's case was a heater. Crime-lab

technicians dusted the Cavalier, and three days later they pulled fingerprints from a Miller High Life bottle and a Löwenbräu forty-ounce that had been found in the car; the prints matched a set on file for Tyrone Hood, a resident of a South Side neighborhood eight miles away. Two detectives immediately began searching for him.

Shortly before 4 P.M., Hood was walking from his house to a corner store, the Munch Shop, when the officers, in an unmarked police car, pulled up alongside him. They informed him that his prints had turned up at a murder scene. Hood, who was twenty-nine, had a full, unpicked head of hair, and a tattoo of his nickname, Tony, on his left forearm. A married father of three, he cobbled together a living through temporary auto-repair jobs, construction gigs, and clerical work. He had grown up in a chaotic home, the eighth of ten children. An older brother had served time for robbing McDonald's restaurants. When Hood was seventeen, two thieves shot and killed his father. Not long afterward, Hood was arrested twice for aggravated assault—one of the incidents involved unlawful use of a firearm—and once each for marijuana possession, battery, and theft. He had served a year on probation for the weapons charge. Now, facing the cops, he dismissed the possibility of his prints being at the scene. ("Someone must have put them there," he later declared.) But he agreed to answer questions at the police station, to "clear his name."

On May 8th, Hood said, he had spent the day at home with his family; that evening, he had watched "Cops" with his wife, Tiwana. Later in the interrogation, though, he said that several people had come over, among them his friend Wayne Washington. When Hood was asked about his whereabouts on May 9th—Mother's Day—he initially said that he had been with his mom. Then he said that he had stayed home with Tiwana.

Kenneth Boudreau and his partner, John Halloran, took over the interrogation the next day. Boudreau considered himself an expert at separating a man from his secrets. "I have spent a lot of time learning how to interview people, and have been trained by the F.B.I.," he told me recently. "You don't have to beat people to get them to talk." Chicago cops, however, have long been criticized

for being overly aggressive. In 1931, a White House commission warned that the “third degree”—methods that “inflict suffering, physical or mental, upon a person in order to obtain information about a crime”—was “thoroughly at home in Chicago”; one preferred tactic involved beating a suspect in the head with a phone book, since it could “stun a man without leaving a mark.” In the late sixties, Chicago police officers shot and killed a Black Panther activist while he was in bed; his relatives received a large wrongful-death settlement. In 1982, a lieutenant named Jon Burge was accused of torturing Andrew Wilson, an alleged murderer of two police officers, who was in his custody. A doctor who examined Wilson found “multiple bruises, swellings, and abrasions,” and several “linear blisters.” Wilson claimed that he had been cuffed to a hot radiator and that “electrical shocks had been administered to his gums, lips, and genitals.” Burge was eventually fired for “systematic” misconduct.

Boudreau, a solidly built man who is now in his mid-fifties, told me that he had never relied on physical intimidation during interrogations. At the time of his encounter with Hood, Boudreau was an Army reservist. In 1990, during the Gulf War, he had deployed to Saudi Arabia; after the September 11th attacks, he had participated in the Ground Zero rescue effort. When he discussed interrogations with me, he spoke like a student of cognitive science. “It’s all right-brain, left-brain,” he said. “When someone is recalling something, they look left. But when they’re creating an answer they look right.” He claimed that people who spoke with their hands near their mouths were acting suspiciously, and theorized that “when someone’s tapping their leg you can see that if they had full movement they would be running away.”

Hood took a polygraph exam. Many scholars have questioned the reliability of such tests, but cops regularly use them. The polygraph technician detected “deception” in Hood’s answers. When Boudreau and Halloran pressed him over the inconsistencies in his story, Hood was impassive, telling them, “If I don’t say anything to explain, I will go to jail for a long time. If I *do* tell what happened, I will go to jail.” Hood later reported that Boudreau and his

fellow-interrogators, frustrated with his refusal to confess, slapped him in the head and thrust a gun in his face, telling him that he could go home “if he signed ‘the papers.’” (Boudreau told me that he had not engaged in any abuse; Halloran declined to comment.)

After forty-eight hours in detention, Hood still maintained his innocence. Boudreau and his colleagues couldn’t hold him any longer without formally charging him, and they didn’t have enough evidence to succeed in court. On May 22nd, they let him go.

Three days after Hood left the station, investigators pulled another set of prints from a beer can in Morgan’s car and traced them to Joe West, who lived two blocks away from Hood. On May 27th, two detectives went looking for West; they didn’t find him, but came across Hood hanging out at the Munch Shop with his friend Wayne Washington. The cops, recalling that Washington had figured in Hood’s alibi, asked him if he would answer questions at the station. Washington agreed. Hood, who said that he didn’t want Washington to mistake him for a snitch, volunteered to go along and face further interrogation.

At the station, Hood and Washington were ushered into separate rooms. Detectives also tracked down West and another friend of Hood’s, Jody Rogers. Boudreau and three other detectives questioned West, who initially denied any knowledge of Morgan’s murder. But after West was informed that his fingerprints had been found on the beer can he told a different story. Wayne Washington and Jody Rogers, in turn, provided details that complemented West’s account.

On the evening of the murder, Washington and Rogers said, they had been idling with Hood on a front porch in the neighborhood. Rogers suggested getting high, according to Washington, and asked him to roll a “mo”—a cigarette sprinkled with cocaine. Washington, who belonged to a street gang and sold drugs, said that he was thirty dollars short for the day and couldn’t afford to dip into his supply. He told the police that Hood proposed getting cash by doing a

stickup, and that Rogers, who was on parole for armed robbery, declined to participate. Nevertheless, Rogers told detectives, he offered his friends a .38 revolver, and Hood took it.

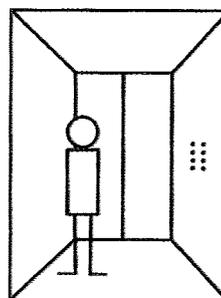
According to Washington, he and Hood set out on foot. After a few blocks, they spotted a blue sedan pulling up to the curb, and saw a man they didn’t recognize—Marshall Morgan—getting out. “There’s a vic,” Hood said, aiming the .38 at Morgan. Washington told police that Morgan gave Hood money from one of his pockets and was reaching into the other when Hood shot him in the gut; as Morgan doubled over, screaming for help, Hood and Washington grabbed his arms and legs and shunted him between the front and back seats of the car. Hood, Washington said, took the car keys from Morgan’s pocket, then climbed into the driver’s seat and sped away.

Joe West told investigators that, on May 10th, he had recognized Hood driving around the neighborhood in a blue sedan, and waved him down: he wanted to buy a dime bag of marijuana, and knew that Hood could help him find one. West got in, pushing aside a pile of empty beer cans and bottles at his feet, and they headed a few blocks east to make a deal. At one point, according to West, Hood ran a red light, and West, anxious about police, glanced backward and spotted someone sprawled across the floor of the back seat. West recalled that, when he asked what was going on, Hood

avoided the question and said that he was “zoning”—stoned. At a corner, West continued, Hood got out and bought a dime bag. After that, Hood drove him home. As West got out, he said, “You are some kind of crazy nigga.”

West told police that he watched Hood ease down the street and park a few hundred feet away; the dome light flipped on, and two gunshots rang out. Panicked, West ran inside.

With West’s statement in hand, detectives entered Hood’s interrogation room and charged him with killing Morgan. Washington was also indicted. The Cook County state’s attorney’s office assigned Hood’s case to



Michael Rogers. Rogers—no relation to Jody—was a prosecutor pointedly averse to compromise. Years of contending with violent criminals had left him with a dark view of humanity. The previous year, he and Boudreau had worked on a case in which three men confessed to raping a woman, strangling her, and setting her on fire. “Most of the people who live in the criminal world are riding their own trail down the razor blade of life,” he wrote in a forty-page memo that circulated around the state’s attorney’s office in 2004.

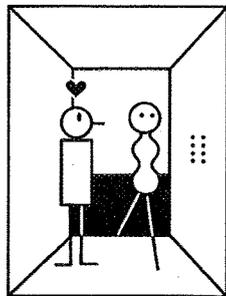
The memo offered advice to young prosecutors. It warned them about the “anti-state judge” who is “bent on screwing you for a discovery violation.” Rogers added, “You will want to punch this judge.” He portrayed appellate clerks as fifth columnists whose “only exposure to the criminal justice system [will] be some professor who is a former public defender who wore Birkenstocks to class.” Rogers cautioned against picking jurors who looked “like the defense lawyer or defendant,” and mocked appellate judges who, “for some reason,” believed that “the Constitution is more than a technicality.”

Hood hired an attorney. But he couldn’t keep up with the payments, and turned to a public defender named Jim Mullenix, who had spent two years living in Sierra Leone as a Peace Corps volunteer. “People like me root for the underdog,” Mullenix said. In their jailhouse conferences, Hood insisted upon his innocence, even though the three witness statements—and Hood’s fingerprints on the beer bottles—suggested otherwise.

The judge, Michael Bolan, scheduled the trial for April, 1996. On the eve of jury selection, three detectives intending to bolster the state’s case visited a woman in Hood’s neighborhood, and asked her if she could help them confirm identities in some photographs. After they fanned several Polaroids—including one of Hood and one of the Cavalier—across the woman’s kitchen table, her sister’s fiancé entered the room in search of an onion and said, “I seen that guy before.”

The fiancé, a former prison guard named Emanuel Bob, pointed at a pic-

ture of Hood. Bob said that he had run into Hood “off and on” over the years. Three years earlier, on the night after the killing, Bob explained, he had been looking out his second-story window sometime between midnight and 3 A.M. when he spotted, about a hundred feet away, Hood sitting in the Cavalier. When asked why he hadn’t reported this to the police, he said, “I figured, ‘Well, they done caught the person who did it.’ It’s in the paper.” Rosemary Higgins, who prosecuted Hood with Rogers, felt that Bob’s eyewitness account sealed their case, and had come about “almost by divine providence.”



Hood waived his right to a jury trial, placing his fate in Judge Bolan’s hands.

Two weeks later, Bolan found Hood guilty of murder and armed robbery. At the sentencing hearing, Higgins read a statement from Morgan’s mother, who pleaded with Bolan not to show Hood mercy. “He took my son’s life so brutally,” she said. “He must pay for his crime so no other parent or child has to go through what I am going through.” Later, Higgins called Hood a “heartless killer” who possessed no “rehabilitative potential.” (Higgins, now a judge, declined to comment.)

Hood’s family and friends and former bosses lobbied Bolan for leniency. A relative characterized Hood as a “lovable and devoted father” with a “smile as big as the sun.” Mullenix pointed out that Hood had spent three years in pre-trial detention, and that much time had passed since his previous run-ins with police. Before his arrest, Hood had graduated from high school, married, brought up children, and earned twelve hours of community-college credit in automotive mechanics. A supervisor at Catholic Charities, where Hood had done clerical work, said that he was admired there. Mullenix submitted a review from the director of the PACE Institute, a social and academic program for inmates; it described Hood as “highly motivated,” and cited his inclusion on the honor roll and his publication of “inspirational articles” in the PACE newsletter as indicators of a “successful future adjustment.”

Bolan, unmoved, sentenced Hood to

seventy-five years. Before leaving the court, Hood submitted a statement, which Mullenix read aloud. “Life is too precious to take away and not give back,” Hood wrote. “An innocent man’s life or freedom” was “about to be taken away.” The statement continued, “I pray that the truth will come out. In the Bible in Luke, chapter eight, verses seventeen to eighteen, it says, ‘Whatever is covered up will be uncovered, and whatever is hidden will be found, therefore, consider carefully how you listen.’ I say to myself, ‘Tony, they will find out that I’m an innocent man, just have patience for the Lord to help you.’”

Hood was sent to a maximum-security facility in Menard, Illinois. The prison, which sits at the foot of a bluff on the east bank of the Mississippi River, was built in the late nineteenth century, of sandstone blocks ornamented with Egyptian Revival and Greek Revival motifs. It looks like a derelict boarding school.

Shortly after Hood arrived, he listened as an inmate in a nearby cell killed another inmate by bashing a television against his head. Hood started lifting weights to protect himself from potential attackers. Eventually, he got a job at the fry-cook station in the kitchen. He worked there for three and a half years before moving to the knit shop, where he made T-shirts for the prisoners. He received a pittance, but the money hardly mattered. “The more time you spend working, the better chance you will be out of harm’s way,” he told me recently.

Menard is seven hours south of Chicago, and the distance deterred Tiwana and the kids from visiting. Calling was expensive, and Tiwana told me that she’s “not a writing person.” Some inmates encouraged Hood to forget about her. Women never wait, they told him.

One day when Hood called home, he could tell by Tiwana’s voice that something had changed. “She said she had company, and I knew right there, this ain’t good,” he recalled. He heard a man speaking in the background. “You ever heard of a Dear John letter? I got a Dear John call,” Hood told me. “I was, like, ‘How could you? You was one of my alibi witnesses—you know I didn’t kill this guy.’” He removed snapshots of Tiwana from his photo album, and

mailed them back to her. Eventually, he filed for divorce.

In 2000, Hood submitted a request for legal assistance through a pen-pal network for inmates. In a letter, he introduced himself as a victim of wrongful conviction, seeking someone to do footwork for him on the outside, so that he could mount a successful appeal. Months later, he received a reply from an Australian woman. The woman, Barbara Santek, had been attending an Amnesty International meeting one night in Fremantle, a town outside Perth, and had agreed to correspond with an American inmate. At first, she was wary of Hood's letter. Weren't judicial measures in place to prevent innocent people from going to jail? Moreover, she told me, exchanging letters with a convicted murderer "took me out of my comfort zone."

After they exchanged a few letters, Hood shipped Santek a packet containing trial transcripts, witness statements, and police files. In a letter to one of Santek's friends, Robyn Fisher, who also corresponded with him, Hood emphasized that he had always maintained his innocence: "If the prosecutor ask me to plea guilty to this crime and they will let me go with time served, well, I would have to say NO because I will be admitting to something that I didn't do, and that would be lying. And I would have to explain that to God on Judgment Day." After his mother became sick, Hood wrote, "This is why I work vigorously on my case, to get out before some else bad happen and I won't be able to see her."

He urged Santek not to take his word for anything, telling her, "Read the stuff and make your own decision."

Santek began leafing through the contents of the package. Forty-seven, with blue eyes and a sandy-blond bob, she grew up as one of four children on a farm on the southwestern tip of Australia. She hadn't seen a black person until she went to boarding school, at the age of fifteen, in the coastal town of Busselton. After graduation, she stayed in Busselton, married, had two children, divorced, and married again, giving birth to a third child. Her second husband abused her, to the point of hospitalization, and she left him. She lived alone in an apartment on the beach, but compared life in Busselton

to "God's waiting room": "Everybody says, 'I want to live there,' but then you have it and it's really quite boring." Searching for something meaningful, she began attending the Amnesty International meetings.

She knew little about the law. But as she read Hood's papers she sensed that his case was far more convoluted than the outcome suggested. At various points before the trial, three of the main witnesses against Hood—Wayne Washington, Joe West, and Jody Rogers—had all, in some manner, recanted.

Three years passed between Morgan's murder, in 1993, and Hood's conviction. Eight months after Joe West told Boudreau about buying a dime bag with Hood and seeing someone in the back of the Cavalier, Mullenix, the public defender, arrived unannounced at West's door. Mullenix always tried to interview witnesses himself, in search of inconsistencies. "A lot of times, witnesses don't know *what* they've told the police," he explained. "When you meet the witness on the street and don't drag them to the police station, oftentimes they will say something completely different from what's in the police report."

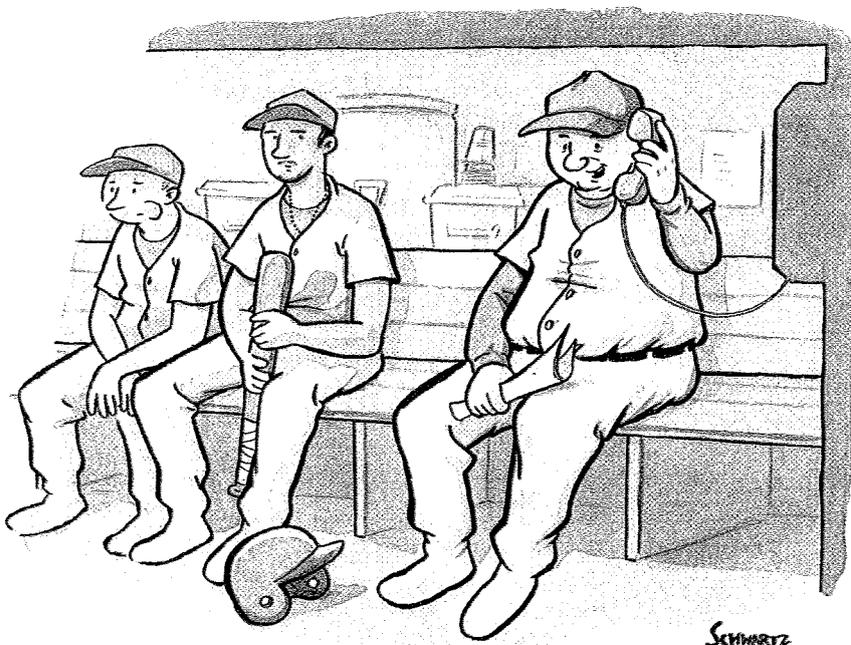
West invited Mullenix inside, and told him that everything he had said to the police—including the dime bag and riding with Hood in the sedan—was "a lie."

At the station, he recalled, detectives had grilled him about his fingerprints on the beer cans and accused him of killing "the next Michael Jordan." One officer, West said, had pointed a pistol at him. The only way to be released, he felt, was to pin Morgan's murder on someone else.

In a recantation, signed by West more than two years before Hood's trial, Mullenix wrote, "The story was just something he made up. He never met Tyrone Hood that day, he never saw Tyrone Hood drive a car, he never saw a body in the back seat of that car, he never heard 2 gun shots come from that car."

Soon afterward, Mullenix visited Jody Rogers, the parolee who had supposedly given Hood his gun. Rogers also revised his story. Three days after Hood's arrest, Rogers told Mullenix, police had dragged him from his house, telling him that he was "going down for a murder." At the station, Boudreau and Halloran gave him a choice: he could admit to seeing Hood shoot Morgan or admit to hearing him talk about it later. A third option, Rogers felt, was implicit: if he refused to cooperate, they could send him back to jail on a cooked-up parole violation. In truth, he told Mullenix, he never heard Hood say anything about a murder. He also signed a recantation statement.

Then, in August, 1995, Washington, Hood's co-defendant, appeared at a pre-



"No, you hang up first. No, you!"

CERES LAMENTING

1.

For Emma's three samples
of landrace maize,
the blue, the red,
the long-toothed yellow, my uncle

reserved
just east of the barn a plot
as yet
unpoisoned by the pesticide

which the cranes, who are also
endangered, unerringly
found
so when

the first green shoots had sprouted
they were one
by one
before their time extracted

from the earth and seed by seed
consumed.

When everything else
had gone to hell—

rich men jumping from windows and
the whole
of Oklahoma turned

to dust—this farm,

this godsent
quarter section and a half, was like
a fence against
confusion. Now

we say to the children, This fenceless
world . . .

2.

She hated the plow.
She hated the cattle.

She hated
that her sweet acres when the girl

had been taken away should still
contrive to be
conformable, even
the barley, even the grape, as though

her heart had not been torn
with hooks.

Well if they
could be reckless so could she.

And that was when
the blighted times we live in first began,
the dying rivers and

trial conference, and claimed that his confession also had been coerced. Halloran, he said, had slapped him, then tricked him into thinking that he could go home if he signed a prepared statement. (He made a few minor alterations so that it would look more authentic.) Washington's own trial, which was held in late 1995, ended in a hung jury: jurors obviously doubted his confession. Nevertheless, the state's attorney's office prepared to retry the case, and after Washington saw Hood get seventy-five years he consulted with his lawyer, who brokered an agreement with prosecutors. Washington pleaded guilty to murder; by doing so, he told me, he "would still have a chance to catch my kids and have a life." In 2005, after serving twelve years, Washington was released on parole.

Mullenix suspected that Boudreau, Halloran, and the other cops had taken shreds of truth—West's prints on the

cans, Hood's mention of Washington in his alibi—and sewn together a false narrative, one that they subsequently strengthened through coercion. But before Hood's trial began Mullenix's case collapsed: West fell ill and died of cancer, and Rogers flipped yet again. The prosecutor Michael Rogers had gone to see Jody Rogers at a Cook County facility, where Jody had recently been detained on carjacking and cocaine charges. Jody initially stood by his recantation. According to trial testimony, Michael warned Jody that admitting that he had misled a grand jury put him at risk of perjury. But he could offer a deal: if Jody repeated his original version of events at Hood's trial, he would avoid a perjury charge—and the state's attorney's office would recommend a lighter sentence in the carjacking case. Jody agreed.

When Jody testified at Hood's trial, Mullenix assailed his credibility. Under questioning, Jody admitted that, in vari-

ous attempts to evade police, he had used eight different first names and made up three different birthdays. He also conceded that he had negotiated an "agreement" in exchange for his testimony. "His testimony was simply bought," Mullenix declared, later in the trial.

Santek was dismayed as she finished reading the court files. Given the recantations and other irregularities, how could a judge have determined Hood to be guilty beyond a reasonable doubt?

The witness testimony wasn't the only aspect of the case that made Santek believe in Hood's innocence. Mullenix, she believed, had identified Morgan's killer.

One day in late 1995, as Mullenix was preparing for Hood's trial, he received a call from Renee Ferguson, an investigative reporter at NBC in Chicago. Ferguson had gathered information that she felt could be pertinent to Hood's defense.

the blackened vine,
 the rain that rots the seed in its furrow,
 the spavin, the sheep scab,
 the empty hive.
 And even in the midst
 of this calamity the girl,
 who was so young, you see, had room
 in her heart to be sorry

about the lilies and the sage.

3.

Last night too—do all
 of our stories begin with rape?—the girl
 came back
 from the dead somehow. The crowbar,

the bus, the whole
 ungodly mess of it lit and scripted on a
 stage
 and we could tell

it wasn't quite business as usual, wasn't
 the thing
 we thought we'd bought
 our tickets for. The actors, yes,

were lovely to look at, all but one,
 which made
 the truth-and-rightness part
 go down like milk. But then

the one with the ruined face began to speak
 and (*kerosene*)
 (*dowry*) then the damage
 wasn't safely in its grave.

And all this while
 the cunning
 counterargument kept seeping
 its way back in, no help for it, every

decision they'd made—the words,
 the few bare things assembled
 on the floor—informed
 with shapeliness, even

the anger, even the grief.
 Which may
 be what they meant,
 the old ones: up

to our elbows in wreckage, and April
 forever refusing
 to be ashamed.

—Linda Gregerson

A few months earlier, an administrator at James R. Doolittle, Jr., Elementary School, on the South Side, had contacted Ferguson after the school's computer teacher, Michelle Soto, was murdered. Police found Soto's naked body a week after she disappeared, wedged between the front and back seats of her Chrysler LeBaron, with a fatal gunshot wound to the face. Detectives investigated Soto's fiancé but did not arrest him. It was not a heater case.

Still, Soto's family harbored suspicions about the fiancé, and the school administrator asked Ferguson to look into the case. Ferguson discovered that he was a thirty-nine-year-old public-school janitor with a history of violence and insurance abuse, whose own son had been murdered two years earlier, and had been found wedged between the front and back seats of a car. The fiancé's name was Marshall Morgan, Sr.

Born in Chicago, Morgan, Sr., was

good-looking, with coppery skin and a groomed mustache. In 1972, he had married his high-school sweetheart, Marcia Escoffery; they named their one son after his father. Morgan, Sr., lived with Escoffery's family for a short time, and then he started staying out all night. Escoffery filed for divorce. "I told him, 'If you want to be free, be free!'" she said to me.

Around this time, Morgan, Sr.'s relationship with a friend named William Hall turned bitter over seven hundred dollars that Hall owed him. As Morgan, Sr., later told the authorities, one night, when they were parked in front of a liquor store, he pulled out a revolver and "accidentally" shot Hall, killing him. Morgan, Sr., pleaded guilty to voluntary manslaughter and got seven years. He was paroled after two.

Once out, he remarried, divorced, and married again. In May, 1992, his third wife, Dolores Coleman, filed a restraining order, alleging that Morgan, Sr., had

choked her "almost to unconsciousness" and had put a gun to her head. They eventually divorced.

His finances crumbled. An affidavit indicated that his expenses exceeded his monthly income by more than sixteen hundred dollars. In September, 1992, he received a foreclosure notice on his house. The next month, he took out a fifty-thousand-dollar Allstate life-insurance policy on his son, the college basketball star, whom he had abandoned when he was a toddler. Young Morgan was murdered seven months later. Three weeks after his body was found, his father collected forty-four thousand dollars from Allstate.

The insurance money did not solve all of Morgan, Sr.'s financial problems. In 1993, another woman, who claimed that he was the father of her baby, took him to court for child support, and the bank came after his house. Around that time, he and Michelle

Soto, the computer teacher, bought a split-level home in Country Club Hills, a Chicago suburb. Soto had recently separated from her husband, Reynaldo Soto, a marine. The Sotos' oldest daughter, Micaela, spent weekends with her mother and Morgan, Sr. Micaela remembers Morgan, Sr., spoiling her and her mother with jewelry. In February, 1995, as a testament to his commitment to Soto, he took out a life-insurance plan for her.

Their relationship, however, deteriorated as the year went on. One evening, Micaela recalls, her mother and Morgan, Sr., quarrelled at the house in Country Club Hills. "I could hear them in their bedroom," Micaela told me. "He was cussing. My mom said, 'I'm leaving,' and Marshall said, 'You better not.'" Soto ignored his threat

and left with Micaela. Soon afterward, she disappeared.

After detectives found Soto's body, they opened a homicide investigation. Soto's sister, Doreen Brown, told them that, two weeks before Soto disappeared, Soto had given her an envelope containing "important papers," telling her not to show the envelope to Morgan, Sr., if anything happened to her. "She knew she was getting ready to die," Brown told me, declaring that Morgan, Sr., "had my sister killed." Alonzo Burgess, Morgan, Sr.'s nephew, told police that he suspected his uncle of having planned a murder. According to Burgess, Morgan, Sr.'s ex-wife Dolores Coleman reported that Morgan, Sr., had told her he was "about to come into some money."

The police questioned Morgan, Sr.,

several times, and they detected inconsistencies. At his first interview, he neglected to mention the life-insurance policy for Soto; he later called the omission "a misunderstanding." He denied any involvement in Soto's death.

Laura Burklin, the Allstate claims adjuster who reviewed Morgan, Sr.'s death claim on Soto, suspected that he was involved in the homicide. He had recently received thirty thousand dollars on a stolen-vehicle claim, and soon after Soto's death he had sold the house in Country Club Hills, using what Soto's family members alleged was a forged deed. But, as Burklin told me, "if the police aren't arresting someone you have to pay the claim." In June, 1997, two years after Soto's death, a judge approved a final settlement, and Morgan, Sr., received a check for a hundred and seven thousand dollars.



PANDOLPH

"Make me that happy."

In the months before Hood's trial, Jim Mullenix, the public defender, scrambled to incorporate this information into his defense. Everything now made sense to him—even Hood's fingerprints on the bottles. According to Mullenix's theory, Morgan, Sr., had killed his son and then grabbed an armful of loose bottles from a random dumpster and thrown them into the car to confuse detectives. Corliss High School, where Morgan, Sr., worked as a janitor, was two blocks from Tyrone Hood's house.

At Hood's trial, Mullenix argued to Judge Bolan that Morgan, Sr., had a suspicious "connection between two dead bodies" and needed to explain it away. He called Burklin, the Allstate adjuster, to the stand. Burklin told me that Morgan, Sr., was "definitely abusing insurance"—that he had started with an "unusual amount" of petty insurance claims, graduated to stolen cars and house fires, and "worked himself up to people." But she never had a chance to discuss Morgan, Sr.'s previous insurance claims in court. When Mullenix tried to bring them up with her, prosecutors objected, and Judge Bolan sided with them.

When Morgan, Sr., took the stand, aspects of his testimony contradicted the statement that he had previously given to police. He initially said that he saw his son that Saturday afternoon;

now he said that they last saw each other in the morning. Previously, he said that he had given his son a hundred and twenty-five dollars for his date; in court, he revised that amount to three hundred and fifty. Mullenix highlighted these discrepancies and attempted to question Morgan, Sr., about murdering his friend in 1977. Judge Bolan rebuffed these efforts.

When Mullenix asked Morgan, Sr., about the life-insurance policy—"How much money did you collect from your son's death?"—Higgins and Rogers, the state's attorneys, objected. At one point, Judge Bolan told Mullenix, "Perry Mason does this. Perry Mason proves the guy in the back of the court did it." He criticized Mullenix for failing to establish a "relevant nexus" between the Hood case and Morgan, Sr.'s past. Any similarity between the deaths of Morgan, Jr., and Soto was mere "coincidence." He ridiculed Mullenix's argument as one more appropriate for the TV show "Unsolved Mysteries."

In late 2001, Barbara Santek ran across a series of articles in the *Chicago Tribune* titled "Cops and Confessions." The reporters described how the Chicago police had relied on "coercive and illegal tactics" to solicit dubious confessions. Among the articles was a profile, by Maurice Possley, Steve Mills, and Ken Armstrong, of Kenneth Boudreau, one of the officers who had culled incriminating statements about Hood from West, Rogers, and Washington. Boudreau, the article stated, had "helped to get confessions from more than a dozen defendants in murder cases in which charges were dropped or the defendant was acquitted at trial." Even in a police department beleaguered by false confessions, Boudreau stood out—"not only for the number of his cases that have fallen apart, but for the reasons." He had targeted suspects especially vulnerable to intimidation, including teen-agers and the mentally retarded, and stood accused of "punching, slapping, or kicking" them. One man, Derrick Flewellen, spent four and a half years in jail after confessing to Boudreau about a rape and a murder—"I wasn't going to get beat up again," he told the paper—before DNA evidence acquitted him. Between

1991 and 1993, Boudreau had allegedly helped elicit at least five dubious confessions from suspects who were later acquitted.

Santek felt sick as she read the article. She told herself, "These were the same guys."

In 2002, Santek came to America for an extended vacation. While in Pittsburgh, she began dating an engineer, and by the end of the year they had married. They started a family together in Pennsylvania, adopting three girls. Meanwhile, Santek and Hood continued to correspond. He wrote to Santek that, after two years of friendship, "I have riches and I can never be poor."

In 2006, Santek and her friend Robyn Fisher travelled to the prison to see Hood. Guards escorted them to a visitation room. "When he walked through the door, I wasn't sure at first if it was him," Santek recalled. His head was shaved, his mustache and goatee flecked with gray. Prison had changed him in other ways. "I learned not to get in nobody's business," he told me, as the possibility of violence lurked behind most prison interactions. "Some guys down here, they like to be right all the time, about anything."

They talked for hours. Hood reminded Santek of her father—"gentle man, good values." She no longer worried that his letters had been a con. "Everything he had written over the years, he was that person," she told me.

A few days later, Hood wrote to Fisher. "During our visit, my mind frame was not in prison at all," he explained. "When it was time for me to lay down, I did hug my pillow and thought about Barbara with a slight smile."

Hood and Santek began talking on the phone several times a month, and he wrote to her frequently. "Your strength has sustained me," he declared in one letter. "Your courage has moved me. Your humor has cheered me. Your wisdom has inspired me." In another, he wrote, "There is not a statement in the English language, or any other language, that could possibly captivate the very essence of how much I truly treasure your Existence." Santek was falling

in love, too, and contemplated divorce. In the end, she stayed with her husband, but they began sleeping in separate rooms.

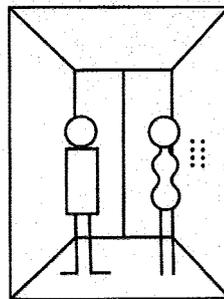
In early 2007, Santek decided to send a plea for help to Loevy & Loevy, a law firm in Chicago that specializes in police-misconduct and wrongful-conviction suits. To insure that her request would attract attention in the firm's

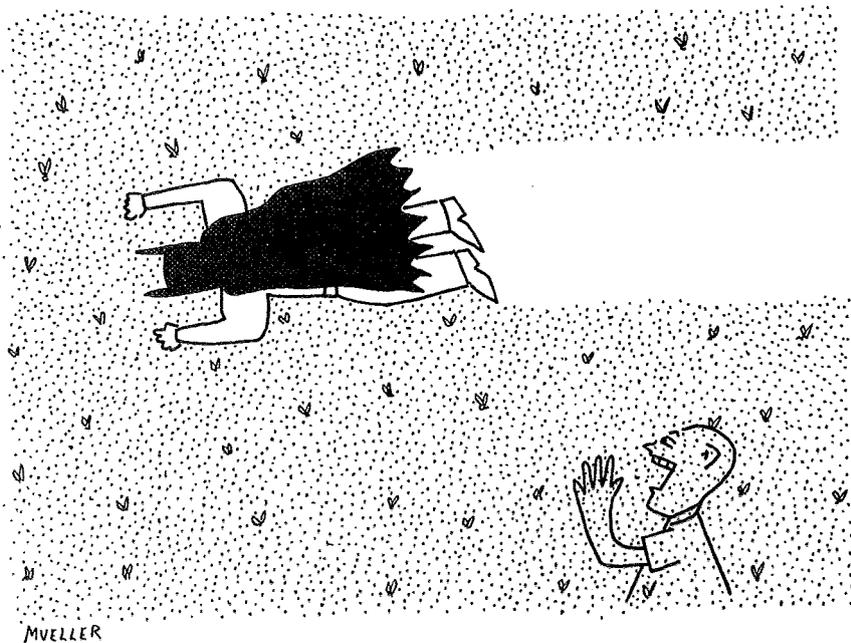
mail room, she had Fisher send a parcel of materials, covered in international stamps, from Australia. Gayle Horn, an attorney there, agreed to take the case, on a pro-bono basis. When Hood heard this, he was ecstatic. He wrote to Fisher, "I'm taking the right step to obtain my free-

dom, and God is going to give me the rest of the steps that I need to walk out this place."

After assessing the case, Horn and her colleagues went out to reinterview witnesses. Wayne Washington reiterated that his confession had been false, saying, "The detectives told me that they wouldn't let me go until I confessed to murdering Marshall Morgan." Jody Rogers signed another sworn recantation. Then Jody's brother, Michael, who had corroborated Jody's false testimony at the trial, revealed something startling: the Chicago police had secretly been paying him for his cooperation. "Every time they picked me up, I got some money," he wrote in a sworn statement. "They told me if I had any problems with anyone in the neighborhood they would take care of it." This struck Horn as a possible infringement of the 1963 Supreme Court decision *Brady v. Maryland*, which prohibited the government from withholding information that could help a defendant's case.

In a separate civil suit centering on abusive interrogations, Horn's associates deposed the detectives involved in Hood's prosecution. When John Halloran, Boudreau's partner, was asked if he had hit Washington during an interrogation, Halloran replied, "I invoke my Fifth Amendment right to remain silent." Boudreau, however, told Horn's associates that he would answer questions. "I'm not Michael Corleone," he told me. "I don't take the Fifth." (In fact,





"Thanks, Batman!"

Boudreau invoked his Fifth Amendment right in 2005, before a grand jury probing abusive interrogations. He later clarified to me that he had never taken the Fifth in a civil suit.)

Russell Ainsworth, a partner at Loevy & Loevy, asked Boudreau if he had grabbed Jody Rogers's arm and twisted it. "I don't recall my involvement with Jody Rogers," Boudreau said. "I may have placed handcuffs on him. If I put handcuffs on him, it would require twisting the arms up behind your back. I'm not sure what you mean by the word 'twist.'"

"Did you push Jody Rogers into the wall?" Ainsworth asked.

"If I was handcuffing somebody, I would have them stand up against the wall," Boudreau said. "Can you define the word 'push'? . . . The word 'push' has many meanings."

Boudreau is now a sergeant, and oversees the police department's gang-out-reach program in area high schools. I met him recently at a diner in Bridgeport, an Irish neighborhood on the South Side. We had apple pie and coffee on tables set with jelly caddies and paper placemats. A cold front was rolling through, causing the awning out front to snap. When I went to turn on my audio recorder, Boudreau flashed a dimpled grin and said, "Nobody tapes me."

He told me that allegations that he had beaten or coerced confessions out of people were "fucking ridiculous." (Years earlier, Boudreau had said in a deposition, "The term 'excessive force' to me is relative. What may be excessive to one person may not be excessive to another.") In one affidavit, a convicted murderer, Kilroy Watkins, claimed that, during an interrogation in 1992 by Boudreau and Halloran, he was "handcuffed to a ring in the wall" and "choked and assaulted repeatedly by Detective Boudreau" until he was "forced into signing a false confession." In 2000, another convicted murderer, Jaime De Avila, said in a sworn statement that Boudreau had threatened to "plant a nigger at the crime scene" who would claim that De Avila had been the driver of a suspect's car. "You'll be surprised what a nigger will do," Boudreau reportedly said. "They will disrespect God before they will disrespect the police." Boudreau denied making such threats, and said, "Have you asked yourself why all the accusations are coming from people in the penitentiary?"

During the past two decades, Chicago has paid substantial legal fees and settlement costs related to Boudreau's discredited cases. In 2011, the city issued a \$1.25-million settlement to Harold Hill, a man who was exonerated by DNA

evidence years after Boudreau produced a rape and murder confession from him. When I asked Boudreau about the Hill case, he said, "I believe he did it—still to this day. I believe what Harold Hill told me." Asked if he had any regrets, Boudreau said, "I probably should have corroborated more of his statements at the time. Does it aggravate me when I see people walk away and escape justice? Sure. But I can't worry about that. I suppose if I worried about it I'd be biting the barrel of a gun."

Boudreau said that "gravy train" firms like Loevy & Loevy had helped to create a spurious wrongful-conviction industry. I later spoke with Martin Preib, a Chicago cop and author, who said that Boudreau was being maligned by a few firms angling for large settlements. Preib called Boudreau "an unbelievable investigator" and said that wrongful-conviction firms had "ruined the lives of some very good police officers."

The Chicago Police Department has frequently been accused of refusing to acknowledge internal problems. Two years ago, a bartender sued the city after an off-duty policeman pummelled her in a bar-room. She alleged that a "code of silence" among officers impeded investigations into misconduct. A jury awarded her eight hundred and fifty thousand dollars in damages.

At the diner, Boudreau said, "I'll tell you what'll happen. Loevy & Loevy wants to get Hood a new trial. The state won't pursue it, Hood will walk, and then Loevy & Loevy will sue me." He took a sip of coffee. "I know in my heart that, when we die, we're going to either Heaven or Hell. I'm convinced that I will be standing at the gates of St. Peter with some homicide victims on my left and some homicide offenders who've made peace with the Lord on my right. And I know that Loevy & Loevy will go straight to Hell for what they do. They call it honor, but they are letting criminals walk free."

We discussed one of the statements attributed to Hood in the police record of his interrogation: "If I don't say anything to explain, I will go to jail for a long time. If I *do* tell what happened, I will go to jail." At the trial, prosecutors had brought up the statement repeatedly to imply guilt. Hood denies ever saying it.

"So I made it up?" Boudreau asked,

his lips pursed in amusement. "I'd like to think if I made up a statement I could make up something better than *that*."

One morning in August, 2007, Hood boarded a corrections bus heading upstate. He had received a message from the Cook County state's attorney's office, instructing him to report to Chicago for an interview. Days later, he was sitting across from two prosecutors. One of them opened a folder, and Hood saw a photograph of a man he recognized from his trial: Marshall Morgan, Sr. The prosecutors explained that Morgan, Sr., was about to stand trial for the murder of his girlfriend Deborah Jackson.

The circumstances echoed the deaths of his friend, his fiancée, and his son. On September 8, 2001, Morgan, Sr., and Jackson got into an argument about kitchen cabinets. In the middle of the dispute, he left for work, at Barton Elementary School, on the South Side. After a while, Jackson drove to the school and found Morgan, Sr., outside, picking up trash. He got into the car. They continued to argue, with Jackson driving. She stopped a few miles away, and Morgan, Sr., got out. She did, too, and followed him on foot. As he recalled, in a videotaped statement, she slapped him, and he "pushed her."

Jackson's purse slipped off her shoulder and, according to Morgan, Sr., a pistol tumbled out, hit the ground, and misfired. He grabbed the weapon and, after a brief struggle, fired it. The bullet pierced her elbow and her chest. He shot her again, in the stomach. When investigators asked him why he shot her twice, Morgan, Sr., said, "Out of rage, I guess."

The bullets did not kill Jackson, Morgan, Sr., said; when he popped the trunk and shoved her inside, he "saw her hands moving." As she bled out, he placed the pistol under the driver's seat and "went and caught the E1" to complete his shift. The next morning, he moved Jackson's car and took the pistol, which he later threw into Lake Michigan.

Jackson's body was found a week afterward, and police questioned Morgan, Sr. For days, he denied knowledge of the murder, but eventually he made a taped confession. He told the police, "I wanted to clear my conscience."

Hood listened to the assistant state's attorneys, confident that they had all arrived at the same conclusion—that Morgan, Sr.'s murder of Jackson was "proof that I didn't kill his son." But they didn't consider it a vindicating event: instead, they asked Hood if Morgan, Sr., had paid him to kill his son. "I never seen the father, I never seen the son," Hood recalls telling them. A conversation that had begun with him anticipating exoneration had ended with the accusation that he was a hit man. He returned to his cell downstate. In 2008, Morgan, Sr., received a seventy-five-year sentence for murdering Jackson. (Morgan, Sr., denied requests to be interviewed.)

Gayle Horn, Hood's attorney, told me that, by targeting the wrong man, Boudreau and his colleagues had allowed a murderer to remain at large. "There was a serial killer—Morgan, Sr.—who should have been arrested and prosecuted in 1993," she said. "Instead, he went on to kill two other women."

In February, 2011, Rahm Emanuel was elected mayor of Chicago. He apologized for abusive police tactics, referring to them as a "dark chapter" in Chicago's history, and said, "This is not who we are." Meanwhile, the Illinois state government was establishing a Torture Inquiry and Relief Commission, to consider retrial for dozens of prisoners who were interro-

gated by Jon Burge, the detective who had been fired for "systematic" abuse of suspects. (In 2010, Burge was convicted of perjury and obstruction of justice for denying misconduct even when, according to the judge, a "mountain of evidence" suggested otherwise.) Cook County began exonerating prisoners at a record rate, freeing more prisoners a year than any other county in the nation. But was it enough? Did even more people deserve freedom?

In February, 2012, Anita Alvarez, the state's attorney, said in a speech, "My job is not just about racking up convictions. It is about always seeking justice—even if that measure of justice means that we must acknowledge mistakes of the past." Signalling a "shift in philosophy," she announced the creation of a Conviction Integrity Unit, to insure "that only guilty people are convicted here in Cook County." Her spokesperson, Sally Daly, told the *Tribune* that the unit would commence with Hood's case, which "merits further investigation and a full review."

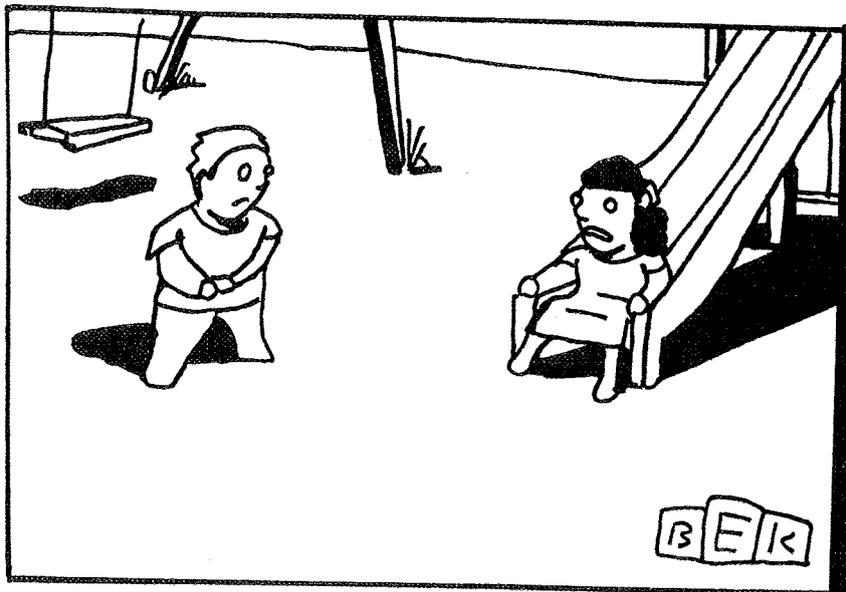
Three months later, James Papa, the assistant state's attorney supervising the new unit, travelled to a prison in southeastern Illinois to interview Jody Rogers, who was now locked up for armed robbery. Rogers said of Hood, "The man didn't do it." He told Papa that he'd been intimidated by police and had always maintained that he didn't know anything about Morgan's



"Will you be needing any more repressed sexual tension before I leave for the day, sir?"

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"I thought I'd be a successful fashion blogger by now."

murder. Rogers said of Hood, "Let him out." Papa and his investigator drove to Michigan, to try to speak with Wayne Washington; Washington refused to talk without his lawyer present, and Papa never followed up. Papa and his investigator also flew to Florida to question Emanuel Bob—the man who had testified about seeing Hood sitting in a car, at night, from a hundred feet away. Bob stood by his story, saying, "Nobody could ever put words in my mouth." (According to the Innocence Project, nearly three-quarters of the convictions that have been reversed through DNA evidence have featured mistaken eyewitness testimony.)

At the Cook County criminal courthouse, Papa interviewed Hood, who told him that, before his arrest, he "drank mostly Miller products or rum." He described being threatened and roughed up by Boudreau and Halloran. Hood added that another detective had brandished a pistol and threatened to "put five slugs in him." Papa asked him if he had ever met Morgan, Sr. "Never," Hood replied.

Two months later, Papa visited Morgan, Sr., in Stateville, a prison forty miles outside of Chicago. He denied killing his son. "You can take a look at me all you want—I don't care, I am at peace with myself," he said. He also denied that he had experienced financial troubles during

that period, saying that he had given "most of his money" to "people who were in need." He had created a life-insurance policy for Morgan, he added, at the request of Morgan's mother, Marcia Escoffery. ("Bullshit," Escoffery told me.) "You have the right guys," Morgan, Sr., told Papa.

A year after Alvarez formed the Conviction Integrity Unit, Papa went before a judge to share its findings on Hood. He did not recommend overturning the conviction. He offered no explanation.

The decision left Hood, his attorneys, and Santek in disbelief. Santek filed a Freedom of Information request with the state's attorney's office, seeking documents pertaining to the Conviction Integrity Unit's investigation and its methods. A week later, a letter arrived informing her that the unit "has no documents that are responsive to this request," and noting, "There are no forms, protocols, or other documents regarding the creation, implementation or operations of the SAO's Conviction Integrity Unit."

Hood's lawyers petitioned Richard Brzeczek, a former superintendent of the Chicago Police Department, to review the memos that Papa had written after each interview. (None of them featured the phrase "Conviction Integrity Unit,"

perhaps explaining the fruitless results of Santek's FOIA request.) Brzeczek was appalled by Papa's interview with Morgan, Sr., calling it "superficial, cosmetic, and perfunctory, at best." Not only had Papa failed to push Morgan, Sr., on the claims about his finances; he had not questioned him about the strong similarities among the deaths of his friend, his son, his fiancée, and his girlfriend. Brzeczek concluded that Hood deserved a "legitimate reinvestigation."

Over the years, Brzeczek said, he had watched the Cook County state's attorney's office fight several "nasty, protracted battles" on cases that "it eventually lost." He added, "Most of the decisions were based not on legalities or what's right or what should be done but, rather, on 'How is this going to wash politically?'"

Craig Futterman, a law professor at the University of Chicago, is a member of the Torture Inquiry and Relief Commission. He told me that the Cook County state's attorney's office had "fairly consistently stood behind shaky convictions"—even ones that he described as a "shame and stain" on the city. He suggested several reasons that the office might resist rigorous reviews of certain cases. There were "economic incentives," given the potential liabilities, and "relationship issues" flowing from the office's "heavy reliance" on the testimony of officers. Internal investigations of abusive practices had the potential to "undermine hundreds of felony convictions that relied on the word of crooked detectives," triggering a cascade of overturned verdicts. Eighty per cent of Chicago police officers, Futterman said, have received three or fewer misconduct complaints in their careers; in 2012, a court document filed by the torture-inquiry commission listed thirty-eight incidents of alleged misconduct involving Boudreau—"an eye-popping number." Futterman continued, "If an individual police officer is exposed, how many other criminal cases might that undermine? If you have a proven instance where an officer lied to put an innocent person in jail, it calls into question all the other cases in which his word has been a primary source of information." He said of the Conviction Integrity Unit, "Its record is pretty dismal." He added, "Was it simply a P.R. move? Thus far, there's no evidence of more than paper reform."

Papa did not respond to several requests for comment. In an e-mail, Sally Daly, the spokesperson, said, "It would be inappropriate to discuss the specifics of the case," because of Hood's ongoing appeal. "More than 12 individuals were interviewed as part of the reinvestigation," she later noted, including people "located out of state." Daly added that, since 2012, the office "has vacated the convictions of 9 individuals following comprehensive conviction integrity reviews" and is examining hundreds of others.

One of the prosecutors litigating against Hood in recent proceedings is an assistant state's attorney named Kurt Smitko. Smitko, I discovered, had participated in the integrity unit's review of Hood's case, joining Papa when he interviewed Marcia Escoffery. Wasn't this a conflict of interest? Daly told me that Smitko "went along" for the interview because he "had a rapport" with Escoffery, but he "did not evaluate the evidence." Daly added, "There is no conflict."

I visited Escoffery on a snowy night in January. She and her sister, Sharon Murphy, led me into a living room with a baby grand piano, giant houseplants, and a bay window overlooking an ice-crusting street. It was Morgan's birthday. "Hell, he would be forty-one today," Escoffery said, blinking back tears. "I can't go out there now, but normally I go to the cemetery and take a six-pack."

I asked them if they thought that Morgan, Sr., had been involved in his son's death. "Logically?" Murphy said. "You take out life insurance on my nephew? You probably had something to do with it!"

Escoffery stared at the floor and nodded. From what she had seen at the trial, eighteen years ago, she believed in Hood's guilt. But she wouldn't rule out Morgan, Sr.,'s involvement. "He hadn't seen his son in seventeen years and then he got a life-insurance policy," she said. "How do I know he didn't kill him for money?" She paused. "If he did it, whatever the penalty is, go for it. Kill him, I don't care. . . . If they can help me prove that he killed my son, hell, I will pull the lever."

One morning in April, Santek was sitting in the parking lot outside the medium-security wing of the Menard prison, fixing her hair in the rearview mirror of a rental car. She and her daughter

Nyasia got out and headed for the entrance. Nyasia, a thirteen-year-old with long spiral curls, had visited Hood several times before, spoke with him regularly on the phone, and thought of him as a stepfather. A female guard checked their underwear for contraband after Santek signed in. "All the stuff he puts up with," Santek said, as we waited for Hood.

Hood entered the room without handcuffs. Nyasia nearly leaped into his arms. They hugged, and Hood kissed her on the forehead. He kissed Santek on the cheek. We had been assigned stools around a metal table, and Hood sat down on one, facing the guards. Aloe plants lined the sill.

"May I have a cup of water?" Hood asked a female guard. That morning, the authorities had turned off the water supply as part of a lockdown. The guard, somewhat grudgingly, obliged.

I mentioned to Hood that, amid the tightened security, Santek's daughter had had to run back to the car twice: once because she had accidentally left her cell phone in her pocket and once because Santek had forgotten to remove a lighter in her purse. (Both were considered contraband.) "You know what you just did?" Hood said to me, smiling. "You just let the cat out of the bag." Apparently, Santek sneaked the occasional cigarette.

"Only when I'm stressed," she said.

"It don't mean I love you less," Hood said. He winked at her and reached across the table to caress her hand.

Hood could be up for parole in 2030. He would be sixty-seven, and Santek would be in her seventies. His lawyers hope to get him out long before then. In 2009, Gayle Horn and another lawyer, Karl Leonard, filed a petition for post-conviction relief for Hood, arguing that the evidence against him had "unraveled," and that the officers involved had "a long history of similar misconduct." Morgan, Sr.,'s most recent murder conviction, they argued, demonstrated a "clear modus operandi: Morgan, Sr. has killed close friends and loved ones for financial gain by shooting them . . . and leaving their partially or fully nude bodies to die in and around abandoned cars."

The petition contained several com-

ponents: the claim that Morgan, Sr.,'s "pattern" of murder pointed to Hood's innocence; police misconduct; and constitutional violations related to the prosecution's undisclosed payments to Jody Rogers's brother. The judge, Neera Walsh, granted an evidentiary hearing about the payments, but dismissed the other components, calling the pattern of evidence against Morgan, Sr., "immaterial in nature," and rejecting the police-misconduct and innocence claims on procedural grounds. No date has been set for the payments hearing.

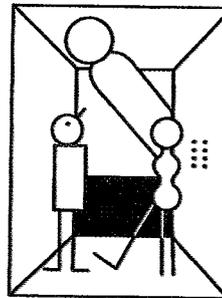
The state also agreed to conduct a test of "hair-like fibers," fixed to a strip of black tape, that had been found in Morgan, Sr.,'s trunk during the Michelle Soto investigation. Morgan, Sr., had claimed that the hairs came from a ferret that Michelle's daughter kept as a pet. The hairs had never been analyzed. In May, the results came back, and indicated that the hairs belonged to a human female. Horn told me she hopes that the judge will consider a new evidentiary hearing.

Hood, sitting in the visitors' room, steeled himself against getting needlessly excited—especially given that his fortunes depended on the discretion of Cook County judges and prosecutors. On an earlier visit, I had asked Hood if he ever got angry.

"Every day," he said. "How can you not think about it when you looking at what I'm looking at? Twenty-one years." He said he realized a while ago that "this thing is bigger than me," and that "there's a chain of corruption."

Hood knew four prisoners at Menard who, since 2010, had been cleared of charges and released. "I see people getting out of the penitentiary, right?" he said. "Exonerated. I read about how they were arrested, how they were exonerated. And

I'm, like, 'Wait a minute—what is going on? You got all this evidence pointing to somebody else? You got nothing pointing at me but some prints.'" He couldn't help feeling that justice was a kind of lottery, and that he was stuck holding a bunk ticket. "Do I have something written on my forehead saying, 'Y'all can just do something to me?'" he pleaded. "What's wrong with me?" ♦



Part 1 - Application for Life Insurance (except SPWL & Universal Term)

ALLSTATE LIFE INSURANCE COMPANY, INC. Northbrook, IL 60062 (Referred to as Allstate)

749*793*283

PERSONS PROPOSED FOR INSURANCE table with columns: First Name, Middle, Last, Sex, Birthdate, Age, Birth Place, Marital Status, Security No., Height, and Weight.

ADDRESS table with columns: a. Insured (No./Street, City/State, Zip Code/County, How long?, Phone #) and b. Add'l Insured.

OWNER and CONTINGENT OWNER table with columns: Name, Address, Relationship, Soc. Security #, and Phone.

BENEFICIARY table with columns: a. Insured (First Class, Second Class, Relationship) and b. Add'l Insured.

EMPLOYMENT table with columns: a. Insured (Job Title/Duties, Employer Name/How Long?, Employer Address) and b. Add'l Insured.

INSURANCE REQUESTED and DISCOUNTS section with fields for Face Amt, Plan, and health-related questions.

UNIVERSAL LIFE BENEFITS/RIDERS section with options for Universal Life Plan, Death Benefit Option, and various riders.

OPTIONAL ADDITIONAL BENEFITS/RIDERS section with checkboxes for WP, ADB, CTR, and other options.

PAYMENT PLAN section with options for Annual, Semi-Annual, Quarterly, Monthly, and Pre-Authorized Method.

C: 00882 A.82

No: _____

19. In the past 3 years or in the next 12 months will anyone proposed for insurance have:

a. Flown other than as a scheduled airline passenger? Yes No

b. Engaged in vehicle racing, hang gliding, parachuting or scuba diving? Yes No

c. Lived, travelled or worked outside of the United States, or have a temporary or student visa? Yes No
(If a, b, or c is answered yes, attach Supplemental Questionnaire)

20. In the past year has anyone owned or operated a motorcycle? (If yes, give driver's license # in REMARKS) Yes No

20. Does anyone proposed for insurance now have any life insurance or annuity:

a. In force or applications pending in any company? (If yes, list below) Yes No

Person	Company Name and Address	Policy No.	Amount of Insurance Face Amt.	ADB Amt.	Date applied or issued	Med or Non-Med
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b. Which will be replaced or changed because of this application? (If yes, list below) Yes No

Person	Company Name and Address	Policy No.	Amount of Insurance Face Amt.	ADB Amt.	Date applied or issued	Med or Non-Med
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21. Within the past 3 years has anyone proposed for coverage been rated, postponed or denied for life or health insurance? If yes, give name of Company and reason. Yes No

22. Was anyone proposed for coverage told that any Allstate medical exams or tests are required? If yes, who will be examined? Yes No

REMARKS: Add to Pac under Pol. # 747797135
Premium notices will be sent to address of Owner in either section 3 or section 1a unless another is shown above.

FOR OFFICE USE ONLY #1a = Age = 20

I declare that all answers written on this Application are full and correct, to the best of my knowledge and belief. Except in So. Carolina, Allstate is not presumed to know any information not in this application.

A. Waiver of Premium and/or Accidental Death Benefit may be shown in the policy as optional benefits. They will be in effect only if applied for and approved by Allstate.

Allstate has the right to require a medical exam of any person proposed for insurance, even if Ques. 22 is answered "No".

C. Allstate may add to or correct the Application in the space "For Office Use Only". Any changes are agreed to if the policy issued is accepted, but written agreement will be obtained from me for any change in insurance amount, plan, benefits, payment class or age at issue. (In Kentucky, Maryland, and W. Virginia written agreement will be obtained for any changes.) Insurance will start only as provided in the Receipt and Temporary Insurance Agreement issued in connection with this application. If no receipt is issued, or if insurance under it has stopped and not started again, no insurance will start by reason of this Application until the policy is delivered and the first payment is accepted by Allstate. In this case, the insurance will start on the date shown in the policy. No insurance will start if on the start date of the policy the health of the persons proposed for insurance is not as described in the application.

E. Only an officer of Allstate may change the Application or waive a right or requirement. No agent may do this.

PLEASE REVIEW ALL INFORMATION BEFORE SIGNING

If a person to be insured is under age 15, print name, parent must sign

APPLICANT: CHICAGO ILL DATED: 10/20/92
 ADDITIONAL INSURED: Marshall More Relationship to Insured: _____

AGENT: Marshall More (If Company/Officer's signature and title)
 PARENT'S SIGNATURE: _____

LR708

Acting Agent: P. Dilalio

Signature: [Signature]
 No: 661013 Region: 9 Loc: 93-H

Participating Agent: _____
 Signature: _____
 ST No.: _____ Region: _____ Loc.: _____

FOR AGENT USE ONLY
 Telephone sale? Yes No
 To the best of my knowledge replacement is is not
 involved in this sale.
 RECEIVED PAYMENT OF \$ 33.99
 Discover Master Card Visa
 Card # _____ EXP. DATE: _____
 Auth # _____ Auth. Date: _____

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AGREEMENT FOR PRE-AUTHORIZED METHOD (NOT TRANSFERABLE OR NEGOTIABLE)

ALLSTATE LIFE INSURANCE COMPANY

COMPANY ID NUMBER 36-255464

I (we) hereby authorize (a) ALLSTATE LIFE INSURANCE COMPANY (ALLSTATE) to initiate debit entries to my (our) account indicated below to pay the premiums due on any life insurance policy issued pursuant to the application to which this agreement attached, and (b) the Financial Institution named below (INSTITUTION) to debit my (our) account for such amount.

INSTITUTION CITY STATE

IDENTIFICATION NUMBER OFFICE USE ONLY

TRANSIT/ABA NO. ACCOUNT NO.

The term "debit entry" shall include charges to my (our) account by orders initiated by electronic means, checks, drafts or an other order.

I (we) have the right to stop payment of a debit entry by giving notice to INSTITUTION in such time as to afford INSTITUTION reasonable opportunity to act prior to charging my (our) account. After my (our) account has been charged, I (we) have the right to have the amount of an erroneous debit immediately credited to such account by INSTITUTION up to 15 days following issuance of statement or 45 days after posting, whichever occurs first.

INSTITUTION'S treatment of each account debit, check, draft or other order initiated by ALLSTATE, and its rights with respect to it will be the same as if it were signed personally by me (us). If any such debit entry is dishonored for any reason, INSTITUTION will not be under any liability even though dishonor results in the forfeiture of insurance.

In addition, I (we) have read, fully understand and also agree to the provisions on the reverse side of this form.

DATED AT City State DATED ON Mo. Day Yr. DEPOSITOR JOINT DEPOSITOR (If any) OWNER (If other than Depositor or Joint Depositor) JOINT DEPOSITOR (If any)

DO NOT DETACH FROM APPLICATION AGENT: ATTACH VOIDED BLANK CHECK

ALLSTATE LIFE INSURANCE COMPANY ("ALLSTATE") PERMIT TO OBTAIN AND DISCLOSE CERTAIN DATA

- A. Allstate, its reinsurers and consumer reporting agencies, may get data about my (our) health, occupations, mode of living, and avocations. I understand that the information obtained by use of this authorization will be used to determine eligibility for insurance and/or benefits.
B. Any doctor, practitioner, medical or medically related facility, the Veterans Administration, the Medical Information Bureau, Inc. (MIB, Inc.), employer, consumer reporting agency or insurer which has such data of me or my children, may give such data to Allstate when this permit or a copy of it is shown. All sources but the MIB, Inc., may give such data to agencies Allstate has hired to retrieve the information for them.
C. Data about mental illness, alcoholism and the use of drugs is to be included.
D. Allstate or its reinsurers may make a brief report about me or my children to other companies to which I have applied or may apply.
E. This permit is good for 30 months after it is signed.
F. Allstate may obtain an investigative consumer report on me.
G. I have read this permit and have a copy. I also have the NOTICE REGARDING MIB, INC. and the NOTICE UNDER THE FAIR CREDIT REPORTING ACT.

DATED AT City State DATED ON Mo. Day Yr. If a person to be insured is under age 15, print name; parent must sign. ADD'L INSURED PARENT'S SIGNATURE OWNER (If Payor Benefit applied for) AGENT

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A.85 0910

Wayne Washington Affidavit

I, Wayne Washington, under oath and penalty of perjury, state the following:

1. My name is Wayne Washington.
2. I knew Tyrone Hood from the neighborhood, but we didn't hang out with the same people because Tyrone was about 10 years older than me. I know Tyrone as Tony.
3. On May 27, 1993, I was approached by two detectives while at the corner store. The detectives told me that they wanted to talk to me about Tony, and that they'd arrest me if I didn't go with them willingly.
4. The detectives first took me to an interview room at 111th and Ellis. I was in the interview room for a while, but nobody came to talk to me during that time.
5. I was then taken by two different detectives to the 51st street station. I spent the rest of the night there without talking to anybody.
6. The next morning, on May 28, some detectives came to the interview room to talk to me. The police told me that they already had people linking me to a murder, and that I should tell them exactly what happened. At this time I didn't even know what murder the police were talking about. When I didn't tell the detectives anything, they began to beat me. A detective slapped me in the face and pushed my chair. *I was also punched and handcuffed the entire time. w.w.*
7. The abuse continued throughout the day. The detectives told me that they wouldn't let me go until I confessed to murdering Marshall Morgan. Later in the night I was given a pre-prepared statement and told to sign it. Even though the statement was completely untrue, I signed it because I couldn't stand the beatings any longer.
8. I don't know anything about Marshall Morgan's murder. I never spoke to Michael or Jody Rogers about doing a stang or getting a gun. I never overheard Tony talk about doing a stang or killing a rival gangmember. Further, I have never identified Marshall Morgan's blue Chevrolet.
9. I never saw Tony on May 8, 1993, the day the police claim the two of us were driving around in Marshall Morgan's car. I spent the entire night hanging out on the porch at 10447 Corliss Avenue with Angienette Evans, Gerviece Collier, Tammy Cage and others.

I remember details from that night because I bought flowers to give some friends in celebration of Mother's Day.

- 10. My public defender never investigated my alibi or any of the witnesses in my case.
- 11. When I was first tried for the murder, I got a hung jury. Shortly thereafter, I was approached by the State's Attorney who offered me a deal to serve 25 years in exchange for a guilty plea. After seeing that Tony got 75 years for the same crime, I decided to accept the deal even though I had nothing to do with Marshall Morgan's murder.
- 12. I was released on parole in 2005. I moved away from the neighborhood in ^{2007 w.w.} ~~2006~~ because I didn't want to hang around with the same crowd as before.
- 13. I've decided to come forward now because I don't want the details of my coerced and entirely fabricated confession to keep an innocent man in jail.
- 14. I give this affidavit of my own free will. No threats or promises have been made to me.
- 15. If I am needed, I will come to court and testify that this affidavit is true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Wayne Washington
Wayne Washington

2/12/09
Date

Subscribed and sworn before me on this ¹² 10th day of February, 2009

[Signature]



To: The Honorable Judge Presiding

Re: Report of Richard J. Brzeczek in Support of the
Post-Conviction Petition of Tyrone Hood

Date: July 28, 2013

INTRODUCTION OF MR. BRZECZEK

I, Richard J. Brzeczek, am the former Superintendent of Police of the Chicago Police Department. Having served in that capacity for 3+ years, I was responsible for the entire operation and functioning of the Department as its chief executive. Appointed Superintendent of Police on January 11, 1980, I resigned from that position on April 29, 1983 and entered the private practice of law concentrating my practice in the area of criminal defense. Prior to being appointed Superintendent, I held all career service ranks in the Chicago Police Department. I held supervisory and command positions supervising detectives in the Detective Division and the Organized Crime Division. As Counsel and Executive Assistant to the Superintendent, I had the responsibility, *inter alia*, of reviewing approximately 3,000+ internal investigations of allegations of police misconduct annually beginning in December, 1973 and continuing until my appointment as Superintendent of Police in January, 1980.

From 1977 thru 2011, I have taught at law enforcement seminars throughout the United States, including, but not limited to, the Federal Bureau of Investigation Academy, the Southern Police Institute at the University of Louisville, and the Northwestern University Traffic Institute (as it was then called). My primary topic of instruction was the techniques, procedures and *case law* regarding investigations of police misconduct.

From approximately 1982 and continuing until the present day, I have been qualified and have testified as an expert witness in the United States District Court for the Northern District of Illinois and the Circuit Court of Cook County, including its Criminal Division on matters involving police procedures and practices, and in cases involving issues that I will generically call "wrongful convictions." I have also been qualified and have testified as an expert witness in both Federal and State courts other than those specifically identified above.

In addition to in-court testimony, I have given numerous depositions on the subject matters described above and in some of those prior cases have had an opportunity to review the work of at least some of the detectives involved in the investigation and prosecution of Tyrone Hood.

I have been asked to review police reports, the Post-Conviction Petition and Exhibits, and the State's investigative reports to offer an expert opinion as to whether there is sufficient evidence to support a *modus operandi* and whether that sufficient evidence would cause a reasonable police officer, detective and/or investigator to undertake a re-investigation of the murders of Marshall Morgan, Jr. and Michelle Soto. Having reviewed that material as aforesaid, I strongly support and urge a significant and legitimate re-investigation to determine whether Marshall Morgan, Sr. and not Tyrone Hood, was responsible for these murders. The re-investigation must go beyond a brief, feeble and superficial conversation with Marshall Morgan, Sr.

Among the matters that I must consider in addition to my experience as a police officer, police supervisor and police executive, is my experience of examining these types of cases as an expert witness. Fortunately, for my experience but unfortunately for the integrity of our system of criminal jurisprudence and criminal justice, I have seen a sufficient number of cases that tell me that the detectives engaged in inappropriate conduct, especially as that conduct relates to the obtaining of a confession, thereby violating an arrestee/defendant's rights. In addition, I have reviewed cases wherein the detectives engaged in inappropriate conduct and it appears that the same detectives with whose work I am familiar from previous cases are involved in this case.

Based on the previously established questionable conduct of these detectives and based upon my almost 19 years in law enforcement, I can state that the issue of *modus operandi* is sufficiently strong and supports the relief sought in the Post-Conviction Conviction.

FACTUAL BACKGROUND ON MARSHALL MORGAN, SR.

Tyrone Hood has alleged that Marshall Morgan, Sr., and not Mr. Hood, is responsible for the death of Marshall Morgan, Jr. Marshall Morgan, Sr. has a history of criminal violence and also had a financial motive for the murders of Marshall Morgan, Jr. and Michelle Soto.

History of Criminal Violence

Marshall Morgan, Sr. has been convicted of two murders. The first occurred in 1977. He shot his friend, William Hall, inside Morgan Sr.'s car with a .38 caliber weapon after Hall could not repay Morgan, Sr. the sum of \$700 that Hall owed him. Morgan, Sr. then dumped Hall's body in an alley and drove away. Marshall Morgan, Sr. confessed to the murder, pled guilty and was sentenced to seven years in the Illinois Department of Corrections.

In 2001, Marshall Morgan, Sr. shot and killed his girlfriend, Deborah Jackson, with a .38 caliber revolver over \$25,000 that she allegedly owed him or took from him. Morgan Sr. dumped Jackson's body in the trunk of her car, partially nude, and walked away. He confessed to the murder of Deborah Jackson. He went to trial before a jury and was convicted in 2008. He was sentenced to 75 years in the Illinois Department of Corrections.

In addition to these convictions, in 1992, Delores Morgan who was then married to Morgan, Sr. filed a Petition for an Order of Protection against Morgan, Sr. In the petition for an order of protection, Delores Morgan alleged that Morgan, Sr. "... choked petitioner almost to unconscious", "... slammed her into walls many times", and "... put a gun to petitioner's head." She also alleged that Morgan, Sr. had been repeatedly abusive to her about seven times in a single year.

By comparison and in contrast, Tyrone Hood has a minor criminal background and no history of violence. Hood's only prior conviction is a misdemeanor from 1982 (when he was a teenager) and for which he received probation.

Marshall Morgan, Sr.'s Financial Motive

In addition to his history of violence, background information on Marshall Morgan, Sr. shows that he had a financial motive for killing his son, Marshall Morgan, Jr. and Michelle Soto because at the time of each of those murders Marshall Morgan, Sr. was experiencing financial problems.

- On June 9, 1992, Marshall Morgan, Sr. filed an affidavit of income and expenses in connection with divorce

proceedings brought by Delores Morgan. His monthly income as recited in the affidavit (\$927.85) was far outweighed by his net monthly expenses (\$2576.80).

- On September 16, 1992, a foreclosure action was filed against Morgan, Sr. by Independence One Mortgage. Two weeks later, on September 30, 1992, Morgan Sr., was personally served with that complaint and summons.
- On October 20, 1992, Morgan Sr., took out a life insurance policy on his son, Marshall Morgan, Jr., who was then 19 years old. Marshall Morgan, Sr., was listed as the sole beneficiary on that life insurance policy.
- On January 6, 1993, Marshall Morgan, Sr., was served with a petition and summons to establish paternity and secure child support. The petition was filed by Angela Griffin.
- On April 23, 1993, a judgment of foreclosure was entered against Marshall Morgan, Sr.
- On May 17, 1993, Marshall Morgan, Jr.'s body was found partially nude, having been shot and killed with a .38 caliber weapon. His body was found wedged between the front and back seats of his abandoned car. The sole beneficiary of the life insurance policy which had been taken out on Morgan Jr.'s life just seven months earlier, Marshall Morgan, Sr., was the last person to see Marshall Morgan, Jr. alive on May 8, 1993.
- On June 8, 1993, Marshall Morgan, Sr. collected \$44,593.43 from the insurance policy he took out on Marshall Morgan, Jr.'s life.
- On October 6, 1993, an order was entered in the Circuit Court of Cook County directing Marshall Morgan, Sr. to pay Angela Griffin child support.

convicted and sentenced to the Illinois Department of Corrections.

Relationship Between the Victims and the Offender

Marshall Morgan, Jr. was the son of Marshall Morgan, Sr. Michelle Soto was the fiancé of Marshall Morgan, Sr. Each victim had a close, familial relationship with Marshall Morgan, Sr. Deborah Jackson was the fiancé of Marshall Morgan, Sr. at the time of her murder. William Hall was sufficiently close to Marshall Morgan, Sr. that a personal creditor-debtor relationship had been established between them.

Location of the Crime

While the precise locations of the murders may not or cannot be established, there is a rule of thought that absent any evidence to the contrary the murder took place where the body was found. The bodies of Marshall Morgan, Jr. and Michelle Soto were found in virtually identical circumstances. The body of Deborah Jackson was also found in her car, shot to death, but in a different location in her car than the previous murder victims found in their cars.

Weapon/Manner by Which the Crime was Committed

Both Marshall Morgan, Jr. and Michelle Soto were shot. The investigation of the murder of Michelle Soto was not able to establish the caliber of the weapon used to kill her. Marshall Morgan, Jr. was shot and killed with a .38 caliber weapon. This is the same caliber weapon used in the murders of William Hall and Deborah Jackson.

Motive (Motivation to Commit the Crime)

In each of the four murders, there is the common factor of financial motivation on the part of Marshall Morgan Sr. In two of the murders, those for which he confessed, there appears to be a frustration on his part to collect a debt. In the other two

murders for which he has not been held accountable, Marshall Morgan, Sr. received substantial amounts of money from insurance policies that he took out on the lives of the victims and for which he was the sole beneficiary.

Other Unique or Defining Factors

Unique or Defining Factors such as the state of undress of the victims need to be also considered. Although these factors may not be common to all victims, these factors are common to a majority of the victims.

RE-INVESTIGATION WARRANTED

The similarities between the murders of Marshall Morgan, Jr. and Michelle Soto coupled with similar and common factors in the Hall and Jackson murders require, in the interest of justice, a thorough, objective and fair re-investigation of the case for which Tyrone Hood is incarcerated. The evidence upon which the state prosecuted Tyrone Hood is not persuasive and definitely not sufficient to support a finding of guilty beyond a reasonable doubt.

Evidence Against Tyrone Hood

The evidence against Tyrone Hood is conspicuously suspect. From what I can determine, the evidence consisted of fingerprints left on beer bottles in a pile of trash that was placed inside the victim's car. The identity of the person putting the trash into the victim's car is unknown. The evidence against Mr. Hood also includes statements that were procured by certain highly controversial detectives* (see footnote and attachment) whose integrity and methodology are suspect and questioned. These alleged statements have since been recanted. There is also the testimony of a questionable witness who was "found" on the eve of trial. This questionable witness who purportedly saw Mr. Hood with the victim's car at night from a second story window obscured by a tree never reported the sighting until detectives located him by "Divine Providence" three years later.

Mr. Hood's fingerprints were found on two beer bottles in the victim's car which bottles were strewn among a pile of trash. Some of the trash included fingerprints from other people who were identified. For

example, Joe West's fingerprints were also found on beer bottles. Laron Hyde's prisoner property envelope was found in the victim's car. No fingerprints were found on any part of the actual car. A simple explanation is that the real offender threw trash in the car knowing that the trash contained fingerprints of other people in an attempt to cover up his involvement and deflect attention from him. The fact that Marshall Morgan, Sr. was a janitor at Corliss High School at the time of the murder which high school was close to where Hyde, Hood and West lived, he could have thrown the trash in the car to deflect attention to someone other than himself. This is a more plausible explanation than the one proffered by the State that the perpetrator took the time and effort to carefully wipe all fingerprints from the car itself but inexplicably left the beer bottles with his fingerprints on them in the rear seat.

With regard to the statements that were taken from two brothers, Jody and Michael Rogers, as well as Joe West and Tyrone Hood's co-defendant, Wayne Washington, each of these inculpatory statements was disavowed as untrue prior to trial. The aforementioned people from whom these statements were obtained all allege that the statements were the product of police coercion. Those allegations of coercion are directed at Detectives* (see footnote and attachment) Kenneth Boudreau, John Halloran and/or James O'Brien who have been previously identified as engaging in patterns of similar coercive conduct and two of whom have asserted their Fifth Amendment right against self-incrimination when questioned under oath, in civil proceedings, about coercing witnesses into giving statements. For example, Detective Kenneth Boudreau (who has since been promoted to sergeant) who has been named a defendant in numerous Civil Rights suits as a result of other cases, and other detectives have been identified in reports arising out of an extensive investigation by the *Chicago Tribune* of cases that have failed to pass judicial muster and for being the very reason why these case have fallen apart. In those investigative reports, Boudreau has been accused of physically mistreating arrestees by punching, slapping and kicking them; taking advantage of arrestees with reduced mental and cognitive capacities; and interrogating juveniles without youth officers being present.

Also in this case involving Mr. Hood, there was a "witness" name Emanuel Bob who detectives located on the eve of trial, three years after the murder occurred. This "witness" allegedly told the detectives that he remembered seeing Mr. Hood outside of his girlfriend's house on the evening that Marshall Morgan, Jr. disappeared. The "witness" purportedly saw Mr.

Hood with Marshall Morgan, Jr.'s car. The "witness" testified that he saw Mr. Hood from a position in a second story window late in the evening. This same "witness" admitted that his view was at least partially obscured by a large tree and that he never reported this sighting to the police.

Mr. Hood has at all times denied any involvement in or knowledge of the murder of Marshall Morgan, Jr. and has been steadfast in his denials since his arrest.

Deficiencies of the Recent Reinvestigation

Given the paucity of evidence against Mr. Hood and the existence of multiple factors to establish a *modus operandi* a reasonable detective or investigator would recognize that there is compelling reason and evidence to warrant a re-investigation of the murder of Marshall Morgan, Jr.

I have reviewed the reports of the recent re-investigation undertaken by the Cook County State's Attorney's Office and particularly the report of the interview of Marshall Morgan, Sr. that was conducted on October 3, 2012. That re-investigation fails to meet the minimum threshold required of investigations conducted by competent detectives or investigators.

The interview of Marshall Morgan, Sr. was superficial, cosmetic and perfunctory, at best. He was not confronted with any of the inconsistencies or falsehoods he previously related and there has been nothing provided to me to demonstrate that any follow-up investigation was conducted to corroborate or disprove anything he said in the interview.

Some of these issues, in summary fashion are listed below:

- Obvious inconsistencies between Morgan, Sr.'s statements and what actually happened in the distribution of the money from Michelle Soto's life insurance policy.
- Obvious inconsistencies between Morgan, Sr.'s statements about his financial situation at the time of Morgan Jr.'s death and actual, legitimate evidence to the contrary such as his Affidavit of Assets and Liabilities, the financial evidence in the Paternity action and the foreclosure of and his subsequent eviction from his residence.

support that determination. The same reasonable detective would examine factors common to other similar crimes, solved or unsolved, to determine if a pattern or *modus operandi* exists. Especially in murder investigations that begin as a "mystery" (as opposed to those that are considered "smoking gun" or "known but flown"), DNA can be considered a virtually mandatory investigative tool.

The detectives involved in the investigation that led to the arrest and prosecution of Tyrone Hood have been previously accused of inappropriate investigative work. Proceeding to look at what was done concerning the investigation of the Marshall Morgan, Jr. murder, I learned that the pattern of investigative malpractice on the part of these detectives is significantly and obviously present in this investigation.

** In addition to my personal prior exposure to the investigative behavior of some of these detectives while examining cases as a hired expert witness in other matters, during my review of this case I was made aware of a breaking story by an electronic news alert from the Chicago Tribune that some of these same detectives had other cases of theirs reviewed by the Illinois Torture and Relief Committee and that there was evidence of police misconduct on the part of some of these same detectives. The news alert to which I refer is attached to this report.*

Respectfully submitted,



Richard J. Brzeczek

www.chicagotribune.com/news/local/ct-met-burge-torture-20130726,0,5484418.story

chicagotribune.com

Commission finds evidence of police torture in 5 convictions

Judge to decide whether defendants will be retried

By Jason Meisner

Chicago Tribune reporter

6:33 AM CDT, July 26, 2013

It was almost 30 years ago when five Chicago police detectives working under disgraced former Cmdr. Jon Burge burst into Jerry Mahaffey's South Side apartment to question him in the home invasion, rape and slaying of a Rogers Park couple and near-fatal beating of their son.

When Mahaffey denied knowledge of the attack, one detective punched him in the nose and another threw him into a wall and put a gun to his head, according to a court records. The detectives allegedly pummeled Mahaffey, nearly suffocated him with a plastic garbage bag and threatened to put his children in an orphanage. Mahaffey eventually confessed, was convicted and is serving life in prison.

On Thursday, the Illinois Torture Inquiry and Relief Commission found credible evidence that Chicago detectives had tortured Mahaffey — as well as four others sentenced to lengthy prison terms — into confessing to murder. Each of the five cases will now be assigned to a Cook County Criminal Court judge to decide whether a new trial is warranted.

The commission has found 17 credible instances of torture since it began inquiries in 2011, and investigations into more than 100 additional claims continue, said David Thomas, the commission's executive director. New claims continue to come in "at a fairly steady trickle," he said Thursday.

Four of the five cases filed Thursday involved Burge or detectives who worked on his infamous "midnight crew." Burge is serving a 4 1/2-year sentence in federal prison for lying under oath about his knowledge of the torture.

Among the alleged torture victims is Anthony Jakes, who was 15 when Detectives Michael Kill and Ken Boudreau allegedly punched and kicked him and threatened to throw him out a window during a 16-hour interrogation for a 1991 armed robbery and slaying, according to the commission's report.

Finally, in the early morning hours and without a parent or lawyer present, Jakes signed a four-page confession to the murder. He was convicted at trial and sentenced to 40 years in prison. Records show he

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was paroled last month.

By the time Scott Mitchell was allegedly beaten and threatened into confessing to a murder in 1996, Burge had been forced out of the Police Department because of mounting evidence of torture, according to the commission's court filing.

But one of the detectives on the case, Joseph Danzl, had worked under Burge, and the interrogation of Mitchell — who had been in psychiatric treatment since he was a toddler and was diagnosed with paranoid schizophrenia — bore many of Burge's hallmarks, according to the torture commission.

"One characteristic of the Burge cases ... is the coercion of confessions from the mentally handicapped and psychologically vulnerable," said the court filing in Mitchell's case. Another notable Burge pattern was that detectives threatened to lock up Mitchell's mother and have state welfare workers take away his siblings, according to the filing.

Other cases filed Thursday include that of Robert Smith, who allegedly was beaten by Burge subordinates and confessed to a 1987 double murder, and Kevin Murray, who claimed that two West Side detectives slapped him and punched him in the ribs during an interrogation into another double homicide that same year.

The crime for which Mahaffey was convicted was by far the most notorious, a double murder that shocked Chicago in 1983 not only because of its brutality but because the victims appeared to have been chosen randomly.

According to his confession, Mahaffey and his younger brother, Reginald, had driven to the North Side to burglarize a clothing shop. But when their borrowed van broke down, they started walking until they saw an open window and crawled into the West Rogers Park apartment of Dean Pueschel and his wife, Jo Ellen.

Prosecutors alleged at trial that the Mahaffey's beat the couple's sleeping 12-year-old son, Ricky, with his own Little League bats and stabbed him in the back with a kitchen knife. Jo Ellen Pueschel, 30, was raped before being pistol-whipped and clubbed to death with a baseball bat in the living room. Her 26-year-old husband was beaten to death in his bedroom.

Ricky miraculously survived the attack and identified the Mahaffey's as the assailants in court, though he had failed to pick them out of a police lineup shortly after the arrests.

Jerry and Reginald Mahaffey were convicted and are serving terms of life without parole.

According to the torture commission's report, Jerry Mahaffey was treated at the Cook County Jail hospital for bruises and scrapes after he was charged. As part of an effort by his lawyers to have his confession thrown out before trial, Mahaffey's wife testified that she had witnessed the beating at their home. A neighbor, Charles Patterson, gave a sworn statement that he heard Mahaffey getting "the (expletive) beat out of him" for five minutes after police had surrounded the apartment with guns drawn.

"I asked a white plainclothes officer what was going on and he told me that they had just arrested the '(expletive)' who had killed the North Side couple," Patterson said in his statement.

Mahaffey's confession was allowed in after all five detectives denied any misconduct, according to the commission's finding.

jmeisner@tribune.com

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Exhibit A A.R

Interview of Allen "Jody" Rogers

Allen "Jody" Rogers states that last May 30, 1993, a Saturday, he was asleep in his basement when he was arrested by a team of 5 Chicago policemen who had come into his house with their guns drawn asking for him. Jody was placed in handcuffs and taken to the police station at 51st and Wentworth. At 51st Street he was put into a small interrogation room and the police began asking him questions about some murder that had happened a few weeks earlier. Jody did not know anything about that murder and told the police that. The police got mad, told Jody he was lying and told Jody that they heard that he (Jody) knew something about the murder. Jody insisted that he knew nothing and the police left.

Later the same 3 detectives came back and again began to ask Jody the same questions about the murder. Again Jody told the police he knew nothing. Again the police got mad, told Jody he was lying and began to threaten Jody with physical harm and threatened to even charge him with the murder if he did not tell the police what they thought he knew. Jody was questioned repeatedly one day (which Jody remember was a Saturday), and the following day. Jody also remember a different team of 3 detectives who took over the questioning when the shift changed. Both teams of detectives threatened Jody with physical harm and also threatened to have Jody charged with the murder if he did not "cooperate" with them and say that he knew something about the murder. At one point one of the detectives twisted Jody's arm and pushed Jody around the interrogation room, and pushed him up against the wall.

During the questioning and Jody's denials, the detectives were telling Jody that he was lying and that they heard that Jody provided the gun for the murder. The detectives also told Jody that they wanted him to say that he saw the murder or at the very least that he heard Tyrone talk about the murder. The police were very clear with Jody that he was not going to go home until he told the police what they wanted to hear. So, because he was tired, scared and wanted to go home Jody agreed to "cooperate" with the police. Jody also did not want to be charged with the murder so he told the police that he provided the gun to Tyrone and also heard Tyrone "confess" to him that he did it. These things that Jody told the police were not true but he told them anyway, and even signed a statement.

What is in the statement, however, is not true. Once Jody signed the statement he was allowed to go home. But before he was taken home he was told that he would have to say the same things (lies) in front of a Grand Jury, not the next day (Memorial Day) but the following day. Arrangement were made to pick him up on that Tuesday morning June 1, 1993. On that

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day Jody was taken to 26th and California by the same police detectives. Once at 26th Street a different State's Attorney went over Jody's statement (lie) with him and told him that her questions and his answers should be the same.

Jody testified before the Grand Jury and lied about what he said because he was afraid of what the police would do to him if he told the truth and not "cooperate" with them.

*J.R.G.
A.S.R.*

The truth being that he did not know anything about the murder
Jody did not provide any weapon to Tyrone or anyone to commit this murder. Jody never heard Tyrone tell him he wanted to do a "sting" or a robbery. Jody also never heard Tyrone tell him that he (Tyrone) did the murder but the police can't prove it. Tyrone never told Jody ~~that~~ anything about this murder.

*J.R.G.,
A.S.R.*

Jody has read this statement and has agreed to sign it because it is the truth.

3-31-94
DATE

Allen Jody Rogers
ALLEN "JODY" ROGERS

B-31-94
DATE

James D. Mullenix
JAMES D. MULLENIX

3-31-94
DATE

Renonia Galvin 10⁵³ A.M.
RENONIA GALVIN

C940

Exhibit B D.P

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Jody was read this statement.

He agrees that this statement is not the truth. Jody lied to the Grand Jury about Tyne asking for a gun, about planning a "sting" or robbery and about having committed a murder. Jody knows

nothing about this case but lied to the police and Grand Jury because he was threatened by the police, threatened with physical harm, and threatened to be charged with the murder.

IN RE PEOPLE VS JOHN DOE - #6J 1054

Jody Rogers
3-31-94

Allen Jody Rogers
3-31-94

Renovia Salmeron
3-31-94 - 10:55 A.M.

BEFORE THE GRAND JURY OF COOK COUNTY
MAY, 1993

Transcript of testimony taken in the above-entitled matter on the 1st day of June, A.D., 1993.

PRESENT: Ms. Mary Roberts,
Assistant State's Attorney,

Reported by Dolarite M. Woods,
Official Shorthand Reporter
Circuit Court of Cook County

THIS IS NOT TRUE

Allen Jody Rogers

3-30-94

Renovia Salmeron 3-30-94

WITNESS:
ALLEN JODY ROGERS

PAGE NO.:
2

ca

1 half.

2 Q And how long have you known Wayne Washington?

3 A I knew Washington about a year.

4 Q When these two people came up to the porch
5 were you on the front porch or back porch?

6 A Front porch.

7 Q This is 10440 South Maryland?

8 A Yes.

9 Q Anyone say anything?

10 A Yes, ma'am.

11 Q What was said?

12 A Well, at first Tony was, Tyrone Hood and
13 Washington were talking, you know, everybody talking,
14 cracking jokes.

15 Q Then did anyone say anything?

16 A Later on Tony Hood had made a statement saying
17 he wanted to go to a stang.

18 Q You say Tony Hood, you are referring to
19 Tyrone?

20 A Tyrone.

21 Q What is a stang?

22 A Stang is a robbery.

23 Q After Tyrone, also known as Tony, said that
24 did anyone say anything?

1 A Yes, ma'am.

2 Q Who said what?

3 A Wayne Washington made a statement that he said

4 we need a gap to do it.

5 Q What is a gap?

6 A A gap is a gun.

7 Q After Wayne said we need a gap to do it, did

8 anyone say anything?

9 A Yes, ma'am.

10 Q Whom?

11 A Tyrone Hood.

12 Q What did he say?

13 A He asked me where did Devoe keep his guns at.

14 Q Who is Devoe?

15 A One of Wayne's friends.

16 Q After Tyrone said what he said to you what did

17 you say?

18 A I told him I didn't know where they keep their

19 guns at. The last place Devoe placed the gun was in my

20 sister's hallway in the mailbox.

21 Q So after you told Tyrone that what, if

22 anything, did anyone do?

23 A Tyrone then proceeded in the hallway.

24 Q The hallway?

1 A The hallway at 10440 South Maryland.

2 Q Does the hallway lead off the porch?

3 A The hallway and the mailbox is in the hallway.

4 Q Do you get to the hallway from the front

5 porch?

6 A From the front door, yes.

7 Q Did you see Tyrone come back out of the

8 hallway?

9 A Yes, ma'am.

10 Q Did you notice anything about him?

11 A Yes, ma'am.

12 Q What did you notice?

13 A He came back out of the porch with a gun.

14 Q Could you describe the gun, please?

15 A The gun was a silver .38 with black tape on

16 the handle.

17 Q Had you ever seen that gun before?

18 A Yes, I seen it before.

19 Q Now, after Tyrone came out on the porch with

20 this gun did anybody say anything to you?

21 A Yes, ma'am.

22 Q Who said what?

23 A Tyrone and Wayne was asking me and brother do

24 they want to go with them to do a stang which is a

1 robbery.

2 Q What did you say?

3 A I told him, I made a statement I am on papers
4 and I don't want to get involved in it.

5 Q When you said that I am on papers, what does
6 that mean?

7 A In other words I was saying I'm on parole. I
8 don't want to get involved with that.

9 Q After you said that did anyone say anything?

10 A Yes, ma'am.

11 Q Who said what?

12 A My brother, Twinkie, made a statement that he
13 told me to go in the house, he don't want me hanging out
14 with them.

15 Q So where were Wayne and Tyrone and your
16 brother when you -- I am sorry, strike that.

17 What did you do after your brother told you to
18 go in the house?

19 A I proceeded in the house.

20 Q Where were Wayne and Tyrone and your brother
21 when you went in the house?

22 A Standing in front of my sister's house, 10440
23 South Maryland.

24 Q Were they still on the porch?

1 A Yes, ma'am.

2 Q What happened after you went in the house?

3 A Well, my brother had came in about 10 minutes

4 later.

5 Q Did he say anything to you?

6 A Yes, ma'am.

7 Q What did he say?

8 A He said he made the statement that he said

9 that crazy as a motherfucker Tony talking about going to

10 do a stang.

11 Q When he said Tony, who was he referring to?

12 A Tyrone Hood.

13 Q Now, did you see either Wayne or Tyrone Hood

14 later that evening?

15 A No, ma'am.

16 Q Did you see Tyrone Hood on or about the 22nd

17 of May, 1993?

18 A Yes, ma'am.

19 Q And about what time was it that you saw him?

20 A It was around from 9:00 p.m. to 12:00, around

21 9:00, from 9:00 to 12:00 in front of the house, 12:00

22 p.m.

23 Q When you first saw him where were you?

24 A Back toward 10438 South Maryland.

1 Q Who was with you, anyone?

2 A Yes, one of my friends, my neighbor whose name
3 is Lonell.

4 Q Lonell?

5 A Yes, Lonell.

6 Q Do you know Lonell's last name?

7 A No, ma'am.

8 Q Now, did you have a conversation with Tyrone
9 when you were on your back porch?

10 A Yes.

11 Q And what if anything was said?

12 A Well, he had walked upon the porch and said
13 these pussy ass police are trying to put a murder on me
14 that happened on 58th and Michigan and they can't prove
15 it was me.

16 Q Did he say anything else?

17 A He said he had just bonded out.

18 Q And after he said that, did anything happen?

19 A Yes, my father was hollering out the door
20 asking who was that on the porch talking loud.

21 Q So what happened?

22 A I told him it was Tony which is Tyrone Hood.

23 Q Then what happened?

24 A So then my dad called me in the house.

1 Q How long after you seen him at your house did
2 you see him at Brenda and Tammy's house at 105th and
3 Corliss?
4 A I would say approximately 20 to 30 minutes.
5 Q And what porch were they on, the front or the
6 back?
7 A They were on the front.
8 Q And besides yourself and Tyrone Hood, who else
9 was there?
10 A There were three ladies, Brenda, Tammy and
11 another lady. I do not know right offhand.
12 Q Do you know Brenda and Tammy's last name?
13 A No, I ain't got there last names.
14 Q Whose house was it at 105th and Corliss?
15 A Tammy's house.
16 Q Now, when you went over there did you hear a
17 conversation?
18 A Yes, ma'am.
19 Q Who did you hear talking?
20 A I heard Tony talking to the ladies on the
21 porch.
22 Q When you say Tony --
23 A Which is Tyrone Hood.
24 Q What, if anything, did you hear Tyrone Hood

Jody states he never heard Tyrone Hood say this. This statement to the Grand Jury is a lie. Ever this about Tyrone and murder is a lie.

1 say?

2 A I heard Tyrone say, telling the ladies, he
3 made the statement, he said I did the murder on 58th and
4 Michigan but they can't prove it was me because it was a
5 crowd of people out there at the time.

6 Q Did you see him after that? How long did you
7 stay there?

8 A How long did I stay there?

9 Q Yes.

10 A I stayed there about 10 or 15 minutes and then
11 I went back home.

12 Q Have you seen Tyrone, did you see Tyrone Hood
13 after the 22nd of May?

14 A No.

15 Q Now, has anyone promised you anything or
16 threatened you in any way in exchange for your testimony
17 here today?

18 A No, ma'am.

19 Q Now, on the 30th of May, 1993 at approximately
20 6:30 p.m. were you at 51st and Wentworth at Area 1
21 Police Headquarters?

22 A Yes, ma'am.

23 Q At that time did you speak with an assistant
24 state's attorney by the name of James Brown?

11:05 A.M.

C95

1 A Yes, ma'am.

2 Q And was that in the company of Detective
3 Halloran and Detective Budreaux of Area 1 Violent Crimes
4 Division?

5 A Yes.

6 Q At that time did you talk to them about the
7 incident that you spoke with us about today?

8 A Yes, ma'am.

9 Q Do you know if what you said to them at that
10 time was recorded in any way?

11 A Well, it was written down on a statement.

12 Q How did they know to write it down?

13 A Because I gave them permission.

14 Q After they wrote it down were you able to read
15 that statement?

16 A Yes.

17 Q And if you saw that any corrections were
18 needed to be made what did you do?

19 A I, you know, crossed out the ones that needed
20 to be made.

21 Q Did you show that the corrections were made by
22 doing anything?

23 A Yes, ma'am.

24 Q What did you do?

1 A Wrote my signature and initials.

2 Q After you read the whole statement did you do
3 anything?

4 A Yes, I signed it.

5 Q I am gong to show you what is marked Grand
6 Jury Exhibit Number 6. Could you identify what that is?

7 A Yes, ma'am.

8 Q What is it?

9 A It is a statement that I gave.

10 Q Now, is this a copy of that statement that you
11 gave?

12 A Yes.

13 Q I would like you to take a look at it. You
14 just look through it and make sure. Is that copy a true
15 and accurate copy of the statement that you gave on the
16 30th of May, 1993 at 6:30 p.m.?

17 A Yes, ma'am.

18 MS. ROBERTS: He just identified Grand Jury Exhibit
19 Number 6 as his statement given on May 30, 1993.

20 I have no further questions. Does the Grand
21 Jury have any questions?

22 A JUROR: When you went into the police station,
23 did you go in voluntarily or were you told to go in or
24 were any threats made against you about your parole?

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THE WITNESS: No, it wasn't any threats but I was told to come in.

A JUROR: Who told you to?

THE WITNESS: The police came to the house and got me.

(Witness excused.)

(The above-entitled matter is an ongoing investigation.)

*This statement
IS NOT TRUE.
allen Jody Rogers
3-30-94*

*Renoma Galvin
3-30-94*

C956

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS:

I, DOLARITE M. WOODS, Official Court Reporter of the Circuit Court of Cook County, County Department-Criminal Division, do hereby certify that I reported in shorthand the testimony of the witness taken before the Grand Jury, and that I thereafter caused to be transcribed into typewriting the above testimony, which I hereby certify is a true and correct transcript of said testimony.



 Dolomite M. Woods
 Official Court Reporter
 County Department-Criminal Division.

0957

A.115

Exhibit C A.R

W. T. H. K. J. J. ~~Theresa M. Davis~~

Allen Rogers SR -
Betha & Meyers
5-18-95

To whom It MAY
Concern. I Allen Rogers Jr.
have been harried about a murder
I don't know anything of. When
the Police questioned me ~~if~~ was not
around I was not in the neighborhood.
They said I said Someone bought
a Pistor here. I didn't see no one
THAT day. I heard about the murder
On television. They excused me of
giving Tony a gun and they tore my
house up. They took me and my brother
to Jail and beat us up and said IF
we dont say they these fellows did
it that we was getting lock-up
for the murder. And we was In custody
for that. wayne and Tony, IF
nessecary me and my family
will come talk to who's ever
to see.

Subscribed and sworn to before me
the 18 Day of May 1995
at Chicago, County of Cook, State of Illinois

~~Theresa M. Davis~~
"OFFICIAL SEAL"
Notary Public
THERESA M. DAVIS
Notary Public, State of Illinois
My Commission Expires May 7, 1998

Allen Rogers Jody JR.
Allen Jody Rogers JR.
10438 S. Maryland
264-0103

0958

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0999

1 KEVIN KELLY,
2 called as a witness on behalf of the People of
3 the State of Illinois, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MS. GOLDISH:

8 Q Mr. Kelly, can you please spell both
9 your first and last last name for the Court?

10 A K-e-v-i-n, Kevin, K-e-l-l-y, Kelly.

11 Q You're currently an attorney licensed
12 to practice law in the State of Illinois?

13 A I am.

14 Q How long have you been so licensed?

15 A Since approximately 1974.

16 Q What is your current concentration,
17 what kind of practice do you have?

18 A I have a sole criminal defense practice
19 based in Cook County.

20 Q Prior to having this practice, were you
21 an Assistant State's Attorney here in Cook
22 County?

23 A I was.

24 Q From what years? During the course of

1 what years were you an Assistant State's
2 Attorney?

3 A From my passage of the bar in '74 until
4 I think 1989.

5 Q And in 1977, what was your unit of
6 assignment within the State's Attorney's Office?

7 A Felony review.

8 Q Pursuant to being on felony review, at
9 some point in January of 1977, were you assigned
10 to speak with detectives that were investigating
11 the murder of a William Hall which had occurred
12 on January 9th of 1977?

13 A I was.

14 Q And did you learn there was a person by
15 the name of Marshall Morgan that was in custody
16 at what was then called Area 3?

17 A Yes.

18 Q Do you think that you would recognize
19 Mr. Morgan 31 years after this?

20 A No.

21 Q When you were on felony review, did you
22 have the opportunity to interview witnesses,
23 victims or people that were in custody accused
24 of crimes?

1 A I did.

2 Q Approximately how many if you would
3 estimate for us?

4 A Probably thousands.

5 Q During the course of speaking with
6 these individuals, would Chicago Police officers
7 be present during your interviews?

8 A Yes.

9 Q And would you guess that would be about
10 every time?

11 MS. ANDERSON: I'm going to object to
12 guessing, Judge.

13 THE COURT: Sustained as to the form of
14 the question.

15 MS. GOLDISH:

16 Q How often was it that the police
17 officers would be present during the course of
18 the interviews?

19 A Always.

20 Q When the police officers would be
21 present during the interviews, what would the
22 police officers be doing during the course of
23 the interviews you were present for?

24 A Either participating in the interview,

1 jointly asking questions but always taking
2 notes.

3 Q When you would go out to an area or a
4 police district to interview an individual,
5 would you review anything prior to interviewing
6 the individual?

7 A Any police reports that were -- that
8 had been taken and what the officers orally
9 would tell me about their investigation.

10 Q And did you do that on each and every
11 investigation that you were called out on?

12 A I did.

13 Q Did you ever have to testify as an
14 Assistant State's Attorney on felony review?

15 A I did.

16 Q Prior to your testimony as a felony
17 review assistant when you would testify in
18 Court, would you review anything?

19 A The police reports and any notes or
20 Court reported statements I had taken.

21 Q I'm going to draw your attention now to
22 the first 10 days or so of January, 1977,
23 specifically January 11th of 1977, did you
24 participate in a Court Reported statement that

1 involved the murder of Mr. Hall in which
2 Marshall Morgan was accused of this murder?

3 A Yes.

4 Q And in fact, were there also Chicago
5 Police officers involved in this and
6 specifically investigator Ptak, P-t-a-k,
7 Investigator Parizanski, P-a-r-i-z-a-n-s-k-i,
8 and Investigator Ballancingham,
9 B-a-l-l-a-n-c-i-n-g-h-a-m?

10 A Yes.

11 Q Did you learn that there had been
12 reports generated with regards to this
13 investigation?

14 A I certainly did.

15 Q Prior to your testimony today, did you
16 have the opportunity to review those reports?

17 A I did today.

18 Q Before this Court Reported statement
19 was documented, had you reviewed any reports?

20 A Yes.

21 Q And can you tell us specifically did
22 you have a report that summarized the Court
23 Reported statement?

24 A I had a report that summarized a

1 where it is?

2 A I don't have a copy of it.

3 Q Additionally, are you aware of where
4 the written statement that detectives took with
5 regard to their conversation with Marshall
6 Morgan on January 10th of 1977, are you aware of
7 where that written statement is?

8 A No.

9 Q On every case that you participated on
10 during the course of felony review, did you in
11 fact review police reports?

12 A Without exception.

13 Q And you also mentioned that police
14 officers would also tell you orally what a
15 suspect had told them prior to you speaking with
16 them?

17 MS. ANDERSON: Objection. She's already
18 asked that question and was given an answer.

19 THE COURT: Let her finish the question.
20 I didn't hear it.

21 MS. GOLDISH:

22 Q You had mentioned that police officers
23 will also tell you orally what a suspect had
24 told them prior to you arriving out at a police

1 area?

2 THE COURT: Overruled. You may answer
3 that.

4 A Yes, I did.

5 MS. GOLDISH:

6 Q And if there were any instances where
7 what the police officers told you orally
8 differed from your conversation, subsequent
9 conversations with the defendant, can you tell
10 the Court had that ever happened?

11 MS. ANDERSON: Objection, I don't
12 understand the question, Judge. Can you read it
13 back.

14 THE COURT: Well, overruled. You may
15 answer if you understand it. If not --

16 A If the Court Reported statement
17 differed from the statement earlier given to
18 detectives, that would certainly be noted in the
19 report. And I did have on occasions when the
20 Court Reported statement did differ from the
21 statement given to detectives.

22 MS. ANDERSON: I'm going to object.
23 Relevant to this case, talking about this case
24 or another case?

1 THE COURT: I assume the State will tie up
2 the relevancy to this case shortly. Go ahead.

3 MS. ANDERSON: Very well.

4 MS. GOLDISH: And those instances --

5 THE COURT: Overruled.

6 MS. GOLDISH: You said it would be
7 documented in a report?

8 A Yes.

9 Q You had an opportunity to review the
10 reports that documented the oral statement that
11 Marshall Morgan gave to those 3 police officers,
12 Ptak, Parizanski, and Ballancingham prior to the
13 Court Reported statement that was taken on
14 January 11th, 1977?

15 A I did.

16 Q And in fact, in the course of that
17 report, is there in fact on the bottom of page
18 10 going to the top of page 11 a summarization
19 of a confession that Marshall Morgan gave to the
20 police officers with regards to the murder of
21 Mr. Hall?

22 A Yes.

23 Q And you had an opportunity to review
24 that today?

1 A I did.

2 Q And does it appear to be a true and
3 accurate reflection of the conversation which
4 you subsequently documented in that Court
5 Reported statement back in January of 1977?

6 A Yes.

7 MS. GOLDISH: At this time I ask permission
8 to approach.

9 THE COURT: You may.

10 MS. GOLDISH:

11 Q Mr. Kelly, I'm going to show you what
12 I've marked for sentencing as People's Exhibit 1
13 and can you tell me if you recognize what this
14 packet of papers is?

15 A Yes, it's a 5 page supplemental report
16 that I reviewed today in regards to this case.

17 Q Mr. Kelly, I'm going to ask you to turn
18 to the last 2 pages of this, what is marked on
19 the bottom as page 10 and 11, but which would be
20 pages 4 and 5 of People's 1. Do you see on
21 there the summarization that the police officers
22 documented with regards to Mr. Morgan's
23 confession regarding the murder of Mr. Hall?

24 A I do.

1 MS. GOLDISH: Your Honor, at this time I
2 ask the witness be able to publish the statement
3 as documented in this report.

4 MS. ANDERSON: I would like to be able to
5 look at that particular portion that he's going
6 to be publishing.

7 THE COURT: Please tender it to the
8 defense.

9 MS. GOLDISH: Sure.

10 MS. ANDERSON: We have had an opportunity
11 to review this. I wanted to show it to Mr.
12 Morgan.

13 THE COURT: Thank you, Counsel. State may
14 proceed.

15 MS. GOLDISH: Thank you.

16 THE COURT: Have your witness publish the
17 relevant portions.

18 MS. GOLDISH: Yes, thank you.

19 THE WITNESS: Reading from the report. Mr.
20 Morgan was re-transported into the third area
21 homicide unit approximately 10 hundred hours on
22 the 11th of January of '77, and re-questioned,
23 re-questioned -- questioned with reference to
24 this homicide and also informed as to the report

1 having shot him, he drove into an alley and
2 dumped the body from the car. He drove to a lot
3 which is located on the southeast corner of 72nd
4 and Stewart and threw the gun into the vacant
5 lot.

6 That concludes the written statement.

7 MS. GOLDISH: And Mr. Kelly, did you
8 subsequently learn that this case was plead to a
9 charge of voluntary manslaughter and that the
10 defendant received 7 years in the Illinois
11 Department of Corrections.

12 A I did.

13 MS. GOLDISH: Your Honor, at this time, I
14 tender for cross.

15 THE COURT: Cross examination.

16 MS. ANDERSON: No cross.

17 THE COURT: All right, thank you you may
18 step down.

19 One moment.

20 I'll allow the witness to leave.

21 Defense, do you have any need for
22 the witness?

23 MS. ANDERSON: I have no more need for Mr.
24 Kelly.

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(Witness excused.)

**ALLSTATE LIFE INSURANCE COMPANY
LIFE CLAIM DEPARTMENT**

P.O. BOX 94212
PALATINE, ILLINOIS 60094-9952

Toll Free 1-800-366-3495

Facsimile 708-317-4362

June 8, 1993

Marshall Morgan, Sr.
18827 S. Keeler
Country Club, IL 60478

Insured: Marshall Morgan, Jr.
Policy No: 749 793 283
Claim No: 774 766 3638

Dear Mr. Morgan:

Enclosed is your Allstate Life Benefit Account checkbook representing the proceeds payable on your claim. The opening balance of your account was calculated as follows:

FACE AMOUNT \$ 50,000.00
Funeral Assignment \$ 5,406.57

ADDITIONAL BENEFITS

DEDUCTIONS

Cash Value	\$	Loan and Interest	\$
Accidental Death Benefit	\$	Premium Due	\$
Premium Refund	\$		
Interest*	\$		

NET PROCEEDS \$ 44,593.43

The Allstate Life Benefit Account provides you with an interest bearing checking account similar to that of a money market fund while also giving you immediate access to your money. You can use the checkbook to pay for personal expenses or leave the money in the account to earn interest.

Again, we extend our condolences. If you have any questions, please contact us at our toll-free number.

Sincerely,

Leslie VanCleve
Sr. Claim Representative

Enclosure
Rev. 1/93 L5aag/vb

- * If this amount equals or exceeds \$10.00 it will be reported to the IRS as taxable interest income.
You may wish to keep this letter with your tax records.

A.131
01018

ALLSTATE LIFE INSURANCE COMPANY
Northbrook, IL 60062
referred to as Allstate)

798*376*332

Application For Life Insurance

Check Box If Life Specialist



PERSONS PROPOSED FOR INSURANCE					Country	Marital		
First Name	Middle	Last	Sex	Mo./Day /Yr.	Age	of Birth	Status	Social Security #
a. Insured								
MICHELLE		SOTO	F	5/9/61	33	ILL	Single	742-64-7574
b. Add'l/Joint Insured								
				1	1			
c. Children (if to be insured)								
				1	1			
				1	1			

Must be the insured's children, adopted children, or step-children age 17 or younger.

ADDRESS: a. Insured

No./Street: 18840 S. KEEFER

City/State: COUNTY CLUB HILLS

Zip Code/County: IL 60478 COOK

Phone # Hm. () Bus. () Hm. () Bus. ()

Date Moved To Address (Mo./Yr.): 1-95

Previous Address (if less than 1 yr.): 2757 W. SEIRA CHICAGO ILL

b. Add'l/Joint Insured (if other than 2a.)

OWNER (if other than 1a)	Address	Relationship	Soc. Security #	Home Phone #
a. CONTINGENT OWNER				
PAYOR (if other than 1a)				

BENEFICIARY - a. Insured		b. Add'l/Joint Insured	
Primary (Name)	Relationship	Primary (Name)	Relationship
MARSHALL MORGAN FINACK			
Contingent (Name)	Relationship	Contingent (Name)	Relationship
MICHAELA SOTO	daughter		

EMPLOYMENT: a. Insured

Occupation: School Teacher

Employer Name/Date of Employment (Mo./Yr.): CHICAGO BOARD OF ED. 13-45

b. Add'l/Joint Insured

Occupation:

Employer Name/Date of Employment (Mo./Yr.):

INSURANCE REQUESTED: (Please list appropriate information on lines provided below)

Plan	Optional Coverages	Amount (if Applicable)
U.L.P. 50	Term Rider	100,000
Insured Face Amount: \$ 67,000		
Death Benefit Option for Universal Life:		
Option 1: <input checked="" type="checkbox"/>	Option 2: <input type="checkbox"/>	

DISCOUNTS (Must be age 18 or older to qualify)	Insured		Add'l/Joint Insured	
	Yes	No	Yes	No
Non-Smoker (Not used tobacco/nicotine in any form in the past 12 months)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Healthy American (Complete attached questionnaire)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Marshall Morgan, Sr.

TAPE TRANSCRIPTION

September 21, 2001

MERRILL CORPORATION

LegalLink, Inc.

311 South Wacker Drive
Suite 300
Chicago, IL 60606
Phone: 312.386.2000
Fax: 312.386.2275

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1075

Marshall Morgan, Sr. September 21, 2001

Page 1

Audio transcript of the Statement of Marshall Morgan, Sr.

September 21, 2001

Merrill Corporation - Chicago
(312) 386-2000 www.merrillcorp.com/law

A.136
C1076

Marshall Morgan, Sr. September 21, 2001

Page 2

1 MR. KIRK: Let the record reflect that today is
2 September 21st, 2001. We are in an interview room at
3 Area 4 violent crimes. Present in the room with me,
4 Assistant State's Attorney Daniel Kirk, are Detective
5 Kenneth Kroful (phon), Marshall Morgan, the
6 defendant.

7 We are here to take the statement of
8 Marshall Morgan concerning the investigation of the
9 murder of Deborah Jackson which occurred on
10 September 8th, 2001, at approximately 11:15 a.m. at
11 4741 South Wentworth in the City of Chicago, County
12 of Cook and the State of Illinois.

13 BY MR. KIRK:

14 Q Marshall, before we spoke, I explained to you
15 that I'm an assistant's state's attorney, that that
16 means that I'm a lawyer and I'm a prosecutor and not
17 your lawyer, is that correct?

18 A Yes.

19 Q And before we spoke, I advised you of your
20 constitutional rights, is that correct?

21 A Yes.

22 Q Marshall Morgan, I talked to you earlier and
23 you told me about the murder of Deborah Jackson. And
24 at that time, you told me that you shot Deborah

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C1077

1 Jackson twice with a nine-millimeter Ruger on
2 September 8th, 2001, at 4741 South Wentworth, is that
3 correct?

4 A Yes.

5 Q I'm going to read you your rights again like
6 I did before. Number one, do you understand that you
7 have the right to remain silent?

8 A Yes.

9 Q Number two, do you understand that anything
10 you say could be used against you in a court of law?

11 A Yes.

12 Q Number three, do you understand you have the
13 right to talk to a lawyer and have him or her present
14 with you while you're being questioned?

15 A Yes.

16 Q Number four, do you understand that if you
17 could not afford to hire a lawyer and you want one, a
18 lawyer would be appointed for you by the court to
19 represent you before any questioning? Do you
20 understand that?

21 A Yes.

22 Q Understanding all of those rights that I've
23 just explained to you, do you want to go through what
24 we had talked about before?

1 A Yes.

2 Q Marshall Morgan, I asked you if you would
3 agree to have your statement videotaped, is that
4 correct?

5 A Yes.

6 Q And this that I'm holding in my hand is
7 entitled consent to videotape statement form. Is
8 this a statement -- I'm sorry, is this a consent of
9 videotape statement form that you signed indicating
10 your consent and willingness to have this statement
11 videotaped?

12 A Yes.

13 Q And does your signature appear on this line
14 on line one? Is that your signature?

15 A Yes.

16 Q And that's right above my signature, correct?

17 A Yes.

18 Q Now, let's start from the top. Can you state
19 your name and spell your last name?

20 A My name is Marshall R. Morgan, M-O-R-G-A-N.

21 Q And, Marshall, how old are you?

22 A 45.

23 Q And what's your date of birth?

24 A 10-16-55.

1 Q And, Marshall, where do you currently live?

2 A 12546 South Ashland in Calumet Park.

3 Q And do you live in a particular apartment
4 there?

5 A Apartment 1 East.

6 Q And how long have you lived at that location?

7 A 17 years.

8 Q Do you live there with anyone?

9 A My daughter Tamara.

10 Q And did you graduate from high school?

11 A Yes.

12 Q What high school did you graduate from?

13 A (Inaudible).

14 Q And are you currently employed?

15 A Yes.

16 Q Who is your employer?

17 A Chicago Board of Education.

18 Q And what's your position with Chicago Board
19 of Ed?

20 A Chief engineer.

21 Q And do you work at a specific location?

22 A Yes.

23 Q And what location is that?

24 A Barton School, 7650 South Wolcott.

1 Q And how long have you been employed by the
2 Board of Ed?

3 A 18 years.

4 Q Now, Marshall, I want to bring your attention
5 back to September 8th of 2001. Do you remember the
6 events that day?

7 A Yes.

8 Q And when you woke up that morning, what did
9 you do?

10 A I called Deborah on the phone.

11 Q Okay. And when you say Deborah, you're
12 talking about Deborah Jackson?

13 A Deborah Jackson.

14 Q Okay. And what's your relationship to
15 Deborah Jackson?

16 A She's my girlfriend.

17 Q How long had you and she been going out
18 together?

19 A A little over a year and a half.

20 Q And why did you phone Deborah that morning
21 when you woke up?

22 A To let her know that I had to work.

23 Q Okay. And could you describe that
24 conversation that you had with her on the phone?

1 A Yeah, I called her that morning to tell her
2 that I had to work and that I would put her cabinets
3 in whenever they got there.

4 Q And what was her reaction?

5 A She was a little bit upset and told me
6 that -- that I thought you wasn't working today. So
7 then I told her that I would put the cabinets in
8 whenever they came.

9 Q Okay. And what day of the week was this?

10 A This was the 8th.

11 Q And that was a Saturday?

12 A That was a Saturday.

13 Q Okay. Now, after you had talked to Deborah
14 on the phone, what did you do?

15 A I went to work.

16 Q And about what time did you arrive at work?

17 A I arrived at work at 7:00 o'clock.

18 Q Okay. Did you have an occasion to talk to
19 Deborah again that day?

20 A Yes, I did.

21 Q And how was it that you talked to her?

22 A I phoned her from work.

23 Q You phoned her from work?

24 A Yes, I did.

1 Q And do you know or do you recall
2 approximately what time that was?

3 A Approximately 7:40.

4 Q Okay. And could you describe that
5 conversation that you had with her?

6 A That conversation was the same thing about
7 the cabinets and to let her know that I was at work.

8 Q Okay. Did you have any plans of seeing her
9 that day? Had you made plans with her to see her
10 that day?

11 A Yes.

12 Q Okay. When was the next time that you saw
13 her after that telephone conversation that you made
14 from work?

15 A Around 11:00.

16 Q Okay. And was that the time that you had
17 planned on meeting her?

18 A No.

19 Q Okay. So where was it that you saw her?

20 A I was outside picking up paper from around
21 the building, and I --

22 Q At Barton School?

23 A At Barton School. And I saw Deborah at 76th
24 between Winchester and Wolcott.

1 Q Now, I'm going to show you what I've marked
2 as Exhibit No. 1. Who is the person that's depicted
3 in Exhibit No. 1?

4 A Deborah Jackson.

5 Q And that's the person that we're talking
6 about now?

7 A Correct.

8 Q Now, you said that Deborah came to that
9 location by Barton School?

10 A Yes.

11 Q And that wasn't planned?

12 A No.

13 Q Okay. What happened when she got there?

14 A I got into the car with Deborah.

15 Q What kind of car was it?

16 A A '95 or '96 Toyota Corolla.

17 Q Whose car is that?

18 A Deborah Jackson.

19 Q Okay. And what happened after you got into
20 the car with Deborah?

21 A We drove around.

22 Q And what was going on between you and she as
23 you were driving around?

24 A We were arguing.

1 Q Arguing?

2 A Yes.

3 Q About the same subject, about the cabinets?

4 A Yes.

5 Q Okay. And where did you go?

6 A We drove Ashland to 59th and 59th to the Dan
7 Ryan, and then Dan Ryan up 51st along Wentworth down
8 to forty -- I want to say 4801.

9 Q Around 48th or 47th and Wentworth?

10 A Yes.

11 Q Was this argument -- did this argument
12 continue as you drove to that location?

13 A Yes, it did.

14 Q Now, what happened when you got to that area
15 around 47th or 48th and Wentworth?

16 A I got out of the car. She pulled over at
17 like 4801, and I got out of the car and started
18 walking southbound on Wentworth, and --

19 Q What's the next thing that happened?

20 A Then Deborah gets out of the car and she
21 comes following me, up to me and Deborah slaps me and
22 I push her.

23 Q Okay. Now, when you pushed Deborah after she
24 slapped you, what happened?

1 A Then her purse slid halfway off of her arm
2 and a gun fell out of her purse.

3 Q What kind of gun was that?

4 A I believe it was a Ruger nine-millimeter.

5 Q Okay. And were you surprised to see a gun in
6 her purse?

7 A Yes, I was very surprised to see a gun in her
8 purse.

9 Q Now, you said the gun slid out of her purse.
10 Where did the gun go?

11 A It fell on the ground.

12 Q And what happened when the gun hit the
13 ground?

14 A It discharged.

15 Q Now, when the gun discharged, was anyone hit?
16 Were either you or Deborah hit by that shot?

17 A No.

18 Q As far as you know, was anybody hit by that
19 round?

20 A No.

21 Q Okay. What happened after the gun hit the
22 ground and discharged?

23 A I picked the gun up.

24 Q And how did you hold the gun when you picked

1 it up?

2 A The gun pointed towards Deborah.

3 Q Okay. And what happened at that time?

4 A Deborah reached for the gun and the gun
5 discharged striking her in the elbow as if she was
6 blocking the shot.

7 Q Okay. Now, when you say Deborah reached --
8 grabbed for the gun or reached for the gun, is that
9 what you said?

10 A Yes.

11 Q Was she touching the gun when the gun
12 discharged?

13 A Yes.

14 Q When the gun discharged, were her hands on
15 the gun?

16 A Yeah, she had moved the gun -- moved her hand
17 away, yes.

18 Q This is what I want to be clear about. Did
19 she move her hand away from the gun?

20 A Yeah, she moved her hand away from the gun.

21 Q So just so that we're clear about that, was
22 her hand actually touching the gun at the very moment
23 that the gun discharged?

24 A No.

1 Q So describe in detail how that happened?

2 A Well, the gun -- my hand was on the trigger,
3 and when she reached for the gun, I lunged back and
4 she lunged back as if she was throwing her hands up
5 and the gun discharged. I fired the gun.

6 Q When you fired the gun, where did that round
7 strike her?

8 A In the elbow and the chest. It penetrated
9 her elbow, her wrist and her chest.

10 Q Now, could you show me -- since this is being
11 videotaped, can you show us how it is that she was
12 holding her left arm when she was struck by the
13 bullet?

14 A Yes, this way.

15 Q So like palm out toward you?

16 A Yes.

17 Q And after that bullet hit her, what happened
18 next?

19 A Then a second shot was fired by me striking
20 her in the abdomen.

21 Q Where did you aim the gun?

22 A At her abdomen.

23 Q Marshall, why did you shoot her a second
24 time?

Marshall Morgan, Sr. September 21, 2001

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1 A I guess I was in a rage, I guess, or --

2 Q After you shot her that second time, what was
3 the next thing that happened?

4 A I opened the trunk and placed her body in the
5 trunk of the car.

6 Q Now, what exactly happened to Deborah when
7 that second shot hit her? Did she fall on the
8 ground? Did she remain standing?

9 A She remained standing holding her stomach,
10 and I opened the trunk and placed Deborah's body in
11 there.

12 Q Now, do you know whether or not she was alive
13 or had she expired when you placed her body in the
14 trunk?

15 A She was still alive.

16 Q How do you know that she was still alive?

17 A I saw her hands moving.

18 Q Okay. And you placed her body in the trunk?

19 A Yes.

20 Q And what did you do with the trunk? Did you
21 close the trunk?

22 A Yes, I closed the trunk.

23 Q And after you placed her body in the trunk
24 and closed the trunk, what was the next thing that

1 you did?

2 A Got back in the car, put her purse -- picked
3 her purse up off the ground and put it in the
4 backseat of the car, drove the car to 47th, got out
5 of the car because the trunk popped up, closed the
6 trunk back and parked the car on 47th and Wentworth.

7 Q Now, Marshall, at any point prior to this did
8 Deborah ever threaten you with a gun or another
9 weapon?

10 A No.

11 Q What did you do when you got to 47th -- on
12 47th Street by Wentworth?

13 A I got out of the car, placed the gun and the
14 keys underneath the seat and caught the el.

15 Q Was her purse still around?

16 A Yes.

17 Q What did you do with her purse?

18 A Her purse was on the backseat of the car.

19 Q So you left her purse there?

20 A Yes.

21 Q And did you leave her -- did you leave
22 Deborah in the trunk?

23 A Yes.

24 Q All right. What did you do after you exited

Marshall Morgan, Sr. September 21, 2001

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1 the car?

2 A I went and caught the el train.

3 Q Okay. I'm going to back you up just a
4 moment. I'm going to show you Exhibit 1A. Do you
5 recognize what's depicted in there?

6 A Yes.

7 Q And what location is shown in 1A?

8 A The shooting, where the shooting took place.

9 Q Okay. That's on Wentworth?

10 A Yes.

11 Q Did you say that -- would it be pretty close
12 around 4741?

13 A Yes.

14 Q Now, after you exited the car, you said you
15 went and you got on the train?

16 A Yes.

17 Q And that was the CTA el train?

18 A Yes.

19 Q Where did you take that to?

20 A To 79th Street.

21 Q And what happened when you arrived at 79th
22 Street?

23 A I got off the el train and got on a bus.

24 Q Where did you go then?

1 A The bus to 79th and Damen and walked from
2 79th and Damen to my job which is Barton School.

3 Q So you went back to Barton School?

4 A Yes.

5 Q And how long did you stay at Barton School?

6 A Until 4:00, 4:30.

7 Q So you finished out your workday there?

8 A Yes.

9 Q And after -- at some point, you left Barton
10 School, right?

11 A Yes.

12 Q And where did you go after you left?

13 A To Deborah Jackson's house.

14 Q And why did you go to Deborah Jackson's
15 house?

16 A To be with Brittany.

17 Q Who is Brittany?

18 A Brittany is Deborah Jackson's daughter.

19 Q How old is Brittany?

20 A She's ten.

21 Q Now, when you got to Deborah's house -- where
22 is Deborah's house exactly?

23 A 9754 South Green.

24 Q Now, when you got to Deborah's house, what

Marshall Morgan, Sr. September 21, 2001

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1 did you do?

2 A Talked to Brittany. Brittany wanted to ride
3 her bike.

4 Q And what was the next thing that happened?

5 A We left Deborah's house, Deborah Jackson's
6 house, and Brittany and I went to my sister's house
7 for a wedding reception.

8 Q Okay. And you stayed at your sister's house
9 for some period of time?

10 A Approximately 20 minutes.

11 Q And then what happened?

12 A Then we left and came back to Deborah
13 Jackson's house.

14 Q When you arrive at Deborah's house, was
15 anyone else there?

16 A No.

17 Q Did anyone else arrive over by her house?

18 A Yes.

19 Q Who was that?

20 A Vanessa, Deborah Jackson's sister.

21 Q Did the subject of Deborah come up at all
22 between you and Vanessa or Brittany?

23 A Yes.

24 Q And could you tell us about that?

1 A Well, she asked have we heard from Deborah,
2 and I said I haven't. I asked Vanessa had she heard
3 from Deborah, and she said no. So we asked Brittany,
4 and Brittany said no.

5 Q And what did you do after that?

6 A I waited around to see what Vanessa was going
7 to do with Brittany to make sure that Brittany was
8 okay, and then I left and I went home.

9 Q And that's where, on Ashland?

10 A Yes.

11 Q And what did you do when you went home?

12 A I watched TV.

13 Q Did you remain at home that night?

14 A Yes.

15 Q Now, what happened the next day when you got
16 up?

17 A I got up around 4:00 o'clock, 4:30 that
18 morning and took a -- the bus to 119th, and then from
19 119th to 95th Street where I caught the el.

20 Q Where did you go?

21 A Took the el to 47th Street.

22 Q What happened when you got there?

23 A I got in Deborah's car and drove Deborah's
24 car down to Jefferson off of Washington.

1 Q Okay.

2 A And parked her car and put the keys under the
3 seat and took the gun from under the seat. Proceeded
4 to walk southbound on Jefferson to near the train
5 station where I caught a cab.

6 Q Okay. I'm going to show you Exhibit No. 2.
7 Do you recognize that?

8 A Yes.

9 Q What area is that?

10 A It's where the car was.

11 Q Around Jefferson and Washington?

12 A Yes.

13 Q And I'm going to show you Exhibit No. 3.
14 What does that depict?

15 A That's exactly where the car was parked.

16 Q That's where you parked Deborah's car?

17 A Yes.

18 Q And as far as you know, her body was still in
19 the car?

20 A Yes.

21 Q Did you ever check incidentally to see
22 whether her body was still in the trunk?

23 A No.

24 Q After you drove the car over by Jefferson and

1 Q I'm going to show you Exhibit No. 5. Do you
2 recognize that?

3 A Yes.

4 Q What does that portray?

5 A That's where the gun was thrown.

6 Q And when you say the gun was thrown there,
7 who threw the gun?

8 A I did.

9 Q And you were alone at that time, right?

10 A Yes.

11 Q Now, you've been here at Area 4 since
12 Tuesday, correct?

13 A Yes.

14 Q All right. And when you first came here, did
15 you come here under arrest or did you come here
16 voluntarily to answer questions?

17 A Voluntary.

18 Q And the day or two following that, were you
19 here voluntarily?

20 A Yes.

21 Q And how have you been treated by the
22 detectives and the police in general since you've
23 been here at Area 4?

24 A Very good.

1 Q And how have I treated you since we met
2 today?

3 A Very good.

4 Q Have you been given things to eat?

5 A Yes.

6 Q What sorts of things have you been eating
7 every day?

8 A Hamburgers, chicken, pop, candy bars.

9 Q And have you been given beverages to drink?

10 A Yes.

11 Q Have you been allowed access to the bathroom?

12 A Yes.

13 Q Do you have any complaints whatsoever about
14 the way that either I've treated you or the police
15 have treated you?

16 A No.

17 Q Now, when you first came in to Area 4 and you
18 were asked questions regarding the death of Deborah
19 Jackson, did you tell the truth at that time?

20 A No.

21 Q When was the very first time that you
22 actually told the whole truth?

23 A Today.

24 Q And who was present when you told the truth?

1 statement and choosing now to tell us the truth?

2 A I wanted to clear my conscious and take
3 responsibility for what I had done.

4 Q And what is it that you think you're
5 responsible for?

6 A The death of Deborah Jackson.

7 Q And right. Now or at any point since you've
8 been here, have you been under the influence of drugs
9 or alcohol?

10 A No.

11 MR. KIRK: This now concludes the statement of
12 Marshall Morgan.

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Micaela Soto Affidavit

I, Micaela Soto, under oath and penalty of perjury, state the following:

1. My name is Micaela Soto.
2. I am the daughter of Michelle Soto, who was murdered in July of 1995 when I was 11 years old. Nobody was ever prosecuted for the crime.
3. My mom and I were living with Marshall Morgan, Sr. before she was killed. She and Morgan, Sr. had been dating for a few years and had lived together for almost a year.
4. For a few months before my mom was killed, she had begun staying over at my dad's house some of the time. During that time, she was still living with Morgan, Sr. Morgan, Sr. didn't like that my mom was seeing my dad.
5. I remember Morgan, Sr. and my mom fighting a lot in the months before her murder.
6. In the months leading up to my mom's murder, she had become increasingly worried about her own safety. She talked to me several times about where I would live if anything ever happened to her. She sent me to live with my dad because she was concerned for my safety.
7. About one month before her murder, my mom gave all of her important documents to her sister in case something bad happened to her. I think she did this because she was afraid of what Morgan, Sr. was going to do. My aunt gave these documents to the State's Attorney who was in charge of investigating the case. The documents were never returned.
8. After my mom's funeral, Morgan, Sr. sold her house and kept all of her personal possessions. I didn't get to keep any of my mom's things. I believe he forged the deed on the house so that he could sell it after killing her.
9. I believe that Marshall Morgan, Sr. murdered my mom. I have always thought that he was the killer. The rest of my family also thinks Morgan, Sr. is the killer.
10. When I spoke to the detectives after my mom's murder, I told them that I thought Morgan, Sr. was responsible. They asked me about my mom's relationship with Morgan, Sr., and I told them that they argued often.
11. I would like to see Marshall Morgan, Sr. prosecuted for my mom's murder. He deserves to be in jail for what he did to my mom.
12. I give this affidavit of my own free will. No threats or promises have been made to me.

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

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4 HAROLD HILL and A.C. YOUNG, on)
behalf of the estate of DAN)
5 YOUNG, JR.,)
6 Plaintiff,)

7 -vs-) No. 06 C 6772

8 CITY OF CHICAGO, Present and)
Former Chicago Police Officers)
9 KENNETH BOUDREAU, JOHN HALLORAN,)
JAMES O'BRIEN, JON BURGE, ANDREW)
10 CHRISTOPHERSON, DANIEL McWEENY,)
MICHAEL KILL, WILLIAM MOSER, JOHN)
11 PALADINO, MICHAEL FORCHORDO,)
DANIEL BRANNIGAN, ASSISTANT)
12 STATE'S ATTORNEY MIKE ROGERS, and)
other AS-YET-KNOWN CHICAGO POLICE)
13 OFFICERS,)
14 Defendants.)

15

16 Deposition of JOHN HALLORAN taken before
17 ROBBIN M. OCHENKOWSKI, C.S.R., and Notary Public,
18 pursuant to the Federal Rules of Civil Procedure for the
19 United States District Courts pertaining to the taking
20 of depositions, at Suite 100, 312 North May Street, in
21 the City of Chicago, Cook County, Illinois at 12:37 p.m.
22 on the 26th day of November, A.D., 2008.

23 There were present at the taking of this
24 deposition the following counsel:

MERRILL LEGAL SOLUTIONS

www.merrillcorp.com/law 311 S. Wacker Drive, Suite 300 Chicago, IL 60606 312.386.2200 Tel

1 You can make your response.

2 THE WITNESS: A I invoke my Fifth Amendment right
3 to remain silent.

4 MR. AINSWORTH: Q Did you interrogate a person by
5 the name of Tyrone Hood in May of 1993?

6 MR. McGOVERN: Object to form and foundation.

7 MR. POLICK: Join in the foundation objection.

8 You can make your response.

9 THE WITNESS: A I invoke my Fifth Amendment right
10 to remain silent.

11 MR. AINSWORTH: Q Did you twist Tyrone Hood's arm
12 during the course of your interrogation of him at
13 Area 1?

14 MR. McGOVERN: Object to form and foundation.

15 MR. POLICK: Join in the objections.

16 You can make your response.

17 THE WITNESS: A I invoke my Fifth Amendment right
18 to remain silent.

19 MR. AINSWORTH: Q Did you push Tyrone Hood against
20 the wall of an interrogation room during his questioning
21 at Area 1 in 1993?

22 MR. McGOVERN: Object to form and foundation.

23 MR. POLICK: Join in the foundation objection.

24 You can make your response.

1 THE WITNESS: A I invoke my Fifth Amendment right
2 to remain silent.

3 MR. AINSWORTH: Q Did you strike Tyrone Hood during
4 your interrogation of him in May of 1993?

5 MR. McGOVERN: Object to form and foundation.

6 MR. POLICK: Join in the objections.

7 You can make your response.

8 THE WITNESS: A I invoke my Fifth Amendment right
9 to remain silent.

10 MR. AINSWORTH: Q Did you point a gun at
11 Tyrone Hood's head during his interrogation at Area 1?

12 MR. McGOVERN: Object to form and foundation.

13 MR. POLICK: Join in the foundation objection.

14 You can make your response.

15 THE WITNESS: A I invoke my Fifth Amendment right
16 to remain silent.

17 MR. AINSWORTH: Q Did you observe another detective
18 place a gun against --

19 Strike that.

20 Did you observe another detective point a gun
21 at Tyrone Hood's head during his interrogation at
22 Area 1?

23 MR. McGOVERN: Object to form and foundation.

24 MR. POLICK: Join in the objections.

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CIISO

1 You can make your response.

2 THE WITNESS: I invoke my Fifth Amendment right to
3 remain silent.

4 MR. AINSWORTH: Q Did you threaten Tyrone Hood with
5 physical abuse if he did not confess to a murder?

6 MR. McGOVERN: Object to form and foundation.

7 MR. POLICK: Join in the objections.

8 You can make your response.

9 THE WITNESS: A I invoke my Fifth Amendment right
10 to remain silent.

11 MR. AINSWORTH: Q Tyrone Hood never told you
12 anything to the effect of if I don't say anything to
13 explain, I'll go to jail for a long time; if I do tell
14 what happened, I'll go to jail?

15 MR. McGOVERN: Object to form and foundation and
16 argumentative.

17 MR. POLICK: Join in the objections.

18 You can make your response.

19 THE WITNESS: A I invoke my Fifth Amendment right
20 to remain silent.

21 MR. AINSWORTH: Q You fabricated --

22 Strike that.

23 You fabricated Tyrone Hood's statement that, if
24 I don't say anything to explain, I'll go to jail for a

1 MR. POLICK: What was the name, Counsel?

2 MR. AINSWORTH: Jody Rogers.

3 MR. POLICK: I'll join in the foundation objection.

4 You can make your response.

5 THE WITNESS: A I invoke my Fifth Amendment right
6 to remain silent.

7 MR. AINSWORTH: Q Did you strike Jody Rogers during
8 the time that you questioned him in May of 1993 at
9 Area 1?

10 MR. McGOVERN: Object to form and foundation.

11 MR. POLICK: Join in the objections.

12 You can make your response.

13 THE WITNESS: A I invoke my Fifth Amendment right
14 to remain silent.

15 MR. AINSWORTH: Q Did you threaten to cause
16 physical harm to Jody Rogers if he did not implicate
17 Tyrone Hood in a murder?

18 MR. McGOVERN: Object to form and foundation.

19 MR. POLICK: Join in the objections.

20 You can make your response.

21 THE WITNESS: A I invoke my Fifth Amendment right
22 to remain silent.

23 MR. AINSWORTH: Q Did you tell Jody Rogers that if
24 he didn't implicate Tyrone Hood that Mr. Rogers would be

1 charged with the murder?

2 MR. McGOVERN: Object to form and foundation.

3 MR. POLICK: Join in the objections.

4 You can make your response.

5 THE WITNESS: A I invoke my Fifth Amendment right
6 to remain silent.

7 MR. AINSWORTH: Q Did you tell Jody Rogers that he
8 could not leave the police station unless he said that
9 he either saw the murder --

10 Strike that.

11 Did you tell Tyrone --

12 Strike that.

13 Did you tell Jody Rogers that he could not go
14 home unless he implicated Tyrone Hood?

15 MR. McGOVERN: Object to form and foundation.

16 MR. POLICK: Join in the objections.

17 You can make your response.

18 THE WITNESS: A I invoke my Fifth Amendment right
19 to remain silent.

20 MR. AINSWORTH: Q Did you tell Jody Rogers that he
21 could not go home unless he said that he saw Tyrone Hood
22 commit a murder?

23 MR. McGOVERN: Object to form and foundation.

24 MR. POLICK: Join in the objections.

1 You can make your response.

2 THE WITNESS: I invoke My Fifth Amendment right to
3 remain silent.

4 MR. AINSWORTH: Q Did you tell Jody Rogers that he
5 could not leave the police station unless he said that
6 he heard Tyrone talk about having committed a murder?

7 MR. McGOVERN: Object to form and foundation.

8 MR. POLICK: Join in the objections.

9 You can respond.

10 THE WITNESS: A I invoke my Fifth Amendment right
11 to remain silent.

12 MR. AINSWORTH: Q Did you twist Jody Rogers' arm
13 during this interrogation at Area 1?

14 MR. McGOVERN: Object to form and foundation.

15 MR. POLICK: Join in the objections.

16 You can make your response.

17 THE WITNESS: A I invoke my Fifth Amendment right
18 to remain silent.

19 MR. AINSWORTH: Q Did you push Jody Rogers against
20 a wall of the interrogation room?

21 MR. McGOVERN: Object to form and foundation.

22 MR. POLICK: Join in the objections.

23 You can make your response.

24 THE WITNESS: A I invoke my Fifth Amendment right

1 to remain silent.

2 MR. AINSWORTH: Q Did you interrogate Jody Rogers'
3 brother Michael Rogers in May of 1993?

4 MR. McGOVERN: Object to form and foundation.

5 MR. POLICK: Join in the objections.

6 You can make your response.

7 THE WITNESS: A I invoke my Fifth Amendment right
8 to remain silent.

9 MR. AINSWORTH: Q Did you threaten Michael Rogers
10 with physical abuse if he didn't implicate Tyrone Hood
11 in a murder?

12 MR. McGOVERN: Object to form and foundation.

13 MR. POLICK: Join in the objections.

14 You can respond.

15 THE WITNESS: A I invoke my Fifth Amendment right
16 to remain silent.

17 MR. AINSWORTH: Q Did you threaten Michael Rogers
18 that, if he didn't implicate Tyrone Hood in the murder,
19 then his brother Jody Rogers would go to jail?

20 MR. McGOVERN: Object to form and foundation.

21 MR. POLICK: Join in the objections.

22 You can respond.

23 THE WITNESS: A I invoke my Fifth Amendment right
24 to remain silent.

1 MR. AINSWORTH: Q You never --

2 Strike that.

3 You took notes of your interrogation with
4 Michael Rogers, is that correct?

5 MR. McGOVERN: Object to form and foundation.

6 MR. POLICK: Join in the objections.

7 You can make your response.

8 THE WITNESS: A I invoke my Fifth Amendment right
9 to remain silent.

10 MR. AINSWORTH: Q You never turned over your notes
11 that you took of your interrogation of Michael Rogers to
12 the prosecution, is that correct?

13 MR. McGOVERN: Object to form and foundation.

14 MR. POLICK: Join in the objections.

15 You can respond.

16 THE WITNESS: A I invoke my Fifth Amendment right
17 to remain silent.

18 MR. AINSWORTH: Q You struck Michael Rogers during
19 your interrogation of him in May of 1993?

20 MR. McGOVERN: Object to form and foundation.

21 MR. POLICK: Join in the foundation objection.

22 You can make your response.

23 THE WITNESS: A I invoke my Fifth Amendment right
24 to remain silent.

1 MR. AINSWORTH: Q Did you interrogate a person by
2 the name of Joe West in May of 1993?

3 MR. McGOVERN: Object to form and foundation.

4 MR. POLICK: Join in the foundation objection.

5 You can make your response.

6 THE WITNESS: I invoke my Fifth Amendment right to
7 remain silent.

8 MR. AINSWORTH: Q Did you tell Joe West that he
9 could not leave until he agreed to either implicate
10 himself or Tyrone Hood?

11 MR. McGOVERN: Object to form and foundation.

12 MR. POLICK: Join in the objections.

13 You can make your response.

14 THE WITNESS: A I invoke my Fifth Amendment right
15 to remain silent.

16 MR. AINSWORTH: Q Did you tell Tyrone --

17 Strike that.

18 Did you tell Joe West details about the murder
19 with which Tyrone Hood was charged so that he could give
20 a statement implicating Tyrone Hood in that regard?

21 MR. McGOVERN: Object to form and foundation.

22 MR. POLICK: Join in the objections.

23 You can respond.

24 THE WITNESS: A I invoke my Fifth Amendment right

1 to remain silent.

2 MR. AINSWORTH: Q Did you threaten Joe West with
3 physical abuse unless he implicated himself or
4 Tyrone Hood in the murder of Marshall Morgan?

5 MR. McGOVERN: Object to form and foundation.

6 MR. POLICK: Join in the objections.

7 You can respond.

8 THE WITNESS: A I invoke my Fifth Amendment right
9 to remain silent.

10 MR. AINSWORTH: Q Did you question Wayne Washington
11 in regard to the Marshall Morgan murder?

12 MR. McGOVERN: Object to form and foundation.

13 Whose murder was this?

14 MR. AINSWORTH: Marshall Morgan.

15 MR. POLICK: And the name of the person?

16 MR. AINSWORTH: Wayne Washington.

17 MR. POLICK: Thank you.

18 I'll join in the foundation objection.

19 You can make your response.

20 THE WITNESS: A I invoke my Fifth Amendment right
21 to remain silent.

22 MR. AINSWORTH: Q Did you strike William Washington
23 during his interrogation about the Marshall Morgan
24 murder?

1 MR. McGOVERN: Object to form and foundation.

2 MR. POLICK: Join in the objections.

3 You can respond.

4 THE WITNESS: A I invoke my Fifth Amendment right
5 to remain silent.

6 MR. AINSWORTH: Q Did you threaten Wayne Washington
7 with physical abuse if he did not implicate Tyrone Hood
8 in the murder of Marshall Morgan?

9 MR. McGOVERN: Object to form and foundation.

10 MR. POLICK: Join in the objections.

11 You can respond.

12 THE WITNESS: A I invoke my Fifth Amendment right
13 to remain silent.

14 MR. AINSWORTH: Q Did you strike Wayne Washington
15 with the intent of getting him to give a statement
16 implicating Tyrone Hood in the murder of
17 Marshall Morgan?

18 MR. McGOVERN: Object to form and foundation.

19 MR. POLICK: I join in the objections.

20 You can respond.

21 THE WITNESS: A I invoke my Fifth Amendment right
22 to remain silent.

23 MR. AINSWORTH: Q Did you interrogate Antoine Ward
24 in 1994 at Area 1?

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through them and identify anyone that he knew or recognized. Joe look through them and identified 2 pictures, Tyronne Hood and Wayne Washington. After Joe made these identifications the detectives really got mad and started slamming things around, and accused Joe of murdering "the next Michael Jordan." One detective even pulled out his gun, pointed it at Joe and asked "where did you shoot him?" As he asked Joe this question he pointed his gun at various parts of Joe's body. Joe denied any involvement, but it was apparent to him that the police didn't believe him, because they kept yelling at him "you did it, we know you did it just tell us how it happened."

After many hours of questioning Joe got very tired, frustrated and was scared. Joe realized that the only way he would be released would be to tell the police something about the murder so he decided to tell the police a lie. Joe told the police that he was walking down the street drinking beer and was picked up by Tyronne Hood. Once in the car he noticed a body in the back seat on the floor. After he was dropped off he saw Tyronne park the car down the street from him and heard 2 gun shots from the car. This story that he told the police however was a lie. The story was just something he made up. He never met Tyronne Hood that day, he never saw Tyronne Hood drive a car, he never saw a body in the back seat of that car, and he never heard 2 gun shots come from that car. Joe West stated that in fact he was in his apartment that entire weekend when it happened. He was in from Friday night May 7 till Monday night May 10, 6:00 p.m. when he finally left to go get his nephew Darnell Mitchell at the police station at 11th Street.

Joe West stated that once he told the police this story they became nice to him and fed him. He still wasn't allowed to leave however until he repeated the same story to the Grand Jury. Joe West agreed to do so and told the Grand Jury the same story even though it wasn't the truth. Joe told this lie because he wanted to go home.

Joe West has given this statement voluntarily without any promises or threats against him. Joe has read over the entire statement and has agreed to sign it because it is the truth.

Joseph West

Sandra Hunter 1-21-94

12:56 pm

Amos M. Miller

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1 homicide?

2 MR. POLICK: Objection to the form.

3 MS. McINNIS: Join.

4 MR. POLICK: You can respond.

5 THE WITNESS: Again, I revert to my previous answer
6 and I invoke my Fifth Amendment right to remain silent.

7 MR. AINSWORTH: Q Were you present when Detective
8 Boudreau questioned Sean Tyler on the Rodney Collins
9 homicide?

10 MS. McINNIS: Object to form and foundation.

11 MR. POLICK: Join.

12 You can respond.

13 THE WITNESS: Again, I revert to my previous answer
14 and I invoke my Fifth Amendment right to remain silent.

15 MR. AINSWORTH: Q Did you investigate the murder
16 of Marshall Morgan in 1993?

17 MR. POLICK: You can respond.

18 THE WITNESS: Again, I revert to my previous answer
19 and I invoke my Fifth Amendment right to remain silent.

20 MR. AINSWORTH: Q In the course of investigating
21 the Marshall Morgan murder, did you question a man by
22 the name of Joe West?

23 MS. McINNIS: Object to form and foundation.

24 MR. POLICK: Join.

1 You can respond.

2 THE WITNESS: Again, I revert to my previous answer
3 and I invoke my Fifth Amendment right to remain silent.

4 MR. AINSWORTH: Q Did you question Joe West on May
5 27th and May 28th of 1993?

6 MR. POLICK: You can respond.

7 THE WITNESS: Again, I revert to my previous answer
8 and I invoke my Fifth Amendment right to remain silent.

9 MR. AINSWORTH: Q Did you tell Joe West that he
10 was not free to leave Area 1 during your questioning of
11 him about the Marshall Morgan murder?

12 MS. McINNIS: Object to form and foundation.

13 MR. POLICK: You can respond.

14 THE WITNESS: Again, I'll revert to my previous
15 answer and I invoke my Fifth Amendment right to remain
16 silent.

17 MR. AINSWORTH: Q When you left the room after
18 questioning Joe West, did you lock the door to the room
19 in which he was being held?

20 MS. McINNIS: Object to form and foundation.

21 MR. POLICK: Join.

22 You can respond.

23 THE WITNESS: Again, I revert to my previous answer
24 and I invoke my Fifth Amendment right to remain silent.

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1 MR. AINSWORTH: Q Did Joe West ask you to be
2 allowed to make a phone call while he was at Area 1?

3 MS. McINNIS: Object to form and foundation.

4 MR. POLICK: Join.

5 You can respond.

6 THE WITNESS: Again, I revert to my previous answer
7 and I invoke my Fifth Amendment right to remain silent.

8 MR. AINSWORTH: Q Did you deny Joe West the
9 opportunity to call -- to make a phone call while he was
10 being held at Area 1?

11 MS. McINNIS: Object to form and foundation.

12 MR. POLICK: Join.

13 You can respond.

14 THE WITNESS: Again, I revert to my previous answer
15 and I invoke my Fifth Amendment right to remain silent.

16 MR. AINSWORTH: Q Did you strike Joe West during
17 the time that he was being questioned at Area 1?

18 MS. McINNIS: Object to form and foundation.

19 MR. POLICK: Join.

20 You can respond.

21 THE WITNESS: Again, I revert to my previous answer
22 and I invoke any Fifth Amendment right to remain silent.

23 MR. AINSWORTH: Q Did you observe Detective
24 Halloran strike Joe West while he was questioning Mr.

1 West at Area 1?

2 MS. McINNIS: Object to form and foundation.

3 MR. POLICK: Join in the objections.

4 You can respond.

5 THE WITNESS: Again, I revert to my previous answer
6 and I invoke any Fifth Amendment right to remain silent.

7 MR. AINSWORTH: Q Did you hear Detective Halloran
8 tell Joe West that he was not free to leave while he was
9 at Area 1 on May 27th and May 28th of 1993?

10 MS. McINNIS: Object to form and foundation.

11 MR. POLICK: Join.

12 You can respond.

13 THE WITNESS: Again, I revert to my previous answer
14 and I invoke my Fifth Amendment right to remain silent.

15 MR. AINSWORTH: Q Did Joe West ask you to be
16 allowed to contact an attorney while he was being held
17 at Area 1?

18 MS. McINNIS: Object to form and foundation.

19 MR. POLICK: Join.

20 You can respond.

21 THE WITNESS: Again, I revert to my previous answer
22 and invoke my Fifth Amendment right to remain silent.

23 MR. AINSWORTH: Q Did Joe West ask you to be
24 allowed to contact an attorney while he was at Area 1?

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1 MR. POLICK: Object to the foundation.
2 You can respond.

3 MS. McINNIS: Join in the objection.

4 THE WITNESS: Again, I revert to my previous answer
5 and I invoke my Fifth Amendment right to remain silent.

6 MR. AINSWORTH: Q Did you deny Joe West the
7 opportunity to call an attorney while he was at Area 1?

8 MS. McINNIS: Object to form and foundation.

9 MR. POLICK: Join.
10 You can respond.

11 THE WITNESS: Again, I revert to my previous answer
12 and I invoke my Fifth Amendment right to remain silent.

13 MR. AINSWORTH: Q Did Joe West ask you for food
14 while he was at Area 1?

15 MS. McINNIS: Object to form and foundation.

16 MR. POLICK: Join.
17 You can respond.

18 THE WITNESS: Again, I revert to my previous answer
19 and I invoke my Fifth Amendment right to remain silent.

20 MR. AINSWORTH: Q Did you deny Joe West the
21 opportunity to eat while he was at Area 1?

22 MS. McINNIS: Object to form and foundation.

23 MR. POLICK: Join.
24 You can respond.

1 THE WITNESS: Again, I revert to my previous answer
2 and I invoke any Fifth Amendment right to remain silent.

3 MR. AINSWORTH: Q Did Joe West ask to use the
4 bathroom while he was at Area 1?

5 MS. McINNIS: Object to form and foundation.

6 MR. POLICK: Join.

7 You can response.

8 THE WITNESS: Again, I revert to my previous answer
9 and I invoke my Fifth Amendment right to remain silent.

10 MR. AINSWORTH: Q Did you refuse to allow Joe West
11 to use the bathroom while he was at Area 1?

12 MS. McINNIS: Object to the form and foundation.

13 MR. POLICK: Join.

14 You can respond.

15 THE WITNESS: Again, I revert to my previous answer
16 and I invoke my Fifth Amendment right to remain silent.

17 MR. AINSWORTH: Q Did you tell Joe West he could
18 not leave Area 1 until he either implicated himself or
19 Tyrone Hood?

20 MS. McINNIS: Object to form and foundation.

21 MR. POLICK: Join.

22 You can respond.

23 THE WITNESS: Again, I revert to my previous answer
24 and I invoke my Fifth Amendment right to remain silent.

1 MR. AINSWORTH: Q Did you interrogate Tyrone Hood
2 in May of 1993 regarding the Marshall Morgan homicide?

3 MR. POLICK: You can respond.

4 THE WITNESS: Again, I revert to my previous answer
5 and I invoke my Fifth Amendment right to remain silent.

6 MR. AINSWORTH: Q Did you strike Tyrone Hood
7 during his interrogation in May of 1993?

8 MS. McINNIS: Object to the form and foundation.

9 MR. POLICK: Join.

10 You can respond.

11 THE WITNESS: Again, I revert to my previous answer
12 and I invoke my Fifth Amendment right to remain silent.

13 MR. AINSWORTH: Q Did you observe Detective Clancy
14 strike Tyrone Hood during his interrogation?

15 MS. McINNIS: Object to form and foundation.

16 MR. POLICK: Join.

17 You can respond.

18 THE WITNESS: Again, I revert to my previous answer
19 and I invoke my Fifth Amendment right to remain silent.

20 MR. AINSWORTH: Q Did you observe Detective
21 Lenihan strike Tyrone Hood during his interrogation at
22 Area 1?

23 MS. McINNIS: Object to form and foundation.

24 MR. POLICK: Join in the objections.

1 You can respond.

2 THE WITNESS: Again, I revert to my previous answer
3 and I invoke my Fifth Amendment right to remain silent.

4 MR. AINSWORTH: Q When you observed Tyrone Hood at
5 Area 1 in May of 1993, did you observe visual injuries
6 to his face?

7 MS. McINNIS: Object to form and foundation.

8 MR. POLICK: Join in the objections.

9 You can respond.

10 THE WITNESS: Again, I revert to my previous answer
11 and I invoke my Fifth Amendment right to remain silent.

12 MR. AINSWORTH: Q Did you point a gun at Tyrone
13 Hood's head during his interrogation at Area 1?

14 MS. McINNIS: Object to form and foundation.

15 MR. POLICK: Join.

16 You can respond.

17 THE WITNESS: Again, I revert to my previous answer
18 and I invoke my Fifth Amendment right to remain silent.

19 MR. AINSWORTH: Q Did you observe Detective Clancy
20 point a gun at Tyrone Hood's head during his
21 interrogation at Area 1?

22 MS. McINNIS: Object to form and foundation.

23 MR. POLICK: Join.

24 You can respond.

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1 THE WITNESS: Again, I revert to my previous answer
2 and I invoke my Fifth Amendment right to remain silent.

3 MR. AINSWORTH: Q Did you observe Detective
4 Lenihan point a gun at Tyrone Hood's head during his
5 interrogation at Area 1?

6 MS. McINNIS: Object to form and foundation.

7 MR. POLICK: Join.

8 You can respond.

9 THE WITNESS: Again, I revert to my previous answer
10 and I invoke my Fifth Amendment right to remain silent.

11 MR. AINSWORTH: Q Did you fabricate the following
12 statement attributed -- that you attributed to Tyrone
13 Hood: If I don't say anything to explain, I'll go to
14 jail for a long time. If I do tell what happened, I'll
15 go to jail?

16 MS. McINNIS: Object to form and foundation.

17 MR. POLICK: Join.

18 You can respond.

19 THE WITNESS: Again, I revert to my previous answer
20 and I invoke my Fifth Amendment right to remain silent.

21 MR. AINSWORTH: Q Is it true that Tyrone Hood
22 never told you anything to the effect of if I don't say
23 anything to explain, I'll go to a jail for a long time;
24 if I do tell what happened, I'll go to jail?

1 MS. McINNIS: Object to form and foundation.

2 MR. POLICK: Join.

3 You can respond.

4 THE WITNESS: Again, I revert to my previous answer
5 and I invoke my Fifth Amendment right to remain silent.

6 MR. AINSWORTH: Q Did you use physical force
7 against Tyrone Hood with the intent of getting him to
8 give a false confession in his case?

9 MS. McINNIS: Object to form and foundation.

10 MR. POLICK: You can respond.

11 THE WITNESS: Again, I revert to my previous answer
12 and I invoke my Fifth Amendment right to remain silent.

13 MR. AINSWORTH: Q Did you have a conversation with
14 Detectives Clancy and Lenihan about getting Tyrone Hood
15 to give a false confession?

16 MR. POLICK: Object to the foundation.

17 MS. McINNIS: Join.

18 MR. POLICK: You can respond.

19 THE WITNESS: Again, I revert to my previous answer
20 and I invoke my Fifth Amendment right to remain silent.

21 MR. AINSWORTH: Q Did you hold Tyrone Hood at Area
22 1 for over 48 hours with the intent of getting him to
23 falsely confess?

24 MS. McINNIS: Object to form and foundation.

1 MR. POLICK: Join.

2 You can respond.

3 THE WITNESS: Again, I revert to my previous answer
4 and I invoke my Fifth Amendment right to remain silent.

5 MR. AINSWORTH: Q Did you observe Detective Clancy
6 strike Tyrone Hood repeatedly in the body?

7 MS. McINNIS: Object to form and foundation.

8 MR. POLICK: Join in the objections.

9 You can respond.

10 THE WITNESS: Again, I revert to my previous answer
11 and I invoke my Fifth Amendment right to remain silent.

12 MR. AINSWORTH: Q Did you observe Detective
13 Lenihan repeatedly beat Tyrone Hood in the body while he
14 was being interrogated at Area 1?

15 MS. McINNIS: Object to the form and foundation.

16 MR. POLICK: Join in the objections.

17 You can respond.

18 THE WITNESS: Again, I revert to my previous answer
19 and I invoke my Fifth Amendment right to remain silent.

20 MR. AINSWORTH: Q Did you observe Detective
21 Boudreau repeatedly beat Tyrone Hood in the body while
22 he was at Area 1?

23 MS. McINNIS: Object to form and foundation.

24 MR. POLICK: Join in the objections.

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1 You can respond.

2 THE WITNESS: Again, I revert to my previous answer
3 and I invoke my Fifth Amendment right to remain silent.

4 MR. AINSWORTH: Q Did you observe Detective
5 Halloran beat Tyrone Hood repeatedly in the body while
6 he was being interrogated at Area 1?

7 MS. McINNIS: Object to form and foundation.

8 MR. POLICK: Join in the objections.

9 You can respond.

10 THE WITNESS: Again, I revert to my previous answer
11 and I invoke my Fifth Amendment right to remain silent.

12 MR. AINSWORTH: Q Did you have a conversation with
13 Detective Halloran about getting Tyrone Hood to give a
14 false confession?

15 MR. POLICK: Object to the foundation.

16 MS. McINNIS: Join. And also form.

17 MR. POLICK: You can respond.

18 THE WITNESS: Again, I revert to my previous answer
19 and I invoke my Fifth Amendment right to remain silent.

20 MR. AINSWORTH: Q Did you have a conversation with
21 Detective Boudreau about getting Tyrone Hood to give a
22 false confession?

23 MS. McINNIS: Object to form and foundation.

24 MR. POLICK: Join in the objections.

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1 You can respond.

2 THE WITNESS: Again, I revert to my previous answer
3 and I invoke my Fifth Amendment right to remain silent.

4 MR. AINSWORTH: Q Did you have a conversation with
5 either Detective Halloran or Detective Boudreau about
6 getting Tyrone Hood to give a false confession before
7 the conclusion of his interrogation in May of 1993?

8 MS. McINNIS: Object to form and foundation.

9 MR. POLICK: Join in the objections.

10 You can respond.

11 THE WITNESS: Again, I revert to my previous answer
12 and I invoke my Fifth Amendment right to remain silent.

13 MR. AINSWORTH: Q Did you question Maurice Lane at
14 Area 3 on July 6th, 1992?

15 A Again, I revert to my previous answer and I
16 invoke my Fifth Amendment right to remain silent.

17 Q Did you strike Maurice Lane in the body on July
18 6th, 1992?

19 MS. McINNIS: Object to form and foundation.

20 MR. POLICK: You can respond.

21 THE WITNESS: Again, I revert to my previous answer
22 and I invoke my Fifth Amendment right to remain silent.

23 MR. AINSWORTH: Q Did you strike Maurice Lane with
24 a shotgun on July 6th, 1992, at Area 3?

2. Newly discovered evidence confirms that the true perpetrator was the victim's father, Marshall Morgan, Sr. He had a strong financial motive to kill Morgan, Jr. and has a history of violence that is long and patterned. Finally, the police detectives have since pled the Fifth Amendment rather than answer questions under oath about their alleged misconduct. This combined with recantations from witnesses, whose testimony was the product of police coercion and undisclosed benefits, requires this Court vacate this conviction.

3. Just months before Morgan, Jr. was killed, things had turned bad for Morgan, Sr.: He was destitute; served with divorce papers; served with an order of protection after he held his soon-to-be-ex-wife at gunpoint and tried to choke her; sued for child support by a second woman; and served with a mortgage foreclosure on his house. Despite these seemingly insurmountable financial debts, Morgan, Sr. took out a life insurance policy on his healthy, 20 year-old son, Morgan, Jr., which required Morgan Sr. to make an initial and monthly payments. Just a few short months later, Morgan, Jr. was found dead; Morgan, Sr. collected \$50,000 on his son's policy.

4. Morgan, Jr.'s mother told police that Morgan, Sr. should be investigated for her son's death. The police ignored her.

5. Morgan, Jr. was shot and killed with a .38 caliber handgun and his disrobed body was left in a car in an abandoned area.

6. Morgan, Sr. had previously pled guilty to shooting and killing his friend William Hall with a .38 caliber handgun and leaving his body in an abandoned area.

7. Less than two years after his son was killed, Morgan, Sr.'s then-fiancée, Michelle Soto, was shot and killed, her nude body left to die in an abandoned car. As was true for Morgan, Jr., just months prior to Soto's death, Morgan, Sr. had taken out a life insurance policy on Soto. Morgan Sr. had also transferred the deed to Soto's house into his own name. When Soto was killed, Morgan, Sr. collected \$107,000 on the life insurance policy.

8. Soto's daughter, Micaela Soto, like Morgan, Jr.'s mother, begged the police to investigate Morgan, Sr. As she explains, "[w]hen I spoke to the detectives after my mom's murder, I told them that I thought Morgan was responsible." Soto Aff. at ¶ 10 (Exhibit 36). But the police again ignored Morgan, Sr. as a suspect. To date, Micaela Soto still hopes that "Marshall Morgan, [will be] prosecuted for [her] mom's murder. He deserves to be in jail for what he did to my mom." *Id.* at ¶ 11.

9. Morgan, Sr. was not done. In 2001, Morgan, Sr.'s then-girlfriend, Deborah Jackson, was shot and killed, her partially nude body left to die in yet another abandoned car. Morgan, Sr. gave a videotaped confession to the murder and in May 2008, Morgan, Sr. was convicted and sentenced to 75 years in prison.

10. This pattern of ruthless killing demonstrates a clear *modus operandi*: Morgan, Sr. has killed close friends and loved ones for financial gain by shooting them with a .38 caliber gun and leaving their partially or fully nude bodies to die in and around abandoned cars.

11. Washington was barred from presenting evidence relating to Morgan, Sr.'s responsibility for the killing at his original trial too attenuated and barred any mention of Morgan, Sr.'s criminal liability. Such liabilities are no longer extant: With his 2008 conviction,

Morgan, Sr.'s *modus operandi* is firmly established, inculpating him in the murder of his son and exonerating Washington of this crime.

12. This court ought vacate this conviction because, at the time of Washington's plea, important new evidence was unknown to both him and his counsel. **First**, there is substantial new evidence suggesting that Marshall Morgan, Sr. is the true killer. This information is strongly indicative of Washington's innocence. **Second**, Michael and Jody Rogers now admit that their testimony at his first trial – which was an integral component of the State's case and contributed to the eventual plea, was false. **Third**, Washington's due process rights were violated by the use of testimony and information gleaned from witnesses by coercive means. **Fourth**, in violation of Brady, the State failed to disclose exculpatory information. **Fifth**, the cumulative effect of these elements demands a new proceeding, and the vacation of the plea.

13. Mr. Washington spent years in jail for a crime he did not commit.

14. Although he pled guilty, that plea could not have been knowing and voluntary given the pervasive denial of due process. A Defendant can vacate a plea when he is denied due process, innocent, and there is compelling evidence previously unavailable.

15. A claim of actual innocence, as is being set forth herein, implicates due process under our State constitution, and the Constitution of the United States. The State should not be allowed to exhaustively violate the Defendant's rights and then claim he is procedurally barred from seeking redress. Rather the Court should consider this request without regard to any procedural limitation.

after Hood

PROCEDURAL HISTORY

16. In 1995, Wayne Washington went to trial before a jury. The jury could not reach a verdict.

17. On May 6, 1996, following a bench trial before the Honorable Judge Michael Bolan, Tyrone Hood was convicted of first degree murder and armed robbery. Hood was sentenced to a total of 75 years in the Illinois Department of Corrections ("IDOC").

18. On October 21, 1996 Washington plead guilty and was sentenced to 25 years in IDOC.

FACTS

I. The Murder of Marshall Morgan, Jr.

19. On May 17, 1993, Marshall Morgan, Jr. was found murdered in the back of his family's abandoned car. His half-naked body was on the floor, wedged between the front and back seats. CPD Supp. Report, 21 May 1993 at 6 (Exhibit 15).

20. According to the police reports, Morgan, Jr.'s father, Marshall Morgan, Sr., was one of the last people to see Morgan, Jr. before he disappeared. CPD Supp. Report, 13 June 1993 at 4-5 (Exhibit 3). Morgan, Jr. had driven to Corliss High School, where Morgan, Sr. worked as a janitor, to purportedly pick up some money from his father. Id. at 5.

21. Tellingly, at the time of Morgan, Jr.'s murder, Morgan, Sr. was himself in dire financial circumstances. In a sworn affidavit dated June 1992, Morgan, Sr. averred that he had a net monthly loss of \$2,108.95. Morgan, Sr. Aff. of Income and Expense at 1 (Exhibit 4).² As a result, Morgan, Sr. was in significant financial debt. *Id.* Additionally, in September 1992, Morgan, Sr. was served with a mortgage foreclosure complaint. Case Info. Summ. for Case No. 1992-CH-08933 at 1-2 (Exhibit 5).

22. Notwithstanding, just three weeks after he was served with the mortgage foreclosure complaint, Morgan, Sr. purchased a \$50,000 life insurance policy on Morgan, Jr. – his healthy, 20-year-old son. Morgan, Jr. Life Insurance App. at 2 (Exhibit 6). The life insurance policy required both up-front and monthly payments. *Id.* at 1; 3.

23. Shortly after applying for this insurance policy, Morgan, Sr. learned that his financial circumstances would soon become markedly worse. On January 8, 1993, a woman with whom Morgan, Sr. had previously had a relationship filed a Petition to Establish Parentage of the child she had with Morgan, Sr. *See* Case Info. Summ. for Case No. 1993-D-050221 (Exhibit 95). This was the first step in requesting the Court to issue an Order for Child Support against Morgan, Sr., which it did on October 6, 1993. *Id.*

² According to his affidavit, as of June 2, 1992, Morgan, Sr.'s total gross monthly income from employment was \$1,616.28. Morgan, Sr. Aff. of Income and Expense at 1 (Exhibit 4). Subtracting taxes, union dues, and child support payments, his net income was \$927.85. *Id.* at 1-2. Morgan, Sr. calculated his monthly living expenses as \$2,576.80. *Id.* at 3. He also paid \$460 each month to service eight debts he owed to various creditors. *Id.* at 4. Ultimately, Morgan, Sr. calculated that he netted \$927.85 each month and had expenditures totaling \$3,036.80. *Id.* This results in monthly losses totaling \$2,108.95 (Morgan, Sr. erroneously calculated his monthly losses as \$1,188.95 by treating his debt service payments as a positive figure rather than a negative figure). *Id.*

24. These are not the only circumstances that should have raised alarm when the police were investigating Morgan, Jr.'s murder. Morgan, Sr. also had a proclivity toward violence – particularly violence directed at loved ones – that should have made him a prime suspect. As will be described more fully below, in 1977 Morgan, Sr. confessed to shooting and killing his friend after a financial dispute; his friend, like his son, was shot, abandoned, and left to die. Hall Supp. Report, 11 Jan 77 at 4-5 (Exhibit 31).

25. Additionally, in the year before Morgan, Jr.'s death, Marshall Morgan, Sr.'s wife Delores Morgan applied for a Temporary Restraining Order against Morgan, Sr. citing ongoing abuse, including choking her "almost to unconsciousness," pulling her hair, kicking her in the back, and holding a gun to her head. Petition for Order of Protection at 2 (Exhibit 7).

II. The Flawed Police Investigation

26. Despite the fact that Marshall Morgan, Sr. was the obvious suspect, Tyrone Hood and Wayne Washington were arrested, prosecuted, and convicted of killing Marshall Morgan, Jr. Neither, however, had anything to do with the crime.

27. When the investigation began, the Chicago Police were under intense pressure from the Mayor of Chicago and the media to solve the disappearance and murder of Morgan, Jr. See Lenihan Dep., McGee v. City of Chicago, 04 C 6352 at 62-64 (Exhibit 11). Indeed, the case generated intense media coverage. See, e.g., Teresa Wiltz, "Mother Not Giving Up On Search For Her Son," Chicago Tribune, May 16, 1993 (Exhibit 8); Phillip J. O'Connor, "Missing IIT Basketball Player Found Slain," Chicago Sun-Times, May 18, 1993 (Exhibit 9); John Owens, "Violence Strikes at the Heart of the IIT Basketball Team," Chicago Tribune, May 29, 1993 (Exhibit 10).

A. Terry King, David Carter, and Lafayette Bush Identified as Suspects; King Beaten by Police

28. To try to resolve the matter, the police initially focused their investigation on several of Morgan, Jr.'s friends, including Terry King and David Carter. CPD Supp. Report, 13 June 1993 at 8 (Exhibit 3). On May 19, 1993, detectives spoke with King and Carter. Id. Both men denied being with the victim on or after May 8, 1993. Id.

29. There is no evidence that King, or any of Morgan, Jr.'s friends, had anything to do with the murder.

30. Despite passing polygraph examinations, Carter and King were kept in police custody for two days before being released. Id. During that time, King was viciously beaten by the police in an effort to force him to inculcate himself. See Office of Professional Standards Report at 1 (Exhibit 12).

31. Detectives Ryan, Lenihan, and Foley struck King "about his body and stepped on his penis" and also "threw him to the floor, stepped on his neck and put a gun in his mouth." Id. As a result, King filed a contemporaneous complaint with the Office of Professional Standards and a civil lawsuit, which ultimately settled. Id.; Dckt. No. 25, King v. Lenihan, et. al., 93 CV 3532 (Exhibit 96).

B. Laron Hyde is Connected to the Crime Scene, Fails a Polygraph Test, is Released

32. With no leads, the Chicago Police turned their attention to the physical evidence found in Morgan, Jr.'s car. When the police found Morgan, Jr.'s body, they recovered a significant amount of trash from his car. CPD Supp. Report, 11 June 1993 at 7-8 (Exhibit 13). The victim's mother told police that she and her son cleaned the vehicle the day he disappeared

and that it was free of litter. CPD Supp. Report, 13 June 1993 at 4 (Exhibit 3). This led the police to assume that the trash found in the vehicle had been placed there by the offender.

33. That assumption was correct: Evidence indicates that Morgan, Sr. placed the trash in the car to cover up his own wrongdoing. At the time of Marshall Morgan, Jr.'s death, Morgan, Sr. worked as a janitor at Corliss High School in Chicago. Tr. at M21. Among Morgan, Sr.'s duties as a janitor was emptying the trash cans outside of the school. Tr. at M22-23.

34. Inside the car, the police found a large assortment of trash, including five beer cans, six liquor bottles, and a prisoner property envelope bearing the name of "Laron Hyde." CPD Supp. Report, 11 June 1993 at 7-8 (Exhibit 13).

35. Police located Hyde and brought him to Area One for questioning on May 19, 1993. Id. Hyde told police that "he had not seen his prisoner property envelope since he was released from the 005th District lockup on 02 Apr 93 and that he recalled that he either left the envelope in his father's vehicle or threw the envelope away." Id. at 9. Hyde told police he "did frequent the area around Corliss H.S.," where Morgan, Sr. worked. Id. Corliss High School is in the same neighborhood where Laron Hyde then lived across the street from a neighborhood convenience store. See CPD Supp. Report, 13 June 1993 at 10 (Exhibit 3).

36. Hyde was given a polygraph examination. Id. Although he "failed as to knowledge of the envelope, homicide and being present when the victim was harmed," the detectives discontinued their investigation of him. Indeed, according to the police reports, "no additional evidence was gathered and HYDE was returned home." Id.

37. Laron Hyde has since died. Sun-Times Newsgroup Wire, "Man, Woman Found Dead in Wentworth Area Garage," Aug. 3, 2006 (Exhibit 14).

C. Tyrone Hood Arrested, Physically Abused, Released

38. In addition to Laron Hyde's property envelope, the police inventoried a number of beer bottles that were located on the floor of the passenger side of the victim's car. CPD Supp. Report 13 June 1993 at 10 (Exhibit 3). Although the police did not recover any fingerprints from the car itself, they matched several different individuals to prints taken from the beer bottles found in the car, including Tyrone Hood and Joe West. CPD Supp. Report, 21 May 1993 at 7 (Exhibit 15); CPD Supp. Report 13 June 1993 at 10 (Exhibit 3).

39. More specifically, on May 20, 1993, the Chicago Police Latent Print Unit identified Tyrone Hood's fingerprints on a Miller beer bottle and a 40-ounce Lowenbrau beer bottle, as well as identifying several other fingerprints belonging to different people on another beer can recovered from the car. *Id.* at 5, 10.

40. Police took Hood into custody and Detectives Halloran and O'Brien, among others, interrogated him about the murder. Hood repeatedly denied all involvement in the crime. Hood Aff., April 17, 1999 at 1 (Exhibit 16).

41. These denials, however, were not what the police wanted to hear. As a result, the police repeatedly threatened Hood, even pointing their guns at his head. *Questions Raised About Police Misconduct, Impact of Wrongful Convictions*, WMAQ Television Broadcast, Dec. 18, 2008 (Exhibit 17); see also Office of Professional Standards Report at 2 (Exhibit 12). The police told Hood that if he did not confess, they would shoot him. *Questions Raised*, WMAQ, Dec. 18, 2008 (Exhibit 17). The police kicked Hood, slapped him, and struck him in the head. *Id.* The injuries Hood sustained to his head from the police abuse would require surgery. *Id.* Despite this abuse, Hood refused to give a false confession.

42. As a result of the abuse, Mr. Hood filed a contemporaneous complaint with the Office of Professional Standards. See Office of Professional Standards Report (Exhibit 12).

43. Detectives Halloran and O'Brien do not deny that Hood was abused in an effort to get him to confess. Recently, when asked under oath about whether he threatened Hood, pointed a gun at Hood, struck Hood, or otherwise physically abused him, Detective Halloran invoked the Fifth Amendment. Halloran Dep., Hill v. City of Chicago, 06 C 6772 19-21 (Exhibit 18). Detective O'Brien also invoked the Fifth Amendment when asked about these abuses. O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 22-24 (Exhibit 19).

44. After two days in police custody, Tyrone Hood was released. CPD Supp. Report. 13 June 1993 at 12 (Exhibit 3) (Hood was "returned to his residence and asked to contact R/Ds if he heard anything in the neighborhood regarding this murder.").

D. Joe West's Fingerprints Discovered on Discarded Beer Can in Victim's Car

45. As stated above, several other sets of fingerprints were found on the trash inside the victim's car. On May 25, 1993, Chicago Police determined that a fingerprint on a Stroh's beer can matched an individual named Joe West. CPD Supp. Report, 11 June 1993 at 5 (Exhibit 13). West lived in apartment complex across the street from Tyrone Hood's residence and near Corliss High School, where Morgan, Sr. worked as a janitor. Id.

46. Two days after identifying West's prints on the beer can, detectives located West and brought him to Area One. Id. at 7. The police, including Detectives Halloran and O'Brien, repeatedly threatened West. Detectives accused him of murdering "the next Michael Jordan." West Recantation at 2 (Exhibit 20). One detective even pulled out his gun, pointed it at West, and asked "where did you shoot him?" Id.

47. It quickly became clear to West that the detectives were not going to allow him to leave the police station until he either implicated himself or some other person in the murder of Morgan, Jr. West Grand Jury Recantation at 1 (Exhibit 21).

48. Eventually, West provided a false statement to Detectives Halloran and O'Brien implicating Tyrone Hood in the killing. See CPD Supp. Report, 11 June 1993 at 5-8 (Exhibit 13). According to West's coerced fabrication, West saw Hood driving the victim's car with a dead body in the back seat and later heard shots fired in the area of the car. Id. At the insistence of the detectives, West provided this same false testimony to the Grand Jury. West Grand Jury Recantation at 1 (Exhibit 21).

49. Once out of police custody and control, West recanted these coerced statements. On January 21, 1994, West declared that his police statement and attendant Grand Jury testimony were "a lie." Id. West "told the police that Tyrone Hood did it only to gain his [West's] freedom. Since he told this lie to the police and Grand Jury he was allowed to go home." Id.

50. Detective's O'Brien and Halloran do not deny that West was abused. When recently asked under oath if he physically abused West while he was in custody, Detective O'Brien invoked the Fifth Amendment. O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 18 (Exhibit 19); see also id. at 18-21 (O'Brien invoking the Fifth Amendment when asked if he allowed West to make a telephone call, contact an attorney, eat, or use the bathroom).

51. Similarly, and consistent with West's story, Detectives O'Brien and Halloran invoked the Fifth Amendment when asked if they told West that he could not leave the police

station until he either confessed or implicated Hood. Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 28 (Exhibit 18); O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 17 (Exhibit 19).

52. Finally, Detective Halloran took the Fifth Amendment when asked if he told West "details about the murder with which Tyrone Hood was charged so that he could give a statement implicating Tyrone Hood in that regard." Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 28 (Exhibit 18).

53. Joe West died of cancer on August 23, 1995, a year before Hood's trial. West Death Certificate at 1 (Exhibit 22).

E. Tyrone Hood Detained A Second Time; Wayne Washington Arrested and Abused

54. On May 27, 1993, police encountered Hood at a grocery store near his home and across the street from Corliss High School. CPD Supp. Report, 11 June 1993 at 6 (Exhibit 13). Wayne Washington, who was later to become Hood's co-defendant, was also at the grocery store. Id. The police took both men into custody. Id.

55. Once at Area One, Hood and Washington were interrogated separately. Id. Both were confronted with the false stories told by Joe West. Id. at 9.

56. Hood again maintained his innocence. Id. He denied all knowledge and participation in the homicide. Id. As for the fingerprints, Hood denied ever being in or around the victim's car. Id. at 10. He stated that he had no knowledge as to how his prints could have been found on rubbish located inside the victim's automobile. Id.

57. Although the detectives allege that during this interrogation, Hood stated "[i]f I don't say anything to explain, I will go to jail for a long time. If I do tell what happened, I will go to jail," id. at 12, this statement is a complete fabrication. Hood Aff. Dec. 22, 2009 at ¶ 3

(Exhibit 46). Hood has never deviated from his insistence that he had nothing to do with this murder. See id. at ¶ 2. When asked under oath if he fabricated this statement, Detective Halloran took the Fifth Amendment. Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 21-22 (Exhibit 18).

58. Washington initially denied West's story. Id. at 9. However, under abusive interrogation by Detective Boudreau, he provided a statement implicating himself and Hood. See id. at 10-13. The statement was false. It was coerced. According to this false statement, Hood and Washington set out to rob someone in order to obtain drug money and obtained a gun from Allen "Jody" Rogers in order to do so. Id. at 10-13.

59. Washington's statement was absolutely false. It was elicited after brutal treatment at the hands of Chicago police officers, including Detectives Boudreau and Halloran. Washington Aff. at ¶ 6 (Exhibit 23). Washington recounts that he was locked in an interview room alone overnight. Id. at ¶ 3. The next morning, police began to interrogate him about the murder. Id. at ¶ 5. According to Washington, "[a]t this time I didn't even know what murder the police were talking about. When I didn't tell the detectives anything, they began to beat me. A detective slapped me in the face and pushed my chair. I was also punched and handcuffed the entire time." Id. at ¶ 6.

60. This abuse continued throughout the day of May 28, 1993. Id. at ¶ 7. According to Washington, "[l]ater in the day I was given a pre-prepared statement and told to sign it. Even though the statement was completely untrue, I signed it because I couldn't stand the beatings any longer." Id.

61. When asked under oath if he physically abused Wayne Washington, Detective Halloran invoked the Fifth Amendment. Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 30 (Exhibit 18).

62. Washington has since recanted his confession and guilty plea. Washington explains:

I don't know anything about Marshall Morgan's murder. I never spoke to Michael or Jody Rogers about doing a stang or getting a gun. I never overheard Tony [Tyrone Hood] talk about doing a stang or killing a rival gangmember. Further, I never identified Marshall Morgan's blue Chevrolet.

I never saw Tony [Tyrone] on May 8, 1993.

Washington Aff. at ¶ 8-9.

F. Allen "Jody" Rogers Detained, Coerced, Provides False Statements

63. After securing Wayne Washington's false confession which identified Jody Rogers as the source of the murder weapon, the police sought to question Jody about the crime. CPD Supp. Report, 13 June 1993 at 14 (Exhibit 3).

64. Jody "was asleep in his basement when he was arrested by a team of 5 Chicago policemen who had come into his house with their guns drawn asking for him. Jody was placed in handcuffs and taken to the police station at 51st and Wentworth." Jody Aff. at Ex. A (Interview of Allen "Jody" Rogers, Mar. 31, 1994 at 1) (Exhibit 24).

65. Jody told the police that he knew nothing about the murder. Detectives Boudreau and Halloran were not satisfied with this response and told Jody "that he was lying and that they heard that Jody provided the gun for the murder. The detectives also told Jody that they wanted him to say that he saw the murder or at the very least that he heard Tyrone talk about the murder." Id. Over the course of this interrogation, the police were "very clear

with Jody that he was not going to go home until he told the police what they wanted to hear.”

Id.

66. Detective Boudreau concedes that he “may have placed handcuffs on [Jody] . . . [which] would require twisting the arms up behind [his] back.” Boudreau Dep., Hill v. City of Chicago, 06 C 6772 at 53 (Exhibit 25).

67. Detective Halloran invoked the Fifth Amendment when he was asked if he physically abused Jody, threatened him, or threatened to charge him with the murder if he did not implicate Tyrone Hood. Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 22-26 (Exhibit 18).

68. As a result of this abuse and “because he was tired, scared and wanted to go home[,] Jody agreed to ‘cooperate’ with the police. Jody also did not want to be charged with the murder so he told the police that he provided the gun to Tyrone and also heard Tyrone ‘confess’ to him that he did it.” Jody Aff. at Ex. A (Interview of Allen “Jody” Rogers, Mar. 31, 1994 at 1) (Exhibit 24).

69. After signing this false statement, Jody was taken before the Grand Jury where he gave the same false testimony. Id. Jody states that he lied in his Grand Jury testimony “because I was afraid of what the police would do to me if I told the truth, which was that I didn’t know anything about the murder.” Id. at ¶ 8.

70. On May 18, 1993 and again on March 31, 1994, Jody recanted his false testimony. Id. at Ex. B and Ex. C.

71. Although he had recanted his false statements to the police and Grand Jury at least twice by the time Hood’s trial began in 1996, Jody Rogers was called as a prosecution

witness. Tr. at 13-1108. In spite of his repeated recantations, Jody falsely testified that his initial (false) statements to police were true. Id.

72. Jody's trial testimony was the product of still more state coercion. According to Jody:

Before Tyrone's trial, the State's Attorney came to talk to me at the courthouse in Bridgeview. He told me that he would give me a deal for two cases (vehicular hijacking and possession of a controlled substance) that I was in jail for at the time if I testified in Tyrone's trial and if I said that I told Tyrone where to get a gun, saw him with the gun, and then heard him talk about doing the murder. The State's Attorney also told me that if I didn't testify, he would charge me in Tyrone's case.

Jody Aff. at ¶ 10 (Exhibit 24).

73. Jody "took the State's Attorney's deal and testified at Tyrone's trial because [he] wanted to get out of jail and because [he] was scared of what would happen if [he] didn't do what the State's Attorney told [him] to do. [Jody's] testimony at Tyrone's trial was not true." Id. at ¶¶ 11-12.

74. According to Jody: "I don't know anything about the murder. I never told Tyrone where to get a gun. I never saw Tyrone with a gun. I never heard Tyrone talking about doing a 'stang' or having done a murder." Id. at ¶ 13.

75. Jody "decided to come forward now because [he] realize[s] that [his] lies may have helped to send an innocent man to jail." Id. at ¶ 14.

G. Michael Rogers Interviewed, Coerced, Provides False Statements

76. With Jody Rogers's false statements in hand, detectives proceeded to locate his brother, Michael Rogers. CPD Supp. Report 11 June 1993 at 15 (Exhibit 13).³

77. Although the police reports indicate only a brief interview at Michael's residence, Michael recounts a relentless series of police contacts. According to Michael, "[t]he police kept coming to talk to me every day after the murder." Michael Aff. at ¶ 5 (Exhibit 26).

78. Michael was frightened by the police. He "was scared because the police showed [him] papers with [his] name, Tyrone Hood's name, and Jody's name, and they said he was involved" in the murder. *Id.* at ¶ 7. As a result of this ongoing police pressure, Michael falsely implicated Tyrone Hood in the crime.

79. When recently asked under oath if he threatened to charge Michael with the murder if he did not implicate Tyrone Hood, Detective Halloran invoked the Fifth Amendment. Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 26 (Exhibit 18).

80. All of the statements Michael made to the police, and his testimony at the trials, was false. Michael has averred that he "was never at any time approached by Tyrone or anyone and asked for a gun," "was never at any time approached by Tyrone or anyone and told of a plan to do a 'stang' or a robbery," and was "never at any time approached by Tyrone or anyone and told or bragged about a murder." Michael Rogers Interview, Mar. 31, 1994 at 2 (Exhibit 27).

81. Like Jody Rogers and Joe West, Michael recanted his false police statement. *Id.*

³ Michael Rogers's true name is Kenneth Crossley, but for consistency's sake this Petition will refer to him as Michael. Michael Aff. at ¶¶ 1-2 (Exhibit 26).

82. After Michael recanted, the police tried to curry favor with him in order to get him to repeat his earlier false statements. To that end, the police “fed [him] and gave [him] money on the days [he] came to court.” Michael Aff. at ¶ 8 (Exhibit 26). He further states that he “got a check for about \$750.00” but does not remember if it was from the police or the State’s Attorneys. *Id.* By Michael’s estimate, “with the food, the check, and some cash, they gave [him] close to \$1000.00.” *Id.* In fact, Michael states, “[e]very time they picked me up, I got some money.” *Id.* The police also told Michael that if he “had any problems with anyone in the neighborhood, they would take care of it.” *Id.*

83. None of these benefits were disclosed to Washington, Hood, or their defense teams. Mullenix Aff. at ¶ 4 (Exhibit 28).

84. After receiving these undisclosed gifts from the State, Michael testified against Hood at trial. Tr. at H1-54.

85. That testimony, however, was false. According to Michael, “I have never seen Tyrone Hood with a gun. . . . I never knew anything about that murder.” Michael Aff. at ¶ 9 (Exhibit 26).

H. A New Witness Located on the Eve of Trial

86. Three years after the murder of Marshall Morgan, Jr. and just four weeks before Hood’s trial, all of the state’s purported witnesses had recanted their false statements inculcating Washington and Hood. As a result, the State had nothing to tie either to the murder. Magically, the state found an 11th hour witness, Emanuel Bob, to salvage its case. CPD General Progress Report, 24 May 96 at 1 (Exhibit 29). According to the State, Detective Lenihan’s discovery of Emanuel Bob on the eve of trial – when his name had not appeared even

once prior to then in any of the police investigations – was something that occurred “[a]lmost by divine providence.” Tr. at L63.

87. The police located Bob on March 24, 1996, when they were questioning Brenda Cage about photographs of Tyrone Hood, Wayne Washington, and the victim’s car. Tr. at G80. Bob had allegedly gone over to Cage’s house to borrow an onion. Id.

88. Although Bob never sought out the police in the three years since the murder, he told the police that he recognized the individuals and the car in the photographs and had information relevant to the crime. Tr. at G109-110.

89. According to Bob, he remembered being upstairs in a house at 10445 South Corliss Avenue in the early morning hours of Mother’s Day, 1993. Bob Statement, Mar. 24, 1996 at 1-2 (Exhibit 30). Bob claims that he “was looking out the window of his room on the second floor to see what his old lady was doing.” Id. at 2. He stated that he “saw a car pull up and park on the wrong side of the street.” Id.

90. At trial, Bob identified the driver as Tyrone Hood and the victim’s car as the one Hood was driving. Tr. at G68; G72. Bob claims to have seen Wayne Washington approach the car and speak to Hood. Bob Statement, Mar. 24, 1996 at 2 (Exhibit 30).

91. Bob admitted that he made these identifications from a second floor window, in the middle of the night, while looking down on a scene partially obscured by the leaves of a “big tree.” Tr. at G128. Although nothing about what Bob allegedly saw was important enough for him to contact police at the time, Bob claimed to have a clear memory of this brief, unremarkable, and obscured encounter three years later. Id.

III. Evidence at Trial

92. At trial, the State argued that Hood and Washington acquired a gun from Jody Rogers (Tr. at G15), accosted Morgan, Jr., shot him (Tr. at P27), robbed him (Tr. at P31), and then drove around in Morgan, Jr.'s car with his body still in the backseat (Tr. at P38). To support this theory, the State called Jody Rogers (Tr. at I3-108), Michael Rogers (Tr. at H3-53), and Emanuel Bob (Tr. at G62-131) as witnesses.

93. At his trial, Washington maintained his innocence and attempted to introduce evidence suggesting that Marshall Morgan, Sr. was the true killer. Tr. at L84-M47. This included evidence of the insurance policy Morgan, Sr. had taken out on his healthy 20-year old son just months before his death. *Id.* It also included evidence relating to the overwhelming similarities between the murders of Morgan, Jr. and Michelle Soto (discussed more fully below). *Id.* The State successfully fought to keep this evidence out of the trial. Tr. at L85-92.

94. Although Judge Bolan noted that “[t]he man [Marshall Morgan, Sr.] bears watching, no question about that,” he thought the evidence of Morgan, Sr.’s involvement in his son’s murder was too attenuated to be admissible. Tr. at M44.

IV. Morgan, Sr.’s *Modus Operandi*: Violence, Money, and Murdered Loved Ones

95. When Judge Bolan made that determination in 1996, he did not have before him a complete picture of Morgan, Sr.’s history of violence. That history, which was crystallized in 2008 by Morgan, Sr.’s confession to and conviction for the murder of Deborah Jackson, is long, patterned, and directly relevant to the instant case. Given Morgan Sr.’s confession and conviction his “modus operandi” is no longer speculative.

96. Morgan, Sr.'s violent history begins in 1977 when he pled guilty to shooting and killing his friend William Hall in a car over money the friend owed him. Hall Supp. Report, 11 Jan 77 at 4-5 (Exhibit 31). Morgan, Sr. also confessed and was convicted in 2008 of killing his girlfriend Deborah Jackson and leaving her body to rot inside of her abandoned vehicle. Morgan, Sr. Confession to Jackson Murder (Exhibit 44). In addition, two of his loved ones – his son, Marshall Morgan, Jr. and his fiancée, Michelle Soto – died in circumstances highly analogous to the murders of Hall and Jackson: they were shot and left to die in abandoned vehicles and both deaths involved financial gain for Morgan, Sr. CPD Supp. Report, 21 May 1993 at 7 (Exhibit 15); Morgan, Jr. Life Insurance Claim Form at 1 (Exhibit 93); Soto Supp. Report, 26 July 95 at 5-6 (Exhibit 37); Soto Life Insurance Claim Form at 1 (Exhibit 38).

97. As described more fully below, this pattern of ruthlessly killing close friends and loved ones for financial gain – information which was not available to Judge Bolan at the time of his prior rulings – is the proverbial writing on the wall demonstrating Morgan, Sr.'s culpability for the murder of his son.

A. *Morgan, Sr. Murdered William Hall in 1977*

98. In 1977, Morgan, Sr. killed William Hall on the south side of Chicago. Morgan, Sr. shot and killed Hall in the passenger seat of his car over a debt that Hall owed to him. Hall Supp. Report, 11 Jan 77 at 5 (Exhibit 31). Hall's body was found with seven gunshot wounds. Hall Supp. Report, 10 Jan 77 at 2 (Exhibit 32).

99. After confessing to the crime, Morgan, Sr. was convicted of manslaughter and was sentenced to seven years in IDOC for the killing. Transcript of Proceedings Regarding Morgan, Sr.'s Confession at 14 (Exhibit 33).

100. In his confession to the murder of William Hall, Morgan, Sr. explained the following:

He related [that] the victim Hall had owed him 7 hundred dollars for the past 8 months and had made no attempt to pay him. On the 9th of January of '77, he went to ask [Hall] about the money, and when the victim told him that he did not have it, he became upset. He offered the victim a ride as he knew that he did not have a car. . . . Mr. Morgan asked him for his money and the victim told him that he did not have it. Morgan pulled out a 38 caliber Smith and Wesson 4 inch blue steel revolver and cocked it and pointed it at the victim.

Id. at 13.

101. Morgan, Sr. stated that the first time he shot Hall was accidental, but then decided to “finish the job.” Id. After the killing, Morgan, Sr. threw “the gun into [a] vacant lot.”

Id. at 14.

B. Michelle Soto's 1995 Murder Closely Resembles the Murders of Marshall Morgan, Jr., William Hall, and Deborah Jackson

102. In July of 1995, two years after Morgan, Jr. was shot with a .38 caliber pistol (the same caliber weapon as Morgan, Sr. used to kill Hall) and left to die inside his abandoned car, Michelle Soto, a public school teacher, was shot to death in Chicago. Soto Certificate of Death (Exhibit 34). Michelle Soto was Morgan, Sr.'s fiancée. Soto Life Insurance App. at 1 (Exhibit 35).

103. Soto's daughter, Micaela Soto, was 11 years old at the time of her mother's murder. Soto Aff. at ¶ 2 (Exhibit 36). Micaela remembers frequent fighting between her mother and Morgan, Sr. in the months before the murder. Id. at ¶ 5.

104. Micaela recalls that during “the months leading up to my mom's murder, she had become increasingly worried about her own safety. She talked to me several times about where I would live if anything ever happened to her. She sent me to live with my dad because she was concerned for my safety.” Id. at ¶ 6.

105. Soto began to make other preparations for her death. She “gave all of her important documents to her sister in case something bad happened to her.” Id. at ¶ 7. She “did this because she was afraid of what Morgan, Sr. was going to do.” Id.

106. Soto’s fears, tragically, were well-founded. On February 4, 1995, Marshall Morgan, Sr. applied for a \$67,000 life insurance policy covering Michelle Soto. Soto Life Insurance App. at 3 (Exhibit 35). The policy also included a \$100,000 term-life rider benefit. Id. The application listed Morgan, Sr. as the policy’s primary beneficiary. Id. at 1.

107. Shortly after taking out the insurance policy on Soto’s life, Morgan, Sr. began informing family members that he “was about to come into some money.” CPD Interview of Michael Thomas, July 26, 1995 at 2-3 (Exhibit 39).

108. Less than six months later, that self-fulfilling prophecy came true. Soto was murdered under circumstances strikingly similar to the murders of Marshall Morgan, Jr., William Hall, and Deborah Jackson.⁴

109. When she was found, Soto’s badly decomposed body was discovered lying between the front and back seats of a car abandoned on the south side of Chicago. Soto Supp. Report, 26 July 95 at 5-6 (Exhibit 37). Soto was nude. Id. at 5. The medical examiner concluded that Soto had been shot to death. Soto Certificate of Death (Exhibit 34).

⁴ At the time of Michelle Soto’s murder, Wayne Washington had been incarcerated for over two years.

110. Morgan, Sr. was the last person to see Soto alive. Morgan, Sr. told police that on the night Soto disappeared, he had dinner with her at his apartment. Soto Supp. Report, 26 July 95 at 9 (Exhibit 37). Morgan, Sr. reported that Soto then left his apartment to go visit her children at her ex-husband Reynaldo Soto's house. *Id.* at 9-10. Soto never showed up at Reynaldo's house. *Id.* at 9.

111. Within weeks of Soto's death, Morgan, Sr. submitted a claim to Allstate seeking distribution of the insurance policy proceeds. Soto Life Insurance Claim Form at 1 (Exhibit 38). In ensuing litigation, Allstate agreed to pay \$60,000 to the Soto family and the remainder of the policy, \$107,000, to Morgan, Sr. Allstate Life Insurance Payment Letter, June 8, 1993 (Exhibit 40); Motion to Dismiss, 96 CH 08673 at 1-2 (Exhibit 41).

112. In addition to the life insurance proceeds, Morgan, Sr. profited from the death of Soto by fraudulently selling her house. According to Soto's daughter Micaela, Morgan, Sr. "forged the deed on the house so that he could sell it after killing her." Soto Aff. at ¶ 8 (Exhibit 36); *see also Questions Raised About Police Misconduct, Impact of Wrongful Convictions*, WMAQ Television Broadcast, Dec. 18, 2008 (Exhibit 17).

113. When questioned by police about any insurance policies covering Soto, Morgan, Sr. initially reported that no such policy existed. Soto Supp. Report, 16 Aug. 1995 at 3 (Exhibit 42). He later explained that this falsehood was the product of a "misunderstanding" and he was not "attempting to elude" any of the facts. *Id.*

114. After searching Morgan, Sr.'s house and vehicle, the police discovered incriminating evidence in the trunk of his car, including a piece of tape with "hair-like fibers adhering to [it]" and a length of rope. *Id.* at 2; 5-6. The detectives re-interviewed Morgan, Sr. so

that they could “confront[] him with the evidence that was recovered in the trunk area of his vehicle.” *Id.* at 6. Morgan, Sr. claimed that the tape had been in the trunk since he purchased the car and that the rope was used when he “transported ferrets.” *Id.*

115. Soto’s daughter has long believed that her mother was murdered by Morgan, Sr. Soto Aff. at ¶¶ 9-11 (Exhibit 36). Micaela states:

I believe that Marshall Morgan, Sr. murdered my mom. I have always thought that he was the killer. The rest of my family also thinks Morgan, Sr. is the killer. When I spoke to the detectives after my mom’s murder, I told them that I thought Morgan, Sr. was responsible.

Id.

116. Despite Micaela Soto’s protests, and despite the highly suspicious circumstances in which Soto was killed, no one, including Morgan, Sr., has ever been prosecuted for the murder of her mother. Micaela states: “I would like to see Marshall Morgan, Sr. prosecuted for my mom’s murder. He deserves to be in jail for what he did” *Id.* at ¶ 11.

C. *Morgan, Sr. Murdered Deborah Jackson in Circumstances Nearly Identical to the Killings of Morgan, Jr., Hall, and Soto*

117. Soto, as mentioned above, was only the third of the four individuals close to Morgan, Sr. who were killed under nearly identical circumstances – Morgan, Sr.’s girlfriend Deborah Jackson would be the fourth.

118. On September 8, 2001, Deborah Jackson, was shot to death in Chicago. Jackson Original Case Incident Report at 1 (Exhibit 43).⁵ Jackson was Morgan, Sr.’s girlfriend. Morgan, Sr. See Morgan, Sr.’s Confession to Jackson Murder (Exhibit 44). As discussed below, the

⁵ The Jackson Original Case Incident Report (Exhibit 43) was provided to Hood’s counsel by the Chicago Police Department in response to a Freedom of Information Act request. The CPD has not provided a non-redacted version of these documents.

circumstances of Jackson's murder closely mirror those of the three other killings of individuals close to Morgan, Sr., including the murder for which Tyrone Hood is wrongfully incarcerated.

119. Morgan, Sr. confessed to murdering Jackson by shooting her twice. Id. Just as he claimed in his confession to murdering William Hall, Morgan, Sr. stated that the first shot was in self-defense. Id.; Transcript of Proceedings Regarding Morgan, Sr.'s Confession to Hall Murder at 13 (Exhibit 33). He shot Jackson a second time because he was "in a rage, I guess." Id.

120. After shooting Jackson twice, Morgan, Sr. shoved her body into the trunk of her car. At this time, according to Morgan, Sr., "she was still alive." Id.

121. The bodies of Soto and Morgan, Jr. were also placed in the back of their own cars. Moreover, as with Morgan, Jr. and Soto, Deborah Jackson was left to die in the abandoned car, her body not found until days after she was killed. Jackson Original Case Incident Report at 8 (Exhibit 43); CPD Supp. Report, 21 May 1993 at 2 (Exhibit 15); Soto Supp. Report, 26 Jul 95 at 2 (Exhibit 37).

122. After abandoning the dying Jackson in the trunk of her car, Morgan, Sr. went to Jackson's home. Morgan, Sr. See Morgan, Sr.'s Confession to Jackson Murder (Exhibit 44). He went there because he wanted to "be with Brittany," the ten-year old daughter of the woman he had just fatally shot. Id. Morgan, Sr. claims that he then took Brittany to a party. Id. The two then returned to Brittany's house and remained there for some time because Morgan, Sr., who had just killed Brittany's mother, wanted "to make sure that Brittany was okay." Id.

123. While Morgan, Sr. was at Deborah Jackson's house with her young daughter, Jackson's sister Vanessa arrived and asked about Jackson's whereabouts. Id. Morgan, Sr. denied all knowledge. Id. Morgan, Sr. further feigned ignorance by asking 10-year old Brittany if she

had heard from her mother. Id. At the time Morgan, Sr. posed this question to the little girl, he knew full well that her mother was lying in the trunk of her car on the south side of Chicago dying of the bullet wounds he had inflicted upon her.

124. Apparently satisfied with his deception, Morgan, Sr. left Jackson's house and returned to his own home. Id. Morgan, Sr. then "watched TV" before bed. Id.

125. The following day, Morgan, Sr. returned to Deborah Jackson's car. Id. He moved the car to a new location. Id. He removed the murder weapon from the car. Id. He never opened the trunk or checked on Deborah Jackson. Id.

126. Morgan, Sr. then took the gun to the shores of Lake Michigan near the Shedd Aquarium and threw the murder weapon into the lake. Id. The Chicago Police were unable to locate the gun. Chicago Police Marine Unit Report at 1 (Exhibit 45).

127. During their investigation, police detectives searched the basement of the school in which Morgan, Sr. worked as a janitor. Jackson Original Case Incident Report at 11 (Exhibit 43). There they found a "wood door which appeared to have several bullet holes in it. The fired bullets were found on the other side of the wood door and it appeared the bullets had passed through the door." Id. Police also recovered a bullet in the drawer of a desk in Morgan, Sr.'s office. Id.

128. The Chicago Police inventoried the items of clothing found on Jackson's body. Id. at 3. These items included a black dress, a white girdle, and a red shirt. Id. Conspicuously absent from this inventory list are the victim's panties. As discussed above, Michelle Soto's body was discovered nude. Soto Supp. Report, 26 Jul 95 at 2 (Exhibit 37). Morgan, Jr. was also discovered nude from the waist down. CPD Supp. Report, 21 May 1993 at 6 (Exhibit 15).

129. The similarities between the murders are in fact so striking that the State itself apparently considered the Jackson murder to be new evidence relevant to Washington's case.

V. New Evidence Emerges Corroborating Washington's Claims of Police Misconduct

130. As described above, the evidence used against Washington and Hood was the product of police misconduct. This includes the coerced statements of Joe West, Jody Rogers, and Michael Rogers.

131. At the time of both trials and the plea, Judge Bolan and Washington's defense counsel were unaware of the extensive history of misconduct by the detectives who procured this false information: Detectives Boudreau, Halloran, and O'Brien.

132. Since his trial and conviction, Washington has learned that many of the detectives involved in his case have amassed a record of abuse not exceeded by any Chicago police officers in modern times with the exception of the now-disgraced Jon Burge – the very man who trained and commanded several of the detectives involved in this case.

133. In December 2001, The Chicago Tribune published a lengthy front page exposé, referencing an investigative study of thousands of murder cases in Cook County from 1991 to 2000, the period in which Washington was arrested and prosecuted. The study found that Boudreau and his partners had been involved in a disproportionate number of murder cases that had collapsed notwithstanding the existence of statements implicating the defendant. See Maurice Possley, Steve Mills, & Ken Armstrong, "Veteran Detective's Murder Cases Unravel," Chicago Tribune, Dec. 17, 2001 (Exhibit 47).

134. According to the Tribune's research,

Boudreau stands out not only for the number of his cases that have fallen apart, but for the reasons. In those cases, Boudreau has been accused by defendants of punching, slapping or kicking them; interrogating a juvenile without a youth officer present; and of taking advantage of mentally retarded suspects and others with low IQs.

Id.

135. Dozens of examples of disturbingly similar mistreatment – unknown to Washington at the time – have been assembled and attached to this petition.

136. Boudreau, however, did not act alone. He often worked alongside Detectives O'Brien and Halloran to "close" cases. Furthermore, this is hardly the first case in which these detectives used physical and psychological torture to do so. Rather, as close co-workers and often partners, these detectives have a longstanding pattern of engaging in such misconduct. See ¶ 142 *infra*; Chart of Additional Misconduct by Boudreau, Halloran, and O'Brien (Exhibit 48).

137. Unfortunately, none of this evidence was available at the hearing on Washington's Motion to Suppress at the time. Nonetheless, as described below, it is highly relevant to the instant case.

138. For example:

- a. After police officer Michael Ceriale was shot to death in 1998, Boudreau, O'Brien, and Halloran arrested Jonathon Tolliver at 4:00 a.m. and interrogated him for a 24-hour period, resulting in allegedly incriminating oral statements. See People v. Tolliver, 347 Ill.App.3d 203, 208, 807 N.E.2d 524, 531 (1st Dist. 2004). To ensure Tolliver's conviction,

Boudreau, O'Brien, and Halloran also coerced incriminating statements from other witnesses. Their means of coercion mirrored that which was used in the Washington's case: holding persons in custody for extended periods of time, physically abusing and threatening to lodge charges against witnesses, withholding food, and denying access to an attorney. See id., 347 Ill.App.3d at 234-39, 807 N.E.2d at 551-55; Report of Proceedings, People v. Tolliver, 98 CR 24624 at 008347-86 (Exhibit 49). When these witnesses later refused to repeat the false statements coerced by O'Brien, Boudreau, and Halloran at trial, the State charged five of them with perjury and at least one witness went to jail on the charges. See Tolliver, 347 Ill.App.3d at 209-12, 807 N.E.2d at 531-34. Not surprisingly, O'Brien and Boudreau have refused to answer any questions under oath about the Tolliver case for fear of subjecting themselves to criminal liability. See Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 110-12 (Exhibit 18); O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 118-20 (Exhibit 19).

- b. Kylin Little was a witness to a 1996 murder. His experience with O'Brien, Halloran, and Boudreau mirrors those of Hood, Washington, King, Jody Rogers, and Michael Rogers in Hood's case. When O'Brien, Halloran, and Boudreau interrogated Little, they physically and psychologically coerced him until he lied and implicated Eric Gibson, a man who had absolutely nothing to do with the crime. See Little Aff. ¶¶ 12, 14 (Exhibit 50). Since

his interrogation, Little has fully recanted the statement he gave to the police. See id. at ¶¶ 15-16.

- c. In 1993, the day after Tyrone Reyna's sixteenth birthday, he was beaten during an interrogation by O'Brien, Boudreau, and Halloran, who refused to let him contact his family and intimidated him into confessing to a murder that he did not commit. See Reyna Aff. (Exhibit 51); see also Reyna Dep., Hill v. City of Chicago, 06 C 6772 at 60, 115, 128-33 (Exhibit 52). Reyna's co-defendants, Nicholas Escamilla and Miguel Morales, were arrested by the same detectives despite the lack of any physical evidence or eyewitnesses linking them to the crime. Boudreau, O'Brien, and Halloran tortured Escamilla by beating him and threatening to send his pregnant wife to jail if he did not confess. See Escamilla Aff. at ¶¶ 8-9 (Exhibit 53). After hours of abuse, Escamilla eventually confessed. See id. at ¶¶ 10-12. Although Morales was also beaten during his interrogation, he refused to confess. See Morales Statement at 2-3 (Exhibit 54).
- d. Therefore, to secure Morales's conviction, O'Brien, Halloran, and Boudreau coerced John Willer and Raphael Robinson to identify Morales as the offender. For example, O'Brien used a shockingly suggestive lineup: He grabbed Robinson by the neck while Robinson was viewing a lineup and asked him "how many fingers am I holding up." When Robinson answered "three," O'Brien used this to say that Robinson had identified person number three. See Robinson Aff. at ¶ 8 (Exhibit 55). In

addition, O'Brien spoke with Robinson prior to his trial testimony to explain who committed the murder and where in the courtroom they would be sitting. See id. at ¶ 14.

- e. In light of these allegations of egregious misconduct, it is perhaps unsurprising that when O'Brien and Halloran were at a deposition in a civil suit about their interrogation and coercion of Escamilla, Morales, Willer, and Robinson, they refused to answer any questions for fear of subjecting themselves to criminal liability. See Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 81-85, 99-101, 105-08, 123-24 (Exhibit 18); O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 52-66 (Exhibit 19).
- f. As they did with Jody Rogers, Michael Rogers, and Joe West, Halloran and other police officers forced Sheila Crosby and Michael Sardin to identify Shondell Walker as a murderer in their 1994 Grand Jury testimonies. Halloran threatened that if Crosby did not do so, he would have the Department of Children and Family Services take her children away from her. See Walker Record of Proceedings, 94 CR 8733 at G42, G117, G126, I55, I98 (cited in Appeal, Post-Conviction Petition, People v. Walker 94 CR 8733 at 5-6) (Exhibit 56). For Sardin, as with Michael and Jody Rogers, the detectives threatened that if he did not name Walker as the killer, he would be charged with the murder himself. See Sardin Aff. at ¶ 4 (Exhibit 57).

- g. In 1996, Jeremy Allen was wrongfully charged with murder after O'Brien coerced two witnesses into falsely identifying him. See Compl., Allen v. O'Brien, 00 C 2585 at ¶¶ 4-5 (Exhibit 58). Allen was ultimately acquitted at trial. See id. at ¶ 7.
- h. In 1994, Jamie DeAvila was arrested for murder and interrogated by Boudreau. When DeAvila explained that he was not involved in the crime, Boudreau barked back that it did not matter because Boudreau "was going to plant a nigger at the crime scene to point [him] out as the driver of the murderer." See DeAvila Aff. at 1 (Exhibit 59). DeAvila eventually falsely confessed to murder. See id.
- i. Harold Hill, Dan Young, and Peter Williams falsely confessed to rape and murder after Boudreau, O'Brien, and Halloran physically assaulted and psychologically coerced them. Hill was unable to withstand the detectives' physical violence. See Amended Compl., Hill v. City of Chicago, 06 C 6772 at ¶¶ 5, 12, 15, 18 (Exhibit 60); Hill Dep., Hill v. City of Chicago, 06 C 6772 at 320-25, 331, 367-73, 389 (Exhibit 61). Similarly, after being kicked and struck about his body, Dan Young also falsely confessed to a crime with which he had absolutely nothing to do. Further, Young implicated Hill in the crime. See Amended Compl., Hill v. City of Chicago, at ¶¶ 22-24 (Exhibit 60); Testimony of Dan Young, People v. Young, 92 CR 8344 at 13-19 (Exhibit 62). Indeed, even Peter Williams (who, it turned out, was incarcerated on an unrelated charge at the time of the rape-

murder), falsely confessed and implicated Hill after being chained to a radiator, hit with a blackjack, and forced to urinate on himself. See Amended Compl., Hill v. City of Chicago, at ¶¶ 26-30 (Exhibit 60). Williams was never charged. Twelve years after their convictions, Hill and Young were exonerated when DNA evidence proved that they were not the offenders. See id. at ¶ 48.

- j. Marcus Wiggins brought a lawsuit against O'Brien, Boudreau, and others alleging that he was handcuffed to a wall, beaten and electro-shocked while being questioned regarding a 1991 murder case. See Compl., Wiggins v. Burge, 93 C 0199 (Exhibit 63). The detectives denied Wiggins' mother access to her son, who was a 13 year-old eighth grader at the time of the coerced confession. See C.R. #193591 at 2 (Exhibit 64). The other suspects also gave confessions, many of them after being physically beaten. For example, Jesse Clemon and lamari Clemon alleged that they were struck about their bodies, including with fists and flashlights. See id. at 2-4; Testimony of lamari Clemon, People v. Clemon, 91 C 25414 at 00340-53 (Exhibit 65). Two of these confessions were later thrown out on the basis of the "periodic screaming [at the police station] throughout the night" – screaming that O'Brien and Boudreau testified that they did not hear. See, e.g., People v. Clemon, 259 Ill.App.3d 5, 8, 10, 630 N.E.2d 1120, 1122, 1124 (1st Dist. 1994); see also Testimony of lamari Clemon, People v. Clemon, 91 C 25414 at 00340-53 (Exhibit 65); Testimony of Myron

James, People v. Clemon, 91 C 25414 at A2-A3, A9-A14, A16-A20, A35-A37 (Exhibit 66). All of the defendants were either acquitted or had their cases *nolle prosequied* by the State. In recent civil depositions in an unrelated lawsuit, O'Brien and Halloran took the Fifth Amendment when asked questions about the torture of Marcus Wiggins and his co-defendants. See Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 36 (Exhibit 18); O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 32-37, 43-48 (Exhibit 19).

- k. In 1991, Johnny Plummer was interrogated for 36 hours by Boudreau, Halloran, and others. See People v. Plummer, 306 Ill.App.3d 574, 578-59, 714 N.E.2d 63, 67 (1st Dist. 1999). Plummer alleged that he was hit in the face, stomach, and side, including with a flashlight, by the detectives. See id. Halloran has taken the Fifth Amendment regarding Plummer's allegations. See Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 101-04, 122 (Exhibit 18).
- l. Plummer's allegations, however, have been further corroborated by Aaron Johnson, a worker at the Cook County Juvenile Detention Center. Johnson saw two white male police officers pick up Johnny Plummer from the facility. See C.R. #194392, Interview of Aaron Johnson (Exhibit 67). At the time, Plummer had no visible injuries. Id. According to Johnson, when the officers brought Plummer back to the Detention Center one of the officers stated, "[w]e put another murder on him." Id.

At that time, Johnson observed “a lump underneath Mr. Plummer’s left eye and swelling to the left side of his forehead.” Id.

- m. In 1993, Emmett White was arrested by O’Brien and Halloran. In an effort to secure a confession, O’Brien and Halloran slapped White on his face and struck him on his body. C.R. #200398 (Exhibit 68); White Report of Proceedings, Case No. F-930121 at 45-46 (Exhibit 69). When White told the officers that he did not have anything to say to them and was exercising his right to remain silent, the detectives became infuriated. The detectives again struck White about the face and body, threw him to the ground, and one of the officers stepped on his face. White Report of Proceedings, Case No. F-930121 at 46, 48-49 (Exhibit 69). Photographs of White corroborated his injuries. See id. at 51-52; C.R. #200398 (Exhibit 68). When recently asked about White’s allegations, O’Brien and Halloran pled the Fifth Amendment. See Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 126-28 (Exhibit 18); O’Brien Dep., Hill v. City of Chicago, 06 C 6772 at 111-15 (Exhibit 19).
- n. In 1992, Arnold Day was interrogated in connection with the murder of Rafael Garcia. After isolating Day in an interrogation room for hours, Boudreau and another detective forcefully grabbed Day by the neck and choked him. The detectives also threatened to throw Day out the window. See Day Aff. ¶¶ 16, 17, 24 (Exhibit 70). Day ultimately confessed,

but was nonetheless acquitted of the Garcia murder after presenting compelling allegations of police torture.

- o. In 1993, Jerry Gillespie confessed to murder after he was kicked and slapped about the face and body and choked during 30 hours of interrogation by Boudreau, O'Brien, and Halloran. Again, analogous to the experiences of Washington, his co-defendant, and other witnesses in his case, Gillespie was denied the right to an attorney and threatened with further torture, including being burned with a cigarette, if he did not sign the statement that was prepared for him. See Post-Conviction Petition, People v. Gillespie, 93 CR 6884 at ¶¶ 11, 24 (Exhibit 71); Motion to Hold in Abeyance, People v. Gillespie, 93 C.R. 6884 at ¶¶ 6-7 (Exhibit 72). Both O'Brien and Halloran have taken the Fifth Amendment on questions relating to Gillespie's allegations. See Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 126-28 (Exhibit 18); O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 111-15 (Exhibit 19).
- p. Gregory Logan was interrogated regarding a murder in 1991 by O'Brien and other police officers. When Logan professed his innocence, the detectives beat him with a bat, pushed him against a wall, and pointed a gun to his head. He was denied the right to an attorney. See Compl., Logan v. O'Brien, 93 C 3386, at 6, 7, 12 (Exhibit 73).
- q. In 1992, Clayborn Smith experienced the same types of torture present in Washington's case: Smith was smacked on the face and head and

punched in the ribs by Boudreau and Halloran. The detectives also grabbed Smith's neck, pulled his hair, and yanked his finger back. After 37 hours of interrogation and physical torture, Smith confessed to a murder that he did not commit. See Compl., Smith v. City of Chicago, 03 L 011581 at ¶¶ 8, 11, 13, 22 (Exhibit 74); Smith Dep., Hill v. City of Chicago, 06 C 6772 at 134, 137-53 (Exhibit 75). Rather than deny Smith's allegations of torture, Halloran recently invoked the Fifth Amendment in response to questions on the matter. See Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 10-16, 19, 123 (Exhibit 18).

- r. Robert Wilson falsely confessed to slashing a woman with a knife after being abused and threatened by O'Brien. See Wilson Report of Proceedings at E50-53 (Exhibit 76). To seal the case, O'Brien, along with other detectives, manipulated the victim into identifying Wilson. To do so, O'Brien withheld evidence from the victim that another man – one who exactly fit her description of the perpetrator – had slashed several persons in the same area at about the same time. See Wilson v. Firkus, 457 F. Supp. 3d 865, 872 (N.D. Ill. 2006). The victim came forward to blow the whistle on the detectives' manipulation of her testimony and identify her real attacker, but not before Wilson had spent almost 10 years in jail. See Maurice Possley, "Witness, Former Inmate at Peace," Chicago Tribune, Feb. 18, 2007 (Exhibit 77). Wilson's conviction was vacated by Chief Judge Biebel on December 4, 2006. O'Brien and Halloran both took

the Fifth Amendment when questioned about Wilson's allegations of abuse. See Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 126-28 (Exhibit 18); O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 111-15 (Exhibit 19).

- s. After being interrogated for more than 36 hours, during which time he was slapped, kicked, and punched in the face and body by Boudreau, Halloran, and others, Derreck Flewellen signed a false confession. See Compl., Flewellen v. City of Chicago, 00 C 2709 at ¶¶ 21, 24, 25, 26, 28 (Exhibit 78); Motion to Suppress Statement, People v. Flewellen, 95 CR 20513 at ¶¶ 3-5 (Exhibit 79); see also Halloran Dep., Hill v. City of Chicago, 06 C 677 at 50-60, 125 (pleading the Fifth Amendment when asked questions about Flewellen's allegations that he beat him) (Exhibit 18). Flewellen spent almost five years in prison before being acquitted of the two murders based on DNA tests which proved that the crime was committed by someone else. See Compl., Flewellen v. City of Chicago at ¶¶ 45, 49, 50 (Exhibit 78).
- t. In December 1993, Boudreau, O'Brien, and Halloran "closed" two separate murder cases by coercing confessions from two mentally retarded juveniles, Fred Ewing and Darnell Stokes. See Compl., Ewing v. O'Brien, 98 C 5569 at ¶¶ 8-11, 14 (Exhibit 80); Possley, Mills & Armstrong, "Veteran Detective's Murder Cases Unravel," Chicago Tribune, Dec. 17, 2001 (Exhibit 47). Absent any other evidence connecting them to the

crime, both were acquitted notwithstanding the “confessions” obtained by Boudreau, Halloran, and O’Brien. O’Brien and Halloran both refused to answer questions about Ewing’s and Stoke’s allegations that they were beaten for fear of subjecting themselves to criminal liability. See Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 93-95 (Exhibit 18); O’Brien Dep., Hill v. City of Chicago, 06 C 6772 at 66-69 (Exhibit 19).

- u. In 1991, Boudreau again took a false confession from another mentally handicapped individual, Alfonzia Neal, whose IQ was in the 40s. After being beaten, Neal agreed to give a confession that was patently false. See Possley, Mills, & Armstrong, “Veteran Detective’s Murder Cases Unravel,” Chicago Tribune, Dec. 17, 2001 (Exhibit 47). Neal was acquitted at trial.
- v. In 1995, Boudreau and Halloran interrogated and coerced a confession from Oscar Gomez. Just as was true for Terry King in Washington’s case, the detectives held Gomez for an extended period of time, repeatedly beat him while he was shackled to the wall, and prevented him from communicating with an attorney. See Motion to Suppress Statement, People v. Gomez, 95 CR 22930 at ¶¶ 4-6, 8 (Exhibit 81). Despite his “confession,” Gomez was found not guilty. Moreover, during a recent deposition in an unrelated civil lawsuit, O’Brien and Halloran both took the Fifth Amendment when questioned about their coercive interrogation of Gomez. See Halloran Dep., Hill v. City of Chicago, 06 C

6772 at 4-10, 119, 124-25 (Exhibit 18); O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 84-93 (Exhibit 19).

- w. Curtis Milsap was slapped in the face while handcuffed and kicked in the testicles by O'Brien until he confessed to a double murder about which he had no knowledge. See Special Prosecutor's Memorandum on Milsap (Exhibit 82). Notwithstanding his confession, Milsap was ultimately acquitted of the murders. See id.
- x. In 1995, Abel Quinones confessed to murder after being interrogated for 30 hours and repeatedly beaten by Halloran. Despite his purported confession, Quinones was found not guilty. See Motion to Quash Arrest and Suppress Evidence, People v. Quinones, 95 CR 22930 at ¶¶ 3-4, 7-8 (Exhibit 83). Not surprisingly, Halloran recently refused to answer any questions about the Quinones case in an unrelated civil deposition on the basis of his Fifth Amendment privilege against self-incrimination. See Halloran Dep., Hill v. City of Chicago at 7-8 (Exhibit 18).
- y. In 1992, Kilroy Watkins was interrogated by Boudreau and Halloran. See Compl., Watkins v. Halloran, 02 C 3461 at ¶¶ 6-7 (Exhibit 84); Watkins Aff. at ¶ 3 (Exhibit 85). Similar to what detectives did to Wayne Washington and Joe West, Watkins was choked, punched in the face, and held for over 30 hours. Notwithstanding his actual innocence, Watkins gave a confession to the detectives because he could not stand further physical abuse. See Watkins Aff. at ¶¶ 4, 8 (Exhibit 85); see also Watkins

Dep., Hill v. City of Chicago, 06 C 6772 at 150, 162-63, 171-72 (Exhibit 86).

In a recent civil suit, Halloran pleaded the Fifth Amendment when asked about Watkins' allegations of abuse. See Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 112-16, 120, 122 (Exhibit 18).

- z. In 1990, Cortez Brown was tortured by O'Brien into confessing to two murders with which he had absolutely nothing to do. O'Brien, along with two other detectives, beat Brown about his head and body, including with a flashlight. See Brown Report of Proceedings, Nov. 8, 1991, 90 CR 23997, 90 CR 23998, 90 CR 23999, 91 CR 643 at M13-14 (Exhibit 87). Brown was denied food and his right to an attorney. See id. at M12. Judge Strayhorn, who presided over Brown's case, signed an affidavit indicating that if he knew then what he knows now about these detectives' misconduct, he might have suppressed Brown's confession. See Strayhorn Aff. ¶¶ 1-2 (Exhibit 88). Moreover, O'Brien has refused to answer questions about his "interrogation" of Brown for fear of subjecting himself to criminal liability. See O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 6-7 (Exhibit 19). In May 2009, Judge Crane ordered a new trial for Brown after finding that the evidence Mr. Brown presented was both "staggering" and "damning." Brown Report of Proceedings, May 22, 2009, 90 CR 23997 at 8 (Exhibit 89).
- aa. In 1998, Antoine Anderson was interrogated by O'Brien and Halloran about a murder. See Anderson Aff. at 1 (Exhibit 90). The detectives hit

Anderson in the face and chest and threatened to take away his children. See id. at 1-2; see also Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 60-68, 126-27 (pleading the Fifth Amendment when asked questions about Anderson's allegations of being beaten) (Exhibit 18); O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 38-43 (same) (Exhibit 19). As a result of this abuse, and after being held for two days at the police station, Anderson falsely confessed to a crime he did not commit. See Anderson Aff. at 1-2 (Exhibit 90).

139. There is additional evidence of these detectives' misconduct outlined in the Chart of Additional Misconduct by Boudreau, Halloran, and O'Brien, attached as Exhibit 48 to the Hood Petition.

140. None of the foregoing evidence was disclosed or available to Washington at the time of his trial.⁶

⁶ Moreover, the above-described documented allegations constitute a tiny fraction of the cases in which these particular detectives have engaged in similar misconduct. This is because many, if not most, criminal defendants seeking to suppress confessions are ultimately unable to identify the particular detectives who committed the acts. Criminal defendants are often interrogated by detectives dressed in street clothes without nameplates working in rotations, not to mention the fact that the suspects are hardly concentrating on remembering detectives' names during the intimidating, and often abusive, interrogation process. Additionally, this list of accusers fails to include those many cases where the attempted coercion ultimately failed. Where no incriminating statement was actually obtained, Boudreau and his colleagues eventually had to release people (as they did with Terry King), and without any statement, the instances of coercive tactics are rarely documented or otherwise known to the public. Thus, for every documented case of coercion involving these detectives, they have likely gotten away with many other similar abuses which were never brought to light.

ACTUAL INNOCENCE

Wayne Washington's Conviction is an Albatross that Violates the Right to Due Process of Law Because Newly Discovered Evidence Proves His Innocence

141. Petitioner re-alleges every paragraph of this petition and expressly incorporates them as if they were fully set forth herein.

142. Wayne Washington is actually innocent of the crimes for which he was convicted. It is well-established that Illinois has no interest in wrongfully incarcerating innocent persons. Procedurally, doing so "would be fundamentally unfair." People v. Washington, 171 Ill.2d 475, 487, 665 N.E.2d 1330, 1336 (1996); see also U.S. Const. amends. V, XIV. Substantively, imprisoning the innocent would be "so conscience shocking as to trigger the operation of substantive due process." Washington, 171 Ill.2d at 487-88, 665 N.E.2d at 1336; see also U.S. Const. amends. V, XIV.

143. Thus, a defendant who is actually innocent of the offense for which he stands convicted may bring a free-standing claim of actual innocence seeking reversal of his conviction. To prevail, the defendant must present supporting evidence which is new, material, and noncumulative, and which would probably change the result on retrial. Washington, 171 Ill.2d at 489, 665 N.E.2d at 1336. Wayne Washington now comes forward with evidence of that character.

144. While Washington eventually pled, that plea cannot be said to be voluntary when it was obviously influenced by the above wrongdoing, and the unknown.

145. Since his trial, Wayne Washington has uncovered substantial new evidence to support his claim of innocence: this includes (1) the 2008 conviction of Marshall Morgan, Sr. for a murder strikingly similar to the murder in this case; (2) a recantation by Michael Rogers; (3) a

recantation by Allen “Jody” Rogers; (4) an explanation from Wayne Washington regarding his false guilty plea; and (5) new evidence of police misconduct both in this case and in others, corroborating his arguments in support of his innocence and the accounts of several witnesses who gave coerced testimony at trial.

I. Marshall Morgan, Sr.’s *Modus Operandi* Demonstrates His Responsibility for the Murder for which Wayne Washington is Wrongfully Incarcerated

146. Since his trial and plea, Marshall Morgan, Sr. has been convicted of another murder strikingly similar to the murder for which Washington is wrongfully incarcerated.

147. “Evidence is newly discovered when it has been discovered since the trial and is of such a character that it could not have been discovered prior to the trial by the exercise of due diligence.” People v. Ortiz, 385 Ill. App. 3d 1, 10, 896 N.E.2d 791, 798 (1st Dist. 2008) (citing People v. Molstad, 101 Ill. 2d at 134, 461 N.E.2d at 401 (Ill. 1984)).

148. Morgan, Sr.’s conviction of the strikingly similar murder of Deborah Jackson occurred on May 23, 2008 (approximately 15 years after Hood’s trial). Morgan, Sr.’s conviction therefore constitutes newly discovered evidence that could not have been discovered prior to trials or pleas.

149. Moreover, this new evidence would likely change the result on retrial because it would enable Washington to present evidence of Morgan, Sr.’s culpability. Judge Bolan thought that Morgan, Sr. deserved “watching” but that the evidence as developed at that time was too attenuated to demonstrate that the killing of Morgan, Jr. fit a *modus operandi* employed by Morgan, Sr. Since, however, Morgan, Sr. has been convicted of another strikingly similar murder, cementing his *modus operandi* and closing the evidentiary gap.

150. The 2001 killing for which Morgan, Sr. confessed and was convicted in 2008 demonstrates the pattern of killings in which Morgan, Sr. has engaged: For each of the Hall, Morgan, Jr., Soto, and Jackson murders (1) Morgan, Sr. had a close relationship with the victim; (2) the nature of the killings – a shooting in a car with the victim left to die – was strikingly similar and idiosyncratic; and (3) each killing shared a common motive.

A. *Morgan, Sr. had a Close Relationship with the Victim in each Killing*

151. Each of the four murder victims had a close relationship to Morgan, Sr. Indeed, each was either a loved one or a close friend.

- a. In 1977, Morgan, Sr. murdered William Hall. Transcript of Proceedings Regarding Morgan, Sr.'s Confession at 14 (Exhibit 33). Hall and Morgan, Sr. were friends. Hall Supp. Report, 10 Jan 77 at 3 (Exhibit 32).
- b. In 1993, Marshall Morgan, Jr. was murdered. Morgan, Jr. was Morgan, Sr.'s son. CPD Supp. Report, 21 May 1993 at 6 (Exhibit 15)
- c. In 1995, Michelle Soto was murdered. Soto was Morgan, Sr.'s fiancée. Soto Life Insurance App. at 1 (Exhibit 35).
- d. In 2001, Deborah Jackson was murdered. Jackson was Morgan, Sr.'s girlfriend. Morgan, Sr. Confession to Jackson Murder (Exhibit 44).

152. Additionally, although Morgan, Sr.'s ex-wife Delores Morgan was not killed, Morgan, Sr. threatened her with a gun and was violent and physically abusive towards her, just as he was with his murder victims. For that reason, the Domestic Relations Division of the Circuit Court of Cook County granted Delores Morgan a temporary restraining order against Morgan, Sr. in 1992. Temporary Restraining Order at 3 (Exhibit 91). This order was granted

pursuant to a complaint by Delores that Morgan, Sr. had “choked petitioner almost to unconsciousness and pulled her hair and kicked her in her back several times and put a gun to petitioner’s head threatening her.” Petition for Order of Protection at 2 (Exhibit 7). Delores also alleged that Morgan, Sr. “choked petitioner and slammed her into walls many times.” *Id.*

153. Thus, with his confession to the murder of Deborah Jackson, Morgan, Sr.’s *modus operandi* has been demonstrated. He has a long pattern of physical violence toward those close to him, including friends and loved ones. Unfortunately for Morgan, Jr., he was among a series of people to get close to Morgan, Sr. and then fall victim to violence.

B. The Nature of Each of the Four Killings is Stunningly Similar

154. Not only does Morgan, Sr. target the same type of person for his killings, he also kills each of them in a similar manner.

155. For example, all four of the victims were shot to death, at least three (including Morgan, Jr.) with a .38 caliber handgun. CPD Supp. Report, 21 May 1993 at 8 (Exhibit 15); Transcript of Proceedings Regarding Morgan, Sr.’s Confession to Hall Murder at 13 (Exhibit 33); Soto Report of Postmortem Examination at 1 (Exhibit 92) (no bullets recovered); People v. Marshall Morgan, Sr., 01 CR 2513501.

156. Additionally, in each of the four cases, the victim was shot in a car with his or her body dumped in a public location. In three of the four cases, including the most recent murder of Deborah Jackson, the victim was left to die in the back of his or her own car.⁷

⁷ In the other case, Morgan, Sr. shot William Hall in a car and abandoned the body in an alley. Hall Supp. Report, 11 Jan. 77 at 4 (Exhibit 31).

- a. In the Morgan, Jr. case, the victim was found on the floor in the backseat of his abandoned car several days after he was killed. CPD Supp. Report, 21 May 1993 at 2 (Exhibit 15).
- b. Similarly, in the Soto case, the victim was found on the floor of the backseat of the abandoned family car several days after she was killed. Soto Supp. Report, 26 Jul 95 at 5-6 (Exhibit 37).
- c. Finally, in the Jackson case, the victim was found in the trunk of the abandoned family car several days after she was killed. Jackson Original Case Incident Report at 2 (Exhibit 43).

157. Moreover, and perhaps even more tellingly, in the three most recent cases – Morgan, Jr., Soto, and Jackson – the victim was found either partially or fully nude.

- a. For Morgan, Jr., he was discovered with no clothing from the waist down. CPD Supp. Report, 21 May 1993 at 6 (Exhibit 15).
- b. Similarly, Soto was found nude. Soto Supp. Report, 26 Jul 95 at 2 (Exhibit 37).
- c. Jackson was discovered without her underwear. Jackson Original Case Incident Report at 3 (Exhibit 43).

C. *The Killings had Similar Motives*

158. Not only were the victims and the nature of the killings similar, but they also had a common purpose.

159. In at least three of the four murders, Morgan, Sr. had a financial motive for the killing.

- a. Shortly before the killing of Morgan, Jr., Morgan, Sr. was in dire financial circumstances. Morgan, Sr. Aff. of Income and Expense at 1 (Exhibit 4). Morgan, Sr. took out a life insurance policy covering Morgan, Jr. with himself as the primary beneficiary. Morgan, Jr. Life Insurance App. at 2 (Exhibit 6). Within months, Morgan, Jr. was murdered. Within days of the discovery of the body, Morgan, Sr. submitted a claim to Allstate seeking distribution of the insurance policy proceeds. Morgan, Jr. Life Insurance Claim Form at 1 (Exhibit 93). He received a \$50,000 payment. Allstate Life Insurance Payment Letter, June 8, 1993 (Exhibit 40).
- b. Just before the Soto murder, Morgan, Sr. told a family member that he was "about to come into some money." Soto Supp. Report, 26 July 95 at 2-3 (Exhibit 37). Morgan, Sr. took out a life insurance policy covering Soto with himself as the primary beneficiary. Soto Life Insurance App. at 1-3 (Exhibit 35). He purchased this policy from the same insurance agent from whom he purchased the policy on Morgan, Jr. Morgan, Jr. Life Insurance App. at 3 (Exhibit 6); Soto Life Insurance App. at 3 (Exhibit 35). Within months, Soto was murdered. Within days of the discovery of the body, Morgan, Sr. submitted a claim to Allstate seeking distribution of the insurance policy proceeds. Soto Life Insurance Claim Form at 1 (Exhibit 38). He received a \$107,000 payment. Motion to Dismiss, 96 CH 08673 at 1-2 (Exhibit 41). Morgan, Sr. also fraudulently transferred the deed to Soto's home into his name after she was murdered. Soto Aff. at ¶ 8 (Exhibit 36); see also

Questions Raised About Police Misconduct, Impact of Wrongful Convictions,
WMAQ Television Broadcast, Dec. 18, 2008 (Exhibit 17).

- c. Finally, the murder of William Hall was also motivated by a desire for financial gain. Morgan, Sr. admits that Hall owed him a monetary debt. Transcript of Proceedings Regarding Morgan, Sr.'s Confession at 13 (Exhibit 33). When Hall failed to pay, Morgan, Sr. killed him. *Id.*

D. *The Cumulative Effect of this Evidence Demonstrates Morgan, Sr.'s Modus Operandi*

160. Although Judge Bolan decided not to admit evidence of Morgan, Sr.'s 1977 manslaughter conviction, evidence related to the strikingly similar murder of Michelle Soto, or evidence of the life insurance policies Morgan, Sr. purchased on his healthy 20-year old son and on Soto just months before their violent deaths (Tr. at L95-96; M18-20), he recognized that Morgan, Sr. "bears watching, no question about that . . ." Tr. at M44.

161. Judge Bolan's remark that Morgan, Sr. "bears watching" suggests that further evidence related to Morgan, Sr.'s *modus operandi* could have changed this ruling. Newly discovered evidence – specifically, the conviction of Morgan, Sr. for another murder nearly identical to the killings of Morgan, Jr., Hall, and Soto – creates a strong probability that Judge Bolan would have ruled differently.

162. A defendant is permitted to introduce exculpatory *modus operandi* evidence related to another offender whenever such evidence contains "significant probative value" to the defense. People v. Cruz, 162 Ill. 2d 314, 350, 643 N.E.2d 636, 653 (Ill. 1994) (citing People v. Tate, 87 Ill. 2d 134, 143, 429 N.E.2d 470, 475 (Ill. 1981)); see also People v. Turner, 373 Ill. App. 3d 121, 130-131, 866 N.E.2d 1215, 1224 (2d Dist. 2007).

163. In Turner, the court provided an example of how this rule works in practice:

In a hypothetical case in which a police officer pulls over a car with two passengers – one with no criminal record and the other a habitual drug offender – and finds illegal drugs in the car, if the first passenger were charged with possession of the illegal drugs, the fact that the second passenger was a habitual drug user would have significant probative value as to which passenger possessed the drugs Under the rule implied in Cruz, evidence of the second passenger’s drug habit would be admissible as exculpatory evidence in the first passenger’s trial

Turner, 373 Ill. App. 3d at 130-131, 866 N.E.2d at 1224 (2d Dist. 2007).

164. Pursuant to Turner and Cruz, Washington will be able to introduce evidence of Morgan, Sr.’s *modus operandi* on retrial. This new evidence would likely change the result on retrial because it clearly inculpatates Morgan, Sr. and has significant probative value to the defense.

165. For the same reason, the evidence of Morgan, Sr.’s *modus operandi* is material and non-cumulative. Illinois courts have held that testimony is not cumulative where it addresses the ultimate issue in the case: the identity of the offender. Ortiz, 385 Ill. App. 3d at 10, 896 N.E.2d at 798 (1st Dist. 2008) (citing Molstad, 101 Ill. 2d at 134, 461 N.E.2d at 401 (Ill. 1984)).

166. The idiosyncratic pattern of killing that the Jackson murder cements – killing for financial gain with a .38 caliber weapon and leaving the victim to die partially or completely nude in his or her own abandoned car – would not only be admissible at retrial, but also would be likely to change the outcome. With this powerful *modus operandi* evidence, Hood would be able to demonstrate that Morgan, Sr. was the true perpetrator and explain any purportedly inculpatory evidence (such as his and many others’ fingerprints on the beer cans) as the product of Morgan, Sr.’s attempt at distracting the police.

II. Michael Rogers has Fully Recanted his False Testimony and Revealed Previously Undisclosed Gifts Given to him by the State in Exchange for his Statements

167. Since the trials, Michael Rogers has fully recanted his false testimony implicating Tyrone Hood and Wayne Washington in the murder of Morgan, Jr. See Michael Aff. (Exhibit 26). Recantations constitute newly-discovered evidence. People v. Bannister, 378 Ill.App.3d 19, 21, 880 N.E.2d 607, 611 (1st Dist. 2007).

168. As noted above, at trial, Michael falsely testified that he and his brother Jody encountered Washington and Hood in the evening of May 8, 1993. Tr. H8-9. He further testified that he heard Hood talk about doing a “sting,” which he defined as a “robbery, stickup.” Id. at H9. Michael also stated that he saw Hood holding a .38 caliber handgun. Id.

169. Like Jody Rogers and Joe West, Michael has decided “to do the right thing by coming forward and telling the truth.” Michael Aff. at ¶ 10 (Exhibit 26). The truth is, “[he] never knew anything about that murder.” Id.

170. Rather, Michael identified Hood and Washington at the police station and again at trial in response to the coercive and suggestive tactics of the detectives involved in the case – detectives who, as discussed above, have taken the Fifth Amendment rather than answer questions about their behavior related to this case. Washington Aff. at ¶ 6 (Exhibit 23); Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 30 (Exhibit 18).

171. Michael’s testimony was also the result of undisclosed gifts given to him by the State. Michael Aff. at ¶ 8 (Exhibit 26); Mullenix Aff. at ¶ 4 (Exhibit 28). On that score, Michael received a check for about \$750.00, additional cash, and other gifts in exchange for his

testimony at trial. Michael Aff. at ¶ 8 (Exhibit 26). He estimates the total value of these gifts as approximately \$1,000. Id.

172. Neither the coercive tactics employed by detectives in this case nor the financial rewards given to Michael were disclosed to the defense. Mullenix Aff. at ¶ 4-6 (Exhibit 28).

173. The State's failure to disclose the money that it paid to Michael precluded Washington from effectively impeaching Michael and establishing his bias in favor of the State. See Brady v. Maryland, 373 U.S. 83, 87 (1963); Giglio v. United States, 405 U.S. 150, 154-55 (1972); People v. Blackman, 359 Ill.App.3d 1013, 1019-20, 836 N.E.2d 101, 106-08 (1st Dist. 2005).

174. That failure was particularly egregious because Michael's testimony was integral to the State's case. For example, during closing arguments, the State repeatedly highlighted for the judge the importance and reliability of Michael's testimony. Tr. at P34-36. The prosecutor stated that Michael "didn't get up here and lie. In fact he made consistent statements to the police officers." Tr. at P34.

175. Michael's new and truthful statements in his affidavit – coupled with the newly discovered consideration provided to him – is plainly the type of material, noncumulative evidence that would probably change the result on retrial.

176. Michael's testimony is material: It not only discredits a central piece of evidence on which the State relied for Washington's conviction, but also corroborates the existence of police misconduct in this case.

177. For the same reasons, Michael's testimony is noncumulative. Illinois courts have held that witness testimony is not cumulative where it addresses the ultimate issue in the case: the identity of the offender. Ortiz, 385 Ill. App. 3d at 10-11, 896 N.E.2d at 799 (citing People v. Molstad, 101 Ill.2d 128, 135, 461 N.E.2d 398, 402 (1984)).

178. Finally, this new evidence would likely change the result on retrial. The State placed great weight on Michael's testimony. As noted above, the State highlighted Michael's credibility and lack of bias. Tr. at P34-36. Such assertions, however, are flatly contradicted by his affidavit: He only implicated Washington after being subjected to significant police pressure and being provided consideration worth at least \$1,000.00. Michael Aff. at ¶ 8 (Exhibit 26).

III. Allen "Jody" Rogers has Fully Recanted his Testimony

179. Just as was true of his brother, Jody Rogers has fully recanted his testimony implicating Washington in the murder of Morgan, Jr. See Jody Aff. (Exhibit 24). As noted above, recantations are newly-discovered evidence. People v. Bannister, 378 Ill.App.3d 19, 21, 880 N.E.2d 607, 611 (1st Dist. 2007).

180. Jody's first encounter with detectives in this case came as he "was asleep in his basement when he was arrested by a team of 5 Chicago policemen who had come into his house with their guns drawn asking for him. Jody was placed in handcuffs and taken to the police station at 51st and Wentworth." Jody Aff. at Ex. A (Interview of Allen "Jody" Rogers, Mar. 31, 1994 at 1) (Exhibit 24).

181. After initially – and truthfully – telling police that he knew nothing about the murder, detectives told Jody:

that he was lying and that they heard that Jody provided the gun for the murder. The detectives also told Jody that they wanted him to say that he saw the murder or at the very least that he heard Tyrone talk about the murder. The police were very clear with Jody that he was not going to go home until he told the police what they wanted to hear. So, because he was tired, scared and wanted to go home Jody agreed to “cooperate” with the police. Jody also did not want to be charged with the murder so he told the police that he provided the gun to Tyrone and also heard Tyrone “confess” to him that he did it.

Id.

182. After signing the false statement, Jody was taken before the Grand Jury where he reiterated the same false testimony. Id. at ¶ 8. Jody states that he lied in his Grand Jury testimony “because [he] was afraid of what the police would do to [him] if [he] told the truth, which was that [he] didn’t know anything about the murder.” Id.

183. On March 31, 1994 and again on May 18, 1995, Jody recanted the false story he provided to police. Id. at Ex. B and Ex. C.

184. Nevertheless, at trial, Jody implicated Washington in the murder of Morgan, Jr. Tr. at 110-15. Jody’s false testimony at trial was the product of similar coercive police tactics and a deal offered to him by the State’s Attorney regarding his then-pending felony charges. Id. at ¶

10.

185. That testimony, like Jody’s statements to the police, was absolutely false. Jody states: “[I] testified at Tyrone’s trial because I wanted to get out of jail and because I was scared of what would happen if I didn’t do what the State’s Attorney told me to do. My testimony at Tyrone’s trial was not true.” Id. at ¶ 11-12.

186. Jody “decided to come forward now because [he] realize[s] that [his] lies may have helped to send an innocent man to jail.” *Id.* at ¶ 14. The truth is, “[he doesn’t] know anything about the murder. [He] never told Tyrone where to get a gun. [He] never saw Tyrone with a gun. [He] never heard Tyrone talking about doing a ‘stang’ or having done a murder.” *Id.* at ¶ 13.

187. Jody’s new and truthful testimony – coupled with newly discovered evidence of police misconduct – is plainly the type of material, noncumulative evidence that would likely change the result on retrial.

188. Jody’s testimony is material: It not only discredits a central premise on which the State relied for Washington’s conviction, but also corroborates the police misconduct in this case. As Jody has explained, his false statements to police and his false testimony against Washington at the Grand Jury were the result of coercive tactics employed by Chicago police detectives – detectives who have taken the Fifth Amendment rather than answer questions about their behavior in this case.

189. For the same reasons, Jody’s testimony is noncumulative. As noted above, Illinois courts have held that witness testimony is not cumulative where it addresses the identity of the offender. *Ortiz*, 385 Ill. App. 3d at 10-11, 896 N.E.2d at 799 (citing *Molstad*, 101 Ill.2d at 135, 461 N.E.2d at 402).

190. Finally, this new evidence would likely change the result on retrial. Jody’s affidavit corroborates Washington’s strong claim of actual innocence. It also undermines the testimony of a central witness in the State’s case.

IV. Wayne Washington Has Explained his False Guilty Plea

191. Wayne Washington was tried separately for his alleged role in the murder of Morgan, Jr.

192. At the police station, after intense police coercion, Washington falsely confessed. See Washington Aff. at ¶ 3-7 (Exhibit 23); see also Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 30 (pleading the Fifth when asked if he beat or threatened Washington) (Exhibit 18). Notwithstanding the introduction of Washington's (false) confession, his first trial ended in a hung jury. Washington Aff. at ¶ 11 (Exhibit 23). Washington has come forward to explain his false confession and why he pled guilty to a crime that he did not commit. Id.

193. Following the hung jury, but before Washington's retrial could commence, Hood was convicted and sentenced to 75 years in prison. Id. Afraid of facing a similar outcome, Washington pled guilty to the murder despite his innocence. Id.

194. Washington has also revealed new details regarding his "confession" and his treatment at the hands of the Chicago police.

195. Washington's alleged confession was elicited after brutal treatment by Chicago police officers. Id. at ¶ 5-6. To that end, Washington was locked in an interview room alone overnight. Id. at ¶ 5. When he denied knowledge of the murder, police began to beat him. Id. at ¶ 6 ("A detective slapped me in the face and pushed my chair. I was also punched and handcuffed the entire time.").

196. This abuse continued throughout the day. Id. at ¶ 7. According to Washington, "[l]ater in the day I was given a pre-prepared statement and told to sign it. Even though the

statement was completely untrue, I signed it because I couldn't stand the beatings any longer."

Id.

197. Washington further states, "I don't know anything about Marshall Morgan's murder. I never spoke to Michael or Jody Rogers about doing a stang or getting a gun. I never overheard Tony [Tyrone Hood] talk about doing a stang or killing a rival gangmember. Further, I never identified Marshall Morgan's blue Chevrolet." Id. at ¶ 8. "I never saw Tony [Tyrone Hood] on May 8, 1993." Id. at ¶ 9.

198. Standing alone, the newly discovered evidence of Washington's mistreatment by the Chicago police and his explanation for his guilty plea constitutes material, non-cumulative information that could have affected the outcome of Washington's motion to suppress and trial, and Washington's plea.

V. New Evidence of Police Misconduct Corroborates the Accounts of Washington, Hood and Other Witnesses that their Statements were Coerced

199. The experiences of Wayne Washington, Michael and Jody Rogers, Joe West, and Tyrone Hood were not unique. As described above, Boudreau, Halloran, and O'Brien have a long-standing history of a pattern of misconduct that is strikingly similar to that which was employed in Hood's case. Although even one incident of similar misconduct by identical officers can be enough to show *modus operandi*, intent, plan, or motive to impeach the officers' credibility, see People v. Banks, 192 Ill.App.3d 986, 994, 549 N.E.2d 766, 771-72 (1st Dist. 1989), to date, Hood has collected dozens of allegations of misconduct by these detectives, each of which demonstrates the same inhumane methods of fabricating witness statements and closing cases, and none of which was available to Hood during his trial. See ¶ 142 *supra*; Chart of Additional Misconduct by Boudreau, Halloran, and O'Brien (Exhibit 48).

200. The totality of this new evidence of police misconduct is material, noncumulative, and would likely change the result on retrial.

201. Indeed, these allegations demonstrate unmistakable patterns of misconduct. Perhaps the most important pattern at issue here involves the physical abuse and threatening of witnesses in order to secure false statements. As discussed above, there are multiple allegations of police officers engaging in behavior nearly identical to that used in Hood's case.

202. For example, there is overwhelming new evidence of Halloran, Boudreau, O'Brien, and other detectives threatening suspects and witnesses and beating them about the body just as the detectives did in this case with Hood, Washington, West, Michael Rogers, and Jody Rogers. The purpose of this abuse was to coerce witnesses into falsely identifying another suspect. See, e.g., supra ¶¶ 142(a) (Tolliver); (b) (Little); (c)-(e) (Reyna, Escamilla, Morales); (f) (Walker); (g) (Allen); (h) (DeAvila); (i) (Hill, Young, Williams).

203. The pattern of misconduct in which these officers were engaged – threatening and physically abusing suspects and witnesses – undermines the reliability of the witnesses used against Hood and thereby the validity of his arrest and conviction. On that score, the allegations of the individuals listed in Paragraph 142 above are sufficiently recurrent and idiosyncratic to warrant closer examination at an evidentiary hearing.

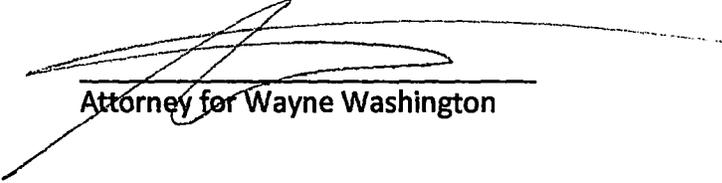
204. This is particularly the case given the fact that the officers involved in Washington's case have taken the Fifth Amendment with regard to allegations of misconduct in this case. See Halloran Dep., Hill v. City of Chicago, 06 C 6772 at 21-22 (Exhibit 18); O'Brien Dep., Hill v. City of Chicago, 06 C 6772 at 24 (Exhibit 19). Adverse inferences from the officers' invocation of the Fifth Amendment corroborate the allegations of police brutality in this case.

CONCLUSION AND PRAYER FOR RELIEF

207. Wherefore, Petitioner Wayne Washington, through his attorney, Steven A. Greenberg, moves this Court to consider the prejudicial impact of each of the above-stated deprivations of his constitutional rights individually and in combination with each another. Accordingly, Wayne Washington respectfully requests the following relief:

- A. Vacation of his conviction; or
- B. A hearing in which proof may be offered concerning the allegations contained in his Motion.

Respectfully submitted,



Attorney for Wayne Washington

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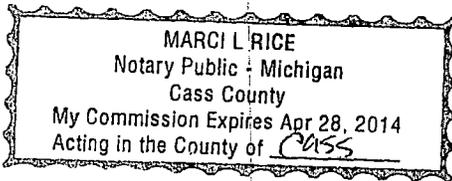
AFFIDAVIT

I, **Wayne Washington**, certify under penalties of perjury that the statements set forth in the foregoing Motion to Vacate, are true and correct except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Wayne Washington
Wayne Washington

Signed and Sworn to before me
this 2nd day of August 2013

Marcy Rice
Notary Public



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

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff-Respondent,)
)
v.) Certificate of Innocence
) 93CR1467601
)
WAYNE WASHINGTON,)
)
Defendant-Petitioner.) Honorable Domenica A. Stephenson
) Judge Presiding

FILED
JUDGE DOMENICA STEPHENSON-1967
OCT 31 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ORDER

Petitioner, Wayne Washington, requests that this Court grant him a Certificate of Innocence pursuant to 725 ILCS 5/2-702 for the judgment of conviction entered against him on October 21, 1996, for first-degree murder, Ill Rev. Stat. 1992, Ch. 38, par. 9-1-A. On February 9, 2015, the court vacated the conviction and dismissed the indictment against petitioner. Petitioner claims that he is actually innocent and has not voluntarily brought about his conviction. After a careful review of the pleadings and supporting documentation this Court finds that petitioner has failed to meet his burden and this petition is DENIED.

BACKGROUND & PROCEDURAL HISTORY

On October 21, 1996, petitioner entered a plea of guilty to first-degree murder. The court sentenced petitioner to serve a term of 25 years' imprisonment in the Illinois Department of Corrections.

On December 5, 2003, petitioner filed a *pro se* petition for habeas relief. On February 27, 2004, the court denied the petition.

On June 13, 2013, petitioner filed an initial *pro se* petition for post-conviction relief. Petitioner claimed actual innocence based on newly discovered evidence. On July 2, 2013, the

circuit court dismissed the petition because petitioner had completed his sentence and lacked standing to bring his claims.

On February 9, 2015, the State moved to vacate petitioner's conviction and sentence, grant petitioner a new trial, and nolle prosequi the charges against petitioner pursuant to 735 ILCS 5/2-1401. The court granted the motion.

On February 18, 2015, petitioner filed a petition for a certificate of innocence pursuant to 735 ILCS 5/2-702. On May 28, 2015, the court denied the petition. On June 24, 2015, petitioner's co-defendant, Tyrone Hood, filed a motion to reconsider. On September 9, 2015, the court vacated its prior ruling in petitioner's case based on the argument set forth in Hood's motion to reconsider. On June 20, 2016, the court heard testimony and took the matter under advisement.

ANALYSIS

Section 2-702 of the Illinois Code of Civil Procedure provides that "[a]ny person convicted and subsequently imprisoned for one or more felonies by the State of Illinois which he or she did not commit may, under the conditions hereinafter provided, file a petition for certificate of innocence in the circuit court of the county in which the person was convicted." 735 ILCS 5/2-702(b) (LEXIS 2015). Pursuant to Subsection 5/2-702(g) petitioner must prove by a preponderance of the evidence that:

- (1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
- (2)(A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; ***;
- (3) the petitioner is innocent of the offenses charged in the indictment or information ***; and
- (4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction."

“If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated.” 735 ILCS 5/2-702(h). In determining whether a defendant shows by a preponderance of evidence that he is innocent of the murders, the court must consider the materials attached to the defendant’s petition in support of his innocence claim in relation to the evidence presented against him at trial. *People v. Fields*, 2011 IL App (1st) 100169, ¶ 19. The court’s decision shall generally not be disturbed absent abuse of discretion. *People v. Pollock*, 2014 IL App (3d) 120773, ¶ 27; *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11.

Based on the pleadings, supporting evidence, and a review of the common law record, this Court finds that petitioner has met the first and second prongs of Subsection 5/2-702(g). Petitioner was convicted for murder, sentenced to serve a term of imprisonment, and served his entire sentence. That conviction was subsequently vacated and the indictment in his case was dismissed. The State has taken no position on the third or fourth prong.¹

At the outset, it is clear that petitioner has failed to satisfy the fourth prong because, by his own conduct, he voluntarily brought about his own conviction by giving a statement to police and pleading guilty. Petitioner argues that, based on the statute’s construction, his plea is not a procedural bar to relief. Petitioner contends that the legislature could have simply barred anyone who pled guilty from seeking a Certificate of Innocence, but they did not do so. Accordingly, petitioner believes that his plea does not, in itself, constitute a procedural bar. This argument is unavailing. Petitioner has not presented any legal authority to support his reasoning. Furthermore, it is clear from the plain text of the statute that if a defendant voluntarily takes steps that caused or brought about his conviction, he is barred from receiving a Certificate of

¹ The State’s abstention is not tacit support for the petition. At best, the State’s decision eliminates a potential hurdle petitioner may face, but it is not a sufficient cause, in itself, to grant the petition.

Innocence. *See Fields*, 2011 IL App. (2d) 120561, ¶ 17 (“the best indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning”). The statute was not written to be limited to only defendants that have pled guilty. Rather, it is constructed to also address situations where defendants have taken substantial steps toward their arrest and subsequent prosecution, but did not plead guilty. *See People v. Dumas*, 2013 IL App (2d) 120561, ¶ 19 (defendant ineligible under the fourth prong where he took steps toward orchestrating a drug deal).

Petitioner also contends that, even if his plea would normally bar him from obtaining a Certificate of Innocence, it should be discounted because he was coerced by police and afraid of a longer sentence. Petitioner testified before this court on June 20, 2016. Petitioner stated that he was arrested by police in connection with the murder. Police subsequently handcuffed him in an interrogation room and questioned him about the murder. Petitioner alleged that, when he denied knowledge of the murder, police struck him repeatedly and knocked him to the ground. Petitioner further alleged that police told him he could leave if he gave a statement, which led to his inculpatory statement. Petitioner stated that he pled guilty after he learned of his co-defendant’s conviction and the length of his sentence. Petitioner asserted that he feared receiving a comparable sentence. Finally, petitioner denied all knowledge or involvement in the murder.

On June 20, 2016, Washington testified before this court. Washington stated that he was arrested by police in connection with the murder. He testified that police handcuffed him in an interrogation room and questioned him about the murder. When he denied knowledge, police allegedly struck him and knocked him to the ground repeatedly. He claimed that he was told he could leave if he gave a statement, which he did. Washington now denies all knowledge or

involvement in the murder. Washington stated that he pled guilty because he learned that petitioner was convicted and sentenced and feared receiving a comparably long sentence.

This argument is also unavailing. First, petitioner's allegations are vague and non-specific. Petitioner does not identify the officer or officers who allegedly coerced his statement and only makes generalized statements that he was knocked to the ground. Petitioner has also failed to substantiate this claim with any evidence. Petitioner has not attached affidavits or other documents to support the allegation that he was abused or that the unnamed detectives responsible are implicated in similar cases of abuse. Finally, fear of a harsher sentence does not invalidate an otherwise voluntary plea. *People v. Mason*, 29 Ill. App. 3d 121, 126 (5th Dist. 1975); *See also People v. Wilbourn*, 48 Ill. 2d 187 (1971) (fear of death penalty insufficient to invalidate a plea). Accordingly, this Court finds no basis to discount petitioner's plea as a voluntary act which helped to bring about his conviction.

Washington's credibility cannot go without mention based upon the differing versions that he gave under oath at various hearings. Most significant, on August 24, 1995, he testified under oath in front of Judge Bolan that he was slapped once in the face and the chair that he was sitting in was pushed. He never testified that the police provided the information to put in his statement. He testified at his jury trial on August 14, 1996, again under oath, that he made up the information in his handwritten statement on his own. In contrast, at the hearing on June 20, 2016, he testified that the information in his written statement was essentially force fed to him. He testified that the police told him basically everything everybody else said and that if he said the exact same thing that he could go home. As such, this court finds that petitioner lacks credibility.

CONCLUSION

Based on the foregoing analysis and after a careful review of the pleadings, this Court finds that petitioner has not met his burden pursuant to 735 ILCS 5/2-702 because he is unable to demonstrate that he did not knowingly bring about his conviction through his own voluntary conduct. Therefore, petitioner's request for a Certificate of Innocence is hereby DENIED.

ENTERED: *Domenica Stephenson* 10/16/16
Honorable Domenica A. Stephenson
Circuit Court of Cook County
Criminal Division

DATED: 10-31-16

ENTERED
JUDGE DOMENICA STEPHENSON-1967
OCT 31 2016
DOMENICA STEPHENSON
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Case No. 127952

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) On Appeal
	) from the Appellate Court of Illinois,
	) First Judicial District, No. 1-16-3024
Respondent-Appellee,)
	) There heard on Appeal from the
v.	) Circuit Court of Cook County,
	) Illinois, No. 93 CR 14676
WAYNE WASHINGTON,)
	) The Honorable Domenica Stephenson,
Petitioner-Appellant.	) Judge, presiding.

CERTIFICATE OF SERVICE

I, David M. Shapiro, an attorney, certify that on June 8, 2022, the foregoing APPENDIX VOLUME was filed by electronic means with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701. I further certify that the same were served by electronic transmission on:

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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.

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Case No. 127952

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	On Appeal
)	from the Appellate Court of Illinois,
)	First Judicial District, No. 1-16-3024
Respondent-Appellee,)	
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)	Illinois, No. 93 CR 14676
WAYNE WASHINGTON,)	
)	The Honorable Domenica Stephenson,
Petitioner-Appellant.)	Judge, presiding.
)	
)	

APPENDIX OF PETITIONER-APPELLANT WAYNE WASHINGTON
VOLUME II OF II

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1 THE COURT: Washington and Hood.

2 (Defendants enter.)

3 THE COURT: Go sit down with your lawyers at the
4 counsel table.

5 MR. MULLENIX: Judge, for the record my name is
6 James Mullenix, M-u-l-l-e-n-i-x. I, along with Miss
7 Cynthia Brown, am representing Tyrone Hood.

8 MR. STANTON: Gary G. Stanton, multiple
9 defendant division. I represent Wayne Washington.

10 THE COURT: Okay. I take it each case is a
11 motion to quash arrest and suppress evidence?

12 MR. STANTON: Correct.

13 THE COURT: Correct. Washington, motion to
14 suppress statement, motion to quash. All right.

15 Let me ask a preliminary question. That
16 is, were Mr. Washington and Hood arrested separately,
17 on separate occasions?

18 MR. STANTON: I am sorry. What?

19 THE COURT: Were the defendants arrested on
20 separate occasions?

21 MR. STANTON: The evidence so far is I believe
22 Mr. Mullenix' client being arrested twice, my client
23 once. Once my client was arrested was the same day
24 as Mr. Mullenix' second arrest which was May 27th of

~~B-2~~
32

1 '93.

2 THE COURT: Oh, yeah. Testimony was taken
3 November 28th.

4 MS. WOLFSON: And January 20th, Judge.

5 THE COURT: And January 20th.

6 MS. WOLFSON: Mr. Washington has rested. Mr.
7 Hood has not.

8 THE COURT: Yeah.

9 MR. STANTON: Right.

10 THE COURT: Okay. Mr. Hood, are you ready to go
11 forward here?

12 MR. MULLENIX: Yes.

13 THE COURT: Proceed.

14 MR. MULLENIX: Judge, we'd be calling Detective
15 Lenihan.

16 THE COURT: Okay. Please raise your right hand,
17 sir.

18 (Witness sworn.)

19 DET. ROBERT LENIHAN,
20 called as a witness on behalf of the Petitioner Hood,
21 being first duly sworn, was examined and testified as
22 follows:

23 DIRECT EXAMINATION

24 By Mr. Mullenix:

~~B-3~~
33

1 THE COURT: Please be seated.

2 MR. MULLENIX:

3 Q. Detective, could you please tell us your
4 name, spell your last name, please, your star number,
5 your current unit of assignment?

6 A. My name is Robert Lenihan, L-e-n-i-h-a-n,
7 star 20593, assigned to area 1 detective division.

8 Q. You are currently at area 2, is that
9 correct?

10 A. Area 1 detective division.

11 Q. I am sorry. Detective, I want to direct
12 your attention to the date of May 20th, 1993. Where
13 were you assigned back then?

14 A. To the area 1 detective division.

15 Q. Detective, I want to direct your attention
16 to the approximate location of 105th and Maryland on
17 May 20th, 1993.

18 Do you see anyone in court today that you
19 encountered at that date and at that time?

20 A. Yes.

21 Q. Could you point to him, please?

22 A. Tyrone Hood, the young fellow sitting
23 straight in front of me (indicating).

24 MR. MULLENIX: Indicating for the record, your

~~B-4~~
34

1 Honor, he pointed to the Petitioner Tyrone Hood.

2 THE COURT: Record so reflects.

3 MR. MULLENIX:

4 Q. Detective, approximately what time of the
5 day was it that you first saw Tyrone Hood?

6 A. I believe it was midafternoon.

7 Q. Was Mr. Hood with anyone when you first saw
8 him?

9 A. No, he was not.

10 Q. Were you with anyone when you first saw Mr.
11 Hood?

12 A. Yes, I was.

13 Q. Who were you with?

14 A. My partner, Detective Ryan.

15 Q. Do you recall, I asked you if this was in
16 the approximate location of 105th and Maryland, do
17 you recall the specific location of Mr. Hood when you
18 first saw him?

19 A. I believe it was on Maryland Mr. Hood was
20 walking northbound. It was right across from the
21 Wheel Works.

22 Q. Now, Detective, when you saw Mr. Hood did
23 you approach him?

24 A. Yeah. We, yes.

~~B-5~~
35

1 Q. Did you detain him?
2 A. No.
3 Q. Well, did you go somewhere with Mr. Hood?
4 A. Yes.
5 Q. Where did you go?
6 A. To area 1.
7 Q. How long did Mr. Hood remain at area 1?
8 A. I believe it was over a day.
9 Q. For over one day, is that what you said?
10 A. Yes.
11 Q. Okay. When you took Mr. Hood to area 1 --
12 strike that.
13 Prior to taking Mr. Hood to area 1 did you
14 have a warrant for his arrest?
15 A. No.
16 Q. Did you observe Mr. Hood violating any
17 laws?
18 A. No.
19 Q. What was your purpose in being at 105th and
20 Maryland?
21 A. We had been notified by the crime lab that
22 there was physical evidence that linked Mr. Hood to
23 the scene of a murder.
24 Q. So you were looking for Mr. Hood?

~~B-6~~
36

A.264

1 A. Yes. As a matter of fact we were.

2 Q. When you took Mr. Hood to area 1 was he
3 advised of his rights?

4 A. Yes.

5 Q. By whom?

6 A. I believe it was by my partner, Detective
7 Ryan, but it could have been by myself. I have no, I
8 am not sure, Counsel.

9 Q. But he was advised of his rights, but you
10 are not sure by you or your partner?

11 A. Absolutely.

12 Q. Do you know when that was done?

13 A. After we arrived at area 1.

14 Q. It was not done en route to area 1?

15 A. I don't believe so. No, sir.

16 Q. Okay. Questions were posed of Mr. Hood, is
17 that correct?

18 A. Yes.

19 Q. And responses were given by Mr. Hood, is
20 that correct?

21 A. Yes. That is correct.

22 Q. Those responses you believe the State
23 seeks, will seek to introduce at his trial, is that
24 correct?

~~B-7~~

37

A.265

1 A. Yes.

2 Q. Now, where did this conversation take place
3 at area 1?

4 A. It was in an interview room in the
5 detective division at area 1.

6 Q. What was the approximate dimensions of that
7 interview room?

8 MS. WOLFSON: Objection.

9 THE COURT: Overruled.

10 A. I don't know. 20 feet by 10 feet roughly.

11 MR. MULLENIX:

12 Q. There was one door to that interview room?

13 A. Yes.

14 Q. That door locks from the outside, is that
15 correct?

16 A. Yes.

17 Q. Is there a window on that door?

18 A. I believe there is. Yes. Yes. There is.

19 Q. What were the dimensions of that window?

20 A. It is a small window. Foot by a foot,

21 Judge.

22 Q. Other than that one foot by one foot window
23 are there any other windows?

24 A. If it were the first or second interview

~~B-8~~
38

1 room, there is a large picture window that looks into
2 the adjoining room. If it is in the first interview
3 room, there is a large picture window that looks into
4 the two adjacent rooms.

5 Q. Do you know which interview room he was
6 in?

7 A. I couldn't say for certain, Counsel.

8 Q. Okay. Do you recall when Mr. Hood was
9 released from that interview room?

10 A. I don't -- your question again, Counsel, is
11 what?

12 Q. Do you know when Mr. Hood was released from
13 that interview room?

14 A. Mr. Hood was not in custody. I don't know
15 that. Do you mean did he have free access to and
16 from that interview room? If that is your question,
17 yes, he did.

18 Q. Did he ever leave that interview room?

19 A. Yes.

20 Q. When?

21 A. When he had to go to the bathroom he left
22 the interview room. When he went to 11th and State
23 he left the interview room.

24 Q. When did he go to 11th and State?

~~B-9~~
39

A.267

1 MS. WOLFSON: Judge, I will object. This is all
2 beyond the scope. This is not a motion to suppress
3 statement. This is a motion to quash the arrest.

4 THE COURT: I don't know when he is arrested.

5 MS. WOLFSON: My objection, my basis is on
6 relevance, Judge. What relevance is it if he went to
7 11th and State and when?

8 THE COURT: Well, --

9 MS. WOLFSON: It goes to the motion to suppress
10 statements, not motion to quash arrest, whether this
11 Officer had probable cause.

12 Seems to me this is just a, Counsel is
13 seeking to elicit a discovery deposition to find out
14 information from the Officer that is not related to
15 the motion.

16 THE COURT: So far I have not heard of an
17 arrest. The subject matter that we are talking about
18 is the arrest.

19 MS. WOLFSON: Right. You haven't heard the
20 arrest. Counsel is going to elicit information --

21 THE COURT: How can I quash it unless I know
22 when it occurred?

23 MS. WOLFSON: The information elicited between
24 the time a detective sees the defendant and the time

1 he is arrested, the information listed is important
2 with regard to possible probable cause, not with
3 regard to a fishing expedition trying to get the
4 Detective to say all kinds of things unrelated to the
5 motion. Only relevant information should be
6 admitted.

7 THE COURT: I think it is relevant to find out
8 when an arrest occurred.

9 MS. WOLFSON: I agree, Judge.

10 THE COURT: That is what he is asking. So far I
11 have not gotten to the point where we talked about
12 anybody being arrested.

13 Answer the question. It is relevant.

14 A. Your question is, Counsel?

15 MR. MULLENIX:

16 Q. When was he taken to 11th and State?

17 A. I believe it was the late evening of the
18 20th or the early morning of the 21st.

19 Q. And he was taken there by whom?

20 A. By Ryan and myself.

21 Q. Okay. And he was then, how long was he at
22 11th and State?

23 A. Be for couple hours.

24 Q. When was he taken from 11th and State?

1 A. From the polygraph examiner's office back
2 to --

3 Q. When was he taken?

4 A. When was he taken?

5 Q. Yes?

6 A. All right. Couple hours after we got
7 there, Counsel.

8 Q. Where was he taken after he left 11th and
9 State?

10 A. He was taken to area 1.

11 Q. Back to area 1?

12 A. Yes.

13 Q. Back to the interview room?

14 A. Yes.

15 Q. How long did he remain in that interview
16 room?

17 A. Basically until he left area 1 and returned
18 home.

19 Q. When was that?

20 A. I don't recall the exact time, Counsel.

21 Q. Were you on duty when he left?

22 A. I don't recall if I was or not, Counsel.

23 Q. So you don't know when Mr. Hood left area 1
24 then, is that correct? We are talking about the 21st

~~B-12~~
42

1 of May 1993?

2 A. I believe so, Counsel.

3 Q. You know for sure what day he left?

4 MS. WOLFSON: Objection.

5 THE COURT: What is your objection?

6 MS. WOLFSON: Objection is the witness answered
7 the question.

8 THE COURT: Sustained.

9 MR. MULLENIX:

10 Q. Detective, I want to direct your attention
11 now to May 27th, 1993. Again directing -- strike
12 that.

13 Directing your attention to May 27th 1993
14 at the approximate the area of 104th and Corliss. Do
15 you recall being there sometime that day?

16 A. Yes.

17 Q. Approximately what time?

18 A. It was the afternoon.

19 Q. Do you recall approximately what time in
20 the afternoon?

21 A. I believe it was roughly about 1:00 o'clock
22 in the afternoon.

23 Q. Do you see anybody in court today that you
24 saw at approximately 1:00 o'clock in the afternoon

~~B-13~~

43

A.271

1 May 27th, 1993 at 104th and Corliss?

2 A. Yes.

3 Q. Who was that?

4 A. Tyrone Hood and Wayne Washington
5 (indicating).

6 MR. MULLENIX: Indicating for the record, Judge,
7 he's pointed to the Petitioners, Tyrone Hood as well
8 as Mr. Wayne Washington.

9 THE COURT: Record so reflects.

10 MR. MULLENIX:

11 Q. On the 27th of May, 1993 at approximately
12 1:00 o'clock in the afternoon did you have a warrant
13 for the arrest of Mr. Tyrone Hood?

14 A. No.

15 Q. When you observed Mr. Tyrone Hood was he
16 violating any state, federal or local laws?

17 A. No, he wasn't.

18 Q. Where was Mr. Hood specifically when you
19 saw him at approximately 1:00 o'clock in the
20 afternoon on May 27th 1993?

21 A. He was around the entranceway of a store,
22 small store located at that location.

23 Q. Other than, well, were there any other
24 people -- strike that.

1 Who were you with that afternoon?

2 A. My partner, Detective Ryan.

3 Q. Same partner as before, is that correct?

4 A. Yes.

5 Q. What was your purpose of going there?

6 A. We had a photo of another individual and we

7 were trying to ascertain that person's location.

8 Q. Did you go there looking for Mr. Hood?

9 A. No, we did not.

10 Q. You saw Mr. Hood there?

11 A. Yes.

12 Q. Near the entranceway of the shop, is that

13 correct?

14 A. Yes.

15 Q. Did you detain Mr. Hood?

16 A. No.

17 Q. Did you approach Mr. Hood?

18 A. Yes.

19 Q. Okay. Did you engage in a conversation

20 with him?

21 A. It is primarily with my, he talked to my

22 partner Ryan. Yes, but yes.

23 Q. Did you take Mr. Hood anywhere?

24 A. Yes.

1 Q. Where?

2 A. Area 2 detective division.

3 Q. That is at 111th Street?

4 A. Yes.

5 Q. How long did Mr. Hood remain at 111th
6 street?

7 A. 2, 3 hours, maybe.

8 Q. Was Mr. Hood advised of his rights at any
9 time -- strike that.

10 Was he advised of his rights at any time
11 from the time you saw him approached him at the
12 sandwich shop at 104th and Corliss and the time you
13 took him to area?

14 A. No.

15 Q. Was he advised of his rights at area 2?

16 A. I don't believe so. No, Counsel.

17 Q. When Mr. Hood was taken to area 2 where was
18 he put?

19 A. In an interview room in area 2.

20 Q. What were the dimensions of this second
21 interview room -- strike that -- of this interview
22 room at area 2?

23 A. Approximately the same. I am just
24 guessing, 10 by 20, 30 by 15. I don't know.

~~B-16~~

46

A.274

1 Q. Was Mr. Hood interviewed in this interview
2 room at area 2?

3 A. Briefly. Yes, Counsel.

4 Q. By whom?

5 A. Detective Ryan. And I was in there also
6 part of the time.

7 Q. The interview was not preceded by any
8 Miranda warnings, is that your testimony?

9 A. I don't believe so, Counsel. No.

10 Q. How long did Mr. Hood remain in this
11 interview room at area 2?

12 A. Approximately 2 to 3 hours, I believe.

13 Q. How long was he interviewed in that
14 interview room at area 2?

15 A. Half hour I would imagine.

16 Q. Where was he taken after he left that
17 interview room at area 2?

18 A. To area 1.

19 Q. Who took him there?

20 A. Myself and Ryan.

21 Q. Now, was he taken in cuffs from area 2?

22 A. No, sir. He was not.

23 Q. Where did he go? Where was he put once he
24 got to area 1?

~~B-17~~

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A.275

1 A. In an interview room at area 1.

2 Q. How long did he remain at area 1?

3 A. You are talking about my own personal
4 knowledge, Counsel?

5 When I got back to area 1, I left. I was
6 off duty. Actually it was my daughter's wedding
7 rehearsal that night. I was out of there.

8 Q. What time did you leave area 1?

9 A. As close to 5:00 o'clock as I possibly
10 could.

11 Q. So, you had been with Mr. Hood
12 approximately for 4 hours from 1:00 o'clock in the
13 afternoon to approximately 5:00 o'clock p.m., is that
14 correct?

15 A. No.

16 Q. I am sorry?

17 A. No.

18 Q. Did you approach Mr. Hood at approximately
19 1:00 o'clock on the 27th of May, 1993?

20 A. Yes.

21 Q. Okay.

22 A. Let me clear this up, Counsel.

23 THE COURT: There is no question pending.

24 MR. MULLENIX: Thank you.

1 A. Oh.

2 MR. MULLENIX:

3 Q. Did Mr. Hood, do you know if Mr. Hood
4 remained in custody at area 1?

5 A. I found out later that Mr. Hood had been
6 taken into custody at area 1. Yes.

7 Q. How did you find that out?

8 A. When I came back from my days off.

9 Q. Were questions posed of Mr. Hood and
10 responses given by Mr. Hood on the 27th of May,
11 1993?

12 A. Specifically where, Counsel? And are you
13 talking about my personal knowledge?

14 Q. I am talking about anywhere on the 27th of
15 May 1993? Were questions asked of Mr. Hood and
16 responses given by Mr. Hood?

17 MS. WOLFSON: Objection.

18 THE COURT: Sustained. He answered that
19 question once, but it is vague.

20 MR. MULLENIX:

21 Q. Well, you were present for the interview of
22 approximately half hour, is that correct?

23 A. Yes.

24 Q. That was at area 2, is that correct?

~~B-19~~

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A.277

1 A. Yes.

2 Q. And the responses of those questions you
3 expect the State to seek to introduce at his trial,
4 is that correct?

5 A. Possibly.

6 MR. MULLENIX: If I could have a moment, Judge?

7 THE COURT: Yeah.

8 MR. MULLENIX: Detective, I just have a few
9 other questions.

10 The interview rooms, I will specifically
11 direct your attention to the 20th of May and 21st of
12 May, 1993 at area 1. I am going to ask you some
13 questions about the interview room that Mr. Hood was
14 in. You understand?

15 A. Yes.

16 Q. First time. Okay. That interview room
17 contains a couple of, I mean what type of furnishings
18 are in that interview room?

19 A. In most of the interview rooms there's a
20 desk, chairs, bench.

21 Q. There is no telephone, is that correct?

22 A. That is correct.

23 Q. There were rings on the wall, is that
24 correct, to which you cuffed detainees?

~~B-20~~
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1 A. There are rings on the wall.

2 Q. Okay.

3 A. In some rooms. In other rooms there's
4 rings on the bench. In other rooms there's no
5 rings. There's --

6 Q. Do you recall was Mr. Hood in a room with
7 rings on the wall or rings on the bench?

8 A. In area 1 he may have been, Counsel. I
9 don't recall.

10 Q. Okay. What about the rooms he was in on
11 the 27th of May 1993 at area 1 and area 2, do you
12 recall?

13 A. In area 2 those rooms would have a ring
14 someplace.

15 Q. Okay.

16 A. In area 1 he might have been in a room with
17 rings on the wall also.

18 Q. When Mr. Hood was transported back and
19 forth from area 1 to area 2 and when he was
20 transported -- strike that -- from --

21 A. Vice versa, Counsel.

22 Q. Yeah. From area 2 to area 1, did you
23 yourself and your partner transport Mr. Hood?

24 A. Yes.

1 Q. Okay. When he was transported to 11th and
2 State again did you and your partner transport him?

3 A. Yes.

4 Q. Detective, you indicate one point on the
5 21st of May, 1993 Mr. Hood was allowed to leave, is
6 that correct, and he went home?

7 A. Yes.

8 Q. Did you transport him home, you or your
9 partner?

10 A. I don't recall, Counsel.

11 MR. MULLENIX: If I could have a moment?

12 THE COURT: Yeah.

13 MR. MULLENIX:

14 Q. Detective, you indicate that you had only
15 heard or learned of Mr. Hood being taken into
16 custody, is that correct?

17 A. Yes.

18 Q. Are you indicating -- strike that.

19 You indicate that you only learned later
20 that Mr. Hood was arrested, is that correct?

21 A. Yes.

22 Q. Detective, you prepared a report, did you
23 not, supplemental report indicating that you were an
24 arresting officer, isn't that correct?

1 MS. WOLFSON: Objection, Judge. I don't know
2 what document Counsel is talking about.

3 MR. MULLENIX: I will show you.

4 THE COURT: Identify it. Sustained.

5 MR. MULLENIX:

6 Q. Did you prepare a document indicating
7 yourself as an arresting officer?

8 MS. WOLFSON: I will object, Judge. This is not
9 an arrest report.

10 THE COURT: But any report wherein the person is
11 described.

12 MS. WOLFSON: Then I would ask the question be
13 rephrased to correctly state what the document is.

14 THE COURT: No. The witness prepared a report.
15 Here, if you have a report, examine person with
16 reference to report, mark the report.

17 Cross-examination on a report regardless
18 what it is, it is a document. It must be marked.

19 MR. MULLENIX: I think he can still answer this
20 question.

21 THE COURT: Did you prepare a report?

22 MR. MULLENIX: Yeah.

23 THE COURT: But the content, it goes beyond
24 that. He says, did you prepare a report wherein?

~~B-23~~

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A.281

1 When you go to the wherein portion of the question,
2 it asks, goes to the substantive document. Best
3 evidence of the document is a document.

4 MR. MULLENIX: Right. I agree. I think he can

5 --

6 THE COURT: I disagree.

7 MR. MULLENIX: Fine.

8 I will show you what I have marked as
9 Petitioner's No. 1 for identification. It's been
10 shown to Counsel. It is a multi-page in fact a
11 16-page document.

12 Do you recognize what that document is,
13 Detective Lenihan?

14 A. Yes.

15 Q. Did you prepare this report?

16 A. Yeah. I was one of the detectives
17 preparing this report, Counsel.

18 Q. Does your name appear on the first page of
19 that report?

20 A. Yes, it does.

21 Q. Does your name appear on the last page of
22 that report?

23 A. Yes, it does.

24 Q. Does your signature appear on the first

1 page of the report?

2 A. Yes, Counsel.

3 Q. Does your signature appear on the first
4 page of that report under the name of your partner
5 and yourself?

6 A. Yes.

7 Q. Are you listed in this report as an
8 arresting officer?

9 A. Yes, Counsel.

10 MS. WOLFSON: Judge, I would ask to where on
11 this report that is noted? I don't see that anywhere
12 on this report.

13 THE COURT: Counsel, show that document to
14 Counsel.

15 MR. MULLENIX: Okay.

16 THE COURT: So you are both on the same page, as
17 they say.

18 MR. MULLENIX:

19 Q. I will ask this Detective where on this
20 report that is listed? What page?

21 A. On page 2.

22 Q. Thank you.

23 THE COURT: 2.

24 MR. MULLENIX: I have nothing further, Judge.

1 THE COURT: Do you have cross-examination of the
2 witness?

3 MS. WOLFSON: Yes, I do, Judge.

4 THE COURT: How long? Is it long?

5 MS. WOLFSON: No. I don't think so. Ten
6 questions. You want to wait?

7 THE COURT: I don't want you to feel confined or
8 rushed, either one.

9 MS. WOLFSON: There are not going to be many,
10 Judge.

11 CROSS-EXAMINATION

12 By Ms. Wolfson:

13 Q. Detective, on May 20th, 1993 you were
14 investigating the homicide of Marshal Morgan?

15 A. Yes.

16 Q. What evidence did you find, did you learn
17 on that date that linked the defendant Mr. Hood to
18 the case?

19 A. Mr. Hood had fingerprints on two bottles
20 that were found in the car with the body of the
21 victim Marshal Morgan.

22 Q. When you spoke with the defendant Hood at
23 the location of approximately 105th and Maryland did
24 you force him to come back to the area 1 headquarters

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1 with you?

2 A. No. He was asked and he agreed to
3 accompany us back.

4 Q. Did you tell him about the physical
5 evidence that you had linking him to the murder? Or
6 that you had some physical evidence linking him to
7 the murder?

8 A. Vaguely on the street we did. We were more
9 specific back in the area.

10 Q. Do you know what reason Mr. Hood agreed to
11 accompany you back to area 1?

12 MR. MULLENIX: Objection.

13 THE COURT: Sustained.

14 MS. WOLFSON:

15 Q. Did Mr. Hood tell you why he wanted to go
16 to area 1 with you?

17 A. Yes.

18 Q. What did he say?

19 A. He said that he didn't do anything wrong,
20 he wanted to clear his name.

21 Q. On May 27th, 1993 you said you were not
22 with the defendant Hood for the 4 hour span of 1:00
23 to 5:00 p.m., correct?

24 A. Yes.

1 Q. Where were you in the times you were not
2 with the defendant, Mr. Hood?

3 A. We had learned the location of another
4 individual, that we wanted to contact the individual
5 that we had gone out that day looking for.

6 And we went to the Wheel Works and located
7 that individual.

8 Q. Was that also related to this homicide of
9 Marshal Morgan?

10 A. Yes, it is.

11 Q. When you transported or drove Mr. Hood and
12 Mr. Washington to area 2 on May 27th, 1993 why is it
13 that you went to area 2 after being at area 1?

14 MR. MULLENIX: I am sorry. I missed the date.
15 5/27?

16 THE COURT: 5/27.

17 A. Why go to --

18 MS. WOLFSON:

19 Q. Why did you change areas?

20 A. We went to area 2 because that was the
21 closest detective division. We didn't anticipate
22 that it would take very long. It was only for the
23 purpose of short interview.

24 Therefore. We went to area 2 which was

1 much closer to 104th and Corliss, I believe it was,
2 than coming all the way back to area 1.

3 Q. And your central location where you work
4 out of is area 1?

5 A. Yes, Ma'am, 51st and Wentworth.

6 Q. What is the name of the individual that you
7 were looking for that you had hoped Mr. Hood and
8 Washington could help you locate?

9 A. Joe West.

10 Q. Did you eventually locate Joe West?

11 A. Yes, we did.

12 Q. Was it sometime after locating Joe West
13 that the defendant Hood was arrested for the murder
14 of Marshal Morgan?

15 A. Yes.

16 Q. I am showing you again what has been marked
17 as Petitioner's Exhibit No. 1 for identification.
18 This is a copy of the supplemental report which your
19 name appears on?

20 A. Yes.

21 Q. On page 2 of that report there is an area
22 listing arresting officers, is that correct?

23 A. Yes.

24 Q. Can you tell me how many detective names

1 are noted under that area as being arresting officers
2 of the defendant Hood in this case?

3 A. I believe it is at least 16 officers or
4 detectives.

5 Q. I am showing you page 3 of your report. Is
6 there an area on the report that shows the date, time
7 and location that Tyrone Hood was arrested?

8 A. Yes.

9 Q. What time was Tyrone Hood arrested?

10 MR. MULLENIX: Objection, your Honor.

11 THE COURT: Sustained.

12 MS. WOLFSON:

13 Q. Do you know what time he was formally
14 arrested?

15 MR. MULLENIX: Objection, your Honor.

16 THE COURT: If he knows, he may answer if he was
17 there.

18 A. I know by report, Judge, not --

19 THE COURT: Sustained.

20 MS. WOLFSON:

21 Q. Did you learn --

22 THE COURT: Well, he didn't know.

23 MS. WOLFSON:

24 Q. Did you learn from other detectives that

1 Tyrone Hood had been formally arrested?

2 A. Yes.

3 Q. Did that occur when you were not working --

4 MR. MULLENIX: Objection, Judge.

5 THE COURT: Let Counsel finish her question,
6 then you can make your objection.

7 MR. MULLENIX: Okay.

8 MS. WOLFSON:

9 Q. Did that occur when you were not working?

10 MR. MULLENIX: Well, the objection was to the
11 previous question.

12 THE COURT: No. I can't rule on it, if you were
13 premature to the previous question. Your objection
14 to this question is denied. This answer will stand.

15 MS. WOLFSON:

16 Q. Was the defendant Hood arrested when you
17 were not at work?

18 A. That is correct.

19 MR. MULLENIX: Judge, I have an objection to
20 that.

21 THE COURT: Overruled.

22 MS. WOLFSON: Judge, I have nothing else of
23 Detective Lenihan.

24 THE COURT: Redirect.

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1 MR. MULLENIX: One moment, your Honor.

2 THE COURT: Okay. Are you done with this
3 witness?

4 MR. MULLENIX: I may have a question or two,
5 your Honor. I am just talking to my partner about
6 that.

7 THE COURT: I am going.

8 MS. WOLFSON: Judge, I would like it if he could
9 finish the witness so he can --

10 THE COURT: I'd like a few things, too, god damn
11 it.

12 (Lunch recess had.)

13 THE COURT: Let's have the defendants back in
14 the courtroom, Mr. Hood and Mr. Washington.

15 Let the record reflect the defendants are
16 present in court in their own proper person by their
17 attorneys.

18 MS. WOLFSON: Should we get the witness?

19 THE COURT: Have the witness retake the stand
20 for further examination, should you chose.

21 Thank you.

22 A. Okay, Judge.

23 THE COURT: Witness is still under oath.
24 Further questions on redirect?

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1 MS. WOLFSON: On behalf of the People we
2 respectfully request to reopen our cross for one
3 additional question.

4 THE COURT: Go ahead.

5 MS. WOLFSON:

6 Q. Detective Lenihan, you said that the
7 defendant, Tyrone Hood, was taken home on May 21st,
8 1993. Could you be mistaken about that date?

9 A. Yes, Ma'am. In reviewing the G P R's it
10 would have been the morning of the 22nd when Tyrone
11 Hood went home.

12 MS. WOLFSON: Thank you. I have nothing else,
13 Judge.

14 THE COURT: Now, cross or redirect.

15 MR. MULLENIX: Thank you.

16 REDIRECT EXAMINATION

17 By Mr. Mullenix:

18 Q. Detective Lenihan, you indicate that when
19 you approached Tyrone Hood on May 20th 1993, May
20 20th, 1993 you were investigating the homicide of
21 Marshal Morgan, is that correct?

22 A. Yes.

23 Q. And you had indicated on response to a
24 question by Ms. Wolfson that there was evidence that

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1 linked Mr. Hood to the crime, is that correct?

2 A. Yes.

3 Q. Or to the crime scene, is that correct?

4 A. More specifically the crime scene.

5 Q. Okay. You indicate that there were two
6 prints of his on bottles that were found in the car
7 where the victim was found, is that correct?

8 A. That is correct, sir.

9 Q. There were other bottles found in that car,
10 is that correct, with other people's prints on them,
11 is that right?

12 A. There was another bottle that was found
13 with another person's print. Correct.

14 Q. Could you be mistaken about just one other
15 person?

16 A. Best of my recollection on the bottles,
17 specifically the bottles, Tyrone Hood's prints were
18 found on two, and Joe West's prints were found on
19 one, I believe.

20 Q. Okay. Did you find other physical evidence
21 in that car linking Tyrone Hood to the scene?

22 MS. WOLFSON: Objection.

23 THE COURT: Sustained.

24 MR. MULLENIX:

1 Q. You found a receipt for inventoried
2 property in the name, with the name of Lerone Hood on
3 it, is that correct?

4 MS. WOLFSON: Objection.

5 THE COURT: Sustained.

6 MR. MULLENIX:

7 Q. You found physical evidence in that car
8 that linked other people other than Tyrone Hood and
9 Joe West to the crime scene, did you not?

10 MS. WOLFSON: Objection.

11 THE COURT: Sustained.

12 MR. MULLENIX:

13 Q. Detective, you indicate that you spoke with
14 Mr. Hood on May 20th, 1993 and that you did not force
15 him to go with you, is that correct?

16 A. Yes, sir. That is correct.

17 Q. You are saying that he willingly went with
18 you, is that correct?

19 A. That is correct.

20 Q. And he wanted to clear his name, is that
21 correct?

22 A. Yes.

23 Q. So, he accompanied you to the police
24 station willingly, that is your testimony?

1 A. Yes, it is.

2 Q. And once you got him to the police station
3 this is specifically that day you went to area 1, is
4 that correct?

5 A. Yes.

6 Q. You asked him some questions and he
7 responded to those questions, is that correct?

8 A. Yes.

9 Q. Okay. You didn't let him go after that, is
10 that right?

11 MS. WOLFSON: Objection, Judge. This is all
12 beyond the scope.

13 THE COURT: Sustained.

14 MR. MULLENIX: I think they brought it out, your
15 Honor.

16 THE COURT: Well, you can't repeat your direct.

17 MR. MULLENIX: I am not repeating it.

18 THE COURT: You had a direct examination, they
19 crossed. I am hearing what I have heard before.

20 MR. MULLENIX: No. It is something they brought
21 out concerning, I did not bring out anything about
22 him going to the police station. That was brought
23 out on cross.

24 Now, I believe I am entitled to --

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1 THE COURT: You probed that. Yeah.

2 MR. MULLENIX: I have to probe that area now
3 because it was brought out on direct.

4 THE COURT: Okay. If I am mistaken, I am
5 mistaken. Go ahead.

6 MR. MULLENIX:

7 Q. Did you hear the question, Detective?

8 THE COURT: Mr. Reporter, would you repeat the
9 question, please?

10 (Whereupon, the reporter
11 read back from the record as
12 requested.)

13 THE COURT: You didn't let him go what?

14 MR. MULLENIX:

15 Q. You didn't let him go after you asked him
16 some questions in the afternoon of May 20th, 1993,
17 correct?

18 MS. WOLFSON: I would object again, Judge. This
19 is not in response to anything that was brought out
20 in cross-examination. These were issues brought out
21 in direct examination.

22 THE COURT: Well, that particular one is
23 correct. You covered that in direct. You are
24 talking about the events of May 20th?

1 MR. MULLENIX: Correct. To backtrack, your
2 Honor, I brought out, I elicited information from
3 this Detective --

4 THE COURT: Here, you didn't ask that exact
5 question, okay? But you certainly covered the area
6 where he was at area 1, described the room he was
7 in. And he was released from the interview room,
8 defendant left the room used the bathroom,
9 transported to 11th and State.

10 So, your examination relative to that area
11 was covered then.

12 Now, there was reference in the State
13 cross-examination relative to May 20th conversations
14 at that time. It came after the first time that Hood
15 said he wanted to clear his name during the
16 conversation there. And he was not always in the
17 room with Mr. Hood.

18 So, in part you have already done those
19 questions. So, confine your cross or redirect to the
20 scope of the cross-examination, which would cover the
21 areas of prints on the bottles, conversation at 105th
22 and Maryland, told the defendant about the evidence
23 that linked him to the scene of the crime, defendant
24 saying he wanted to clear his name. That was it. It

1 was covered, everything else relating to 5/27.

2 MR. MULLENIX:

3 Q. Detective, you testified that, your
4 testimony in response to questions posed by Miss
5 Wolfson is that the midafternoon hours of May 20th,
6 1993 Tyrone Hood willingly accompanied you to area
7 2? That is your testimony?

8 A. No, to area 1.

9 Q. I am sorry. To area 1. But Mr. Hood
10 willingly accompanied you to area 1?

11 A. Yes, he did.

12 Q. Your testimony is that he willingly stayed
13 there all that afternoon?

14 A. Yes.

15 Q. All that evening?

16 A. Yes.

17 Q. Throughout the night from May 20th to May
18 21st, 1993?

19 A. Yes.

20 Q. That he willingly stayed there throughout
21 the entire day of May 21st, 1993?

22 A. Yes.

23 Q. And he willingly spent a second night at
24 area 1, the night of May 21st into May 22nd of 1993?

1 MS. WOLFSON: Objection.

2 MR. MULLENIX:

3 Q. Is that your testimony?

4 MS. WOLFSON: Objection.

5 THE COURT: What is your objection?

6 MS. WOLFSON: Because, my objection is based on
7 this is beyond the scope. I ask the last 3 questions
8 be stricken, make a motion to strike.

9 THE COURT: First two are untimely because they
10 are made. The last is obviously even by the nature
11 of it I know you have asked it before. So,
12 sustained. It is a summary-type question. It is
13 more like an argument, Mr. Mullenix.

14 MR. MULLENIX:

15 Q. Ms. Wolfson asked you when she asked leave
16 to reopen, Court granted leave, she asked you if you
17 could be mistaken as to when Mr. Hood left. And your
18 response was that he left on May 22nd, 1993, is that
19 correct?

20 A. Yes. That is correct.

21 Q. My question in response to her question is,
22 that is it your testimony that Tyrone Hood agreed to
23 spend the evening the second night at area 1, that is
24 the evening hours of May 21st, 1993 and the morning

1 of May 22nd, 1993 willingly, is that correct?

2 MS. WOLFSON: Objection.

3 THE COURT: Sustained.

4 MR. MULLENIX: On what basis, your Honor?

5 THE COURT: Because it's been asked and
6 answered. Even though you said it's not been
7 answered, it's been asked and answered. It is beyond
8 the scope.

9 You are saying by the thrust of your own
10 question, it is a bootstrap type question to bring it
11 in the purview of redirect examination. Obviously
12 that is an issue you want to argue to me, but --

13 MR. MULLENIX: I understand your ruling. I
14 disagree, but I understand your ruling. That is why
15 I am not responding.

16 THE COURT: Sure. Good.

17 MR. MULLENIX:

18 Q. Detective, now I am going to direct your
19 attention to May 27th, 1993. And you indicate that,
20 I believe this was one question posed by Miss Wolfson
21 on cross, that you were not there all the time with
22 Mr. Hood, is that correct?

23 A. Specifically when on the 27th, Counsel?

24 Q. Well, you had to leave at some point to go

1 to your daughter's, I believe you said the rehearsal
2 dinner, is that correct, the evening of May 27th,
3 1993?

4 A. Yes.

5 Q. When you left area 2 Mr. Hood was still at
6 area 2, is that correct?

7 A. No. Counsel, my testimony is that Tyrone
8 Hood accompanied Detective Ryan and myself to area
9 2. We talked to Mr. Hood for a short time. We left
10 area 2. We located Joe West.

11 Joe West went to area 1. Ryan and myself
12 returned to area 2. And Mr. Hood accompanied us from
13 area 2 to area 1.

14 That was prior to 5:00 p.m. on the 27th.
15 Approximately 5:00 p.m. on the 27th, Counsel, I
16 left.

17 Q. It was some time after you had left that
18 you had learned that Mr. Hood was formally arrested,
19 is that correct?

20 A. Yes.

21 Q. Okay. Mr. Hood was in with your partner
22 and remained with your partner or another brother
23 officer from the time that you had approached him
24 that early afternoon around 1:00 o'clock May 27th,

1 1993 until you had learned that he was formally
2 arrested, is that correct?

3 MS. WOLFSON: Objection.

4 A. Counsel.

5 THE COURT: What is it?

6 MS. WOLFSON: Objection.

7 THE COURT: Sustained.

8 MR. MULLENIX: If I could have a moment, Judge?

9 THE COURT: Yes.

10 MR. MULLENIX:

11 Q. Detective, when you left Mr. Hood he was at
12 area 1, is that correct?

13 A. That is correct.

14 Q. On the 27th of May?

15 A. Yes, it is.

16 Q. You had learned, some point later you had
17 learned that Mr. Hood was formally arrested around
18 11:00 o'clock that evening, is that correct?

19 MS. WOLFSON: Objection, Judge.

20 MR. MULLENIX: Strike that.

21 You had learned that Mr. Hood was formally
22 arrested at a later point in time, is that right?

23 MS. WOLFSON: Objection. Asked and answered.

24 THE COURT: Well, it could be direct. There is

1 no harm.

2 Go ahead. I will overrule it, if it is to
3 be followed by another question.

4 MR. MULLENIX: Yes.

5 A. I learned, later learned that Mr. Hood was
6 later arrested. Yes.

7 MR. MULLENIX:

8 Q. And that from the time that you had left
9 him till the time he had been formally arrested he
10 remained at area 1, is that correct?

11 MS. WOLFSON: Objection. Beyond the scope of
12 the witness' knowledge what happened once he left.

13 THE COURT: Sustained after he left. You would
14 have to get somebody else. He had been gone. He
15 doesn't know.

16 MR. MULLENIX: Well, then I objected to when he
17 learned he was formally arrested.

18 THE COURT: You just asked the question.

19 MR. MULLENIX: No. Earlier, your Honor, I made
20 an objection when they posed the question on cross
21 concerning when he had learned.

22 THE COURT: All right. His acquisition of
23 knowledge is a fact that he has actual knowledge of.
24 What transpired between the time he left and the time

1 an arrest occurred, he has no knowledge of. But he
2 knows when he was informed of the defendant's
3 arrest.

4 MR. MULLENIX: Perhaps he had been informed that
5 Mr. Hood was, had remained in the police station in
6 that period of time as well.

7 THE COURT: That could be so, but that is not
8 his actual knowledge.

9 MR. MULLENIX: That is fine. I would ask leave
10 to recall at a different the Officer then?

11 THE COURT: Okay. Yeah. That is, not by
12 examining this witness what some other police officer
13 might have asked him or told him.

14 MR. MULLENIX: Fine. I have nothing further
15 then.

16 THE COURT: No more from you, recross
17 examination of the witness?

18 MS. WOLFSON: No, your Honor.

19 THE COURT: Next witness, please. Thank you.

20 A. Thanks, Judge.

21 (Witness excused.)

22 MR. MULLENIX: Judge, I think there will be a
23 stipulation that Mr. Hood remained at area 1 after
24 the Detective Lenihan had left, he remained at area 1

1 until he was formally arrested later on that evening.

2 THE COURT: Okay. Can we stipulate to the time
3 of the arrest? Can we do that, too? I am just
4 curious.

5 MS. WOLFSON: Stipulate.

6 MR. MULLENIX: That is an issue for the Court to
7 determine.

8 THE COURT: No. No. No. As to when the police
9 department thinks he is arrested?

10 MR. MULLENIX: That is fine. I don't care.

11 THE COURT: It takes two to make a stipulation.

12 MS. WOLFSON: Tyrone Hood was formally arrested
13 on May 27th, 1993 at 11:00 o'clock p.m.. We will
14 stipulate to that.

15 MR. MULLENIX: Yes. Stipulate for the purposes
16 of the motion that that is what the police wrote in
17 the report.

18 THE COURT: What was the date?

19 MS. WOLFSON: May 27th, 1993, 11:00 o'clock
20 p.m..

21 THE COURT: Okay. Mr. Mullenix.

22 MR. MULLENIX: With that --

23 THE COURT: Do you rest on your motion?

24 MR. MULLENIX: Yes.

~~B-46~~

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(Petitioner Hood rests.)

THE COURT: Petitioner rests. State, are you ready to proceed?

MS. WOLFSON: Judge, we would make a motion. Prior to proceeding we would make motion for directed finding with regard to defendant Hood that there is no evidence adduced that on May 20th, 1993 Tyrone Hood was ever arrested.

On that portion of Counsel's motion we ask for motion for directed finding.

THE COURT: Denied. Go ahead.

Please raise your right hand, sir.

(Witness sworn.)

DET. BERNARD RYAN,
called as a witness on behalf of the People of the State of Illinois, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Ms. Wolfson:

THE COURT: Please be seated.

MS. WOLFSON:

Q. Detective, can you give us your full name, please, star number?

A. Detective Bernard Ryan, R-y-a-n, star

~~B-47~~
77

1 number 20867. I am a Detective in area 1 violent
2 crimes.

3 Q. Were you working as a detective at area 1
4 violent crimes on May 27th, 1993?

5 A. I was.

6 Q. Who was your partner on that day?

7 A. Detective Bob Lenihan.

8 Q. I'd like to direct you to the afternoon
9 hours on that day. Were you and your partner working
10 on any particular case?

11 A. Yes, we were.

12 Q. What case were you working on?

13 A. We were working on the homicide of Marshal
14 Morgan.

15 Q. As part of that investigation what did you
16 do on the afternoon of May 27th?

17 A. On the afternoon of May 27th approximately
18 1:00 o'clock to 2:00 p.m. we proceeded out to the
19 corner of 104th and Corliss to look for an
20 individual.

21 Q. Who were you looking for?

22 A. Subject known as Joe West.

23 Q. What is located at the corner of 104th and
24 Corliss?

1 A. Northwest corner is a variety liquor store,
2 might be called Munchies, I think.

3 Q. What is the first thing you did when you
4 got to that location?

5 A. Thinking that Joe West frequented that area
6 we went into that variety liquor store and attempted
7 to interview the clerk in the store to see if they
8 knew this Joe West.

9 Q. While you were in the store talking to the
10 clerk did you recognize anyone else who came into the
11 store?

12 A. Yes, I did.

13 Q. Who did you recognize?

14 A. I recognized Tyrone Hood as he entered
15 through the doorway.

16 Q. Was Tyrone Hood with anybody else when you
17 saw him?

18 A. Yes. Another person was in the area of the
19 doorway, subject I later identified.

20 Q. Do you know that person, second person's
21 name?

22 A. Yes. Wayne Washington.

23 Q. Do you see Wayne Washington in court
24 today?

1 A. I do.

2 Q. Could you identify him for us, please?

3 A. He is seated in between the female defense
4 attorney and the male defense attorney to the right.
5 He has X L on his prison garb (indicating).

6 MS. WOLFSON: Indicating, Judge, the in-court
7 identification of Wayne Washington.

8 THE COURT: Record so reflects.

9 MS. WOLFSON:

10 Q. The person you referred to as Tyrone Hood,
11 do you see him in court today?

12 A. Yes. He is. He is to my left on the
13 defense bar next to an attorney there with a pen in
14 his hands (indicating).

15 MS. WOLFSON: Indicating --

16 THE COURT: Hand on his face.

17 MS. WOLFSON: Indicating in-court identification
18 of Tyrone Hood.

19 THE COURT: Hand on the face is the key.

20 MR. MULLENIX: I was going to stipulate.

21 MS. WOLFSON:

22 Q. Did there come a time when you had a
23 conversation with Tyrone Hood and Wayne Washington?

24 A. Yes.

~~B-50~~
80

1 Q. How shortly was it after you saw them in
2 the store?

3 A. Almost immediately when I noticed the
4 individual now known as Tyrone Hood walk in he nodded
5 to me as if he recognized me. And he said hello. I
6 went over to talk to him.

7 Q. Did you talk to him in in the store or
8 outside the store?

9 A. Just initially in the store. And we walked
10 out on the street.

11 Q. Did Wayne Washington also walk out with
12 you?

13 A. Yes, he did.

14 Q. Did you have a conversation with Tyrone
15 Hood then?

16 A. I did.

17 Q. After having that conversation did someone
18 have a conversation with Wayne Washington?

19 A. Yes.

20 Q. Who was that?

21 A. My partner, Detective Lenihan.

22 Q. Did you inquire of Tyrone Hood and Wayne
23 Washington if they knew the whereabouts of this Joe
24 West who you were looking for?

~~B-51~~

81

A.309

1 A. Yes, I did.

2 MR. MULLENIX: Object to they.

3 THE COURT: Sustained.

4 MS. WOLFSON:

5 Q. Did you ask Tyrone Hood if he knew the
6 whereabouts of Joe West?

7 A. Yes. I asked him if he knew him and the
8 whereabouts.

9 Q. Did he have any information with regard to
10 Joe West?

11 A. At this time he denied knowing Joe West.

12 Q. Did you ask, or did your partner ask Wayne
13 Washington if he had any information with regard to
14 Joe West?

15 A. Yes.

16 Q. Were you able to overhear that
17 conversation?

18 A. Yes. I was present during that
19 discussion. And he --

20 Q. What did Mr. Washington say with regard to
21 Joe West?

22 A. Wayne Washington denied knowing Joe West
23 after looking at the photo.

24 Q. After speaking with both defendants did

~~B-52~~
82

1 there come a time when the investigation was moved to
2 another location?

3 A. Yes.

4 Q. Why was the investigation moved to another
5 location?

6 A. I had ascertained through Tyrone Hood that
7 Wayne Washington was the Wayne that he referred to as
8 the person he was with on the night when Marshal
9 Morgan disappeared and later determined he was
10 murdered.

11 Q. Did you confront Wayne Washington, or did
12 your partner in your presence confront Wayne
13 Washington with the information that Tyrone Hood gave
14 Wayne Washington's name as an alibi?

15 A. Yes, we did. And Wayne Washington said
16 that he did wish to give a statement on behalf of
17 Tyrone Hood. And that he was with, and, correction,
18 and that he would accompany, go in with us and give a
19 statement.

20 Q. When you told -- did you tell Tyrone Hood
21 you were taking Wayne in for a statement?

22 A. I did.

23 Q. When you told Tyrone Hood that Wayne
24 Washington was coming to the police station to make a

~~B-53~~
JZ

1 statement what did Tyrone Hood say?

2 A. Tyrone was very concerned. He stated, if
3 you are going to take Wayne in --

4 MR. MULLENIX: Objection to the, very
5 concerned.

6 THE COURT: Sustained.

7 MS. WOLFSON:

8 Q. What did Tyrone Hood say?

9 A. Tyrone Hood stated that if Wayne was going,
10 we would have to take him, too. Because Wayne, Wayne
11 he was afraid of Wayne and Wayne's friends. He
12 didn't want to look like a snitch.

13 He also stated that he wanted to talk to us
14 anyway because he had new information about the
15 murder, who may have committed the murder.

16 Q. Did you take both Mr. Washington and Hood
17 to area 2 with you?

18 A. Yes, we did.

19 Q. How did you get to area 2?

20 A. We drove directly there. Area 2 is the
21 closest police facility to that location.

22 Q. Did either defendant Mr. Hood or Mr.
23 Washington ask if they could drive themselves to the
24 area?

1 A. No, they did not.

2 Q. Where were they seated in the car when you
3 took them to area 2?

4 A. They were seated in the rear of the squad
5 car.

6 Q. Were either defendant Hood or defendant
7 Washington handcuffed?

8 A. No, Ma'am.

9 Q. Were either of them Mirandized before
10 taking them in your car?

11 A. They were not.

12 Q. Were either of them told they were under
13 arrest?

14 A. No. In fact, we told them both they
15 weren't under arrest.

16 Q. Before going to area 2 did you go anywhere
17 with either of the defendants?

18 A. Yes. On the way in we drove by the Wheel
19 Works and that area where, which is a project where
20 Wayne Washington I believe was living at the time.

21 He wanted to stop by get some
22 identification and make notification where he was
23 going.

24 Q. Did he go up to his apartment?

~~B-55~~

85

A.313

1 A. Yes, he did.

2 Q. Did your partner go up there with him?

3 A. Yes. I waited in the car while Detective
4 Lenihan went along with him.

5 Q. I'd like to move to about 2:30 in the
6 afternoon. Did you arrive at area 2 about 2:30 in
7 the afternoon?

8 A. Approximately. Yes.

9 Q. Where did defendant Washington go?

10 A. Defendant Washington went to an interview
11 room off the bull pen area of the second, that is
12 second floor of area 1.

13 Q. Where did defendant Hood go?

14 A. He went to a similar interview room off the
15 same bull pen of the south end of the office.

16 Q. Did you lock either of the doors to that
17 interview room?

18 A. No, I did not.

19 Q. Did you handcuff either defendant inside
20 the interview room?

21 A. No, I did not.

22 Q. What was the focus of your investigation at
23 this time when you had Mr. Hood and Washington at
24 area 2?

~~B-56~~
86

A.314

1 A. The focus of the investigation initially
2 was finding Joe West.

3 Q. When you got to area --

4 A. When I got to area 2 --

5 Q. Detective, let me just ask the question,
6 okay?

7 A. Yes, Ma'am.

8 Q. When you got to area 2 did you speak to,
9 with a Detective Rowan with regard to Joe West?

10 A. Yes, I did.

11 Q. What happened during that conversation?

12 A. Okay.

13 THE COURT: Detective who?

14 MS. WOLFSON: Rowan.

15 THE COURT: Rowan. Okay.

16 A. Okay. Detective Rowan advised us that he
17 knew Joe West. And he showed us, he directed us to a
18 case report that gave us a more specific address for
19 Joe West also within the Wheel Works.

20 Q. After doing that investigation were you
21 able to get an address for Joe West?

22 A. Yes.

23 Q. What did you do when you had that
24 information?

1 A. We left area 2, went along with some 5th
2 district personnel we proceeded to Wheel Works and
3 that address.

4 Q. Where was the defendant Washington when you
5 left area 2?

6 A. In the same interview room that he was in.

7 Q. Where was defendant Hood?

8 A. In the very same interview room that he
9 initially was placed.

10 Q. Do you recall what time you went to the
11 Wheel Works?

12 A. It would be approximately around 3:00 p.m.
13 that day.

14 Q. When you got to the Wheel Works area were
15 you able to find Joe west?

16 A. Yes. We were knocking on the door and he
17 actually walked up to the door and intorduced himself
18 as we were knocking on the door.

19 Q. Did you spent wome time with Joe West at
20 the apartment where he was living?

21 A. We did.

22 Q. What did you do after you spent some time
23 there with Joe West?

24 A. After we spent some time with Joe West,

~~B 58~~
88

1 completed our investigation there, we, myself and my
2 partner, Detective Lenihan, proceeded back to area 2
3 and Joe West proceeded to area 1.

4 Q. Area 1 is where you are assigned?

5 A. It is.

6 Q. Why is it that you went initially to area 2
7 with defendant Hood and defendant Washington?

8 A. Initially we just wanted to secure, do this
9 alibi witness interview with Mr. Washington. So I
10 chose the closest facility.

11 MS. WOLFSON: I am sorry, Judge. Is there
12 something amusing? Counsel seems --

13 THE COURT: Yes, it is. The witness almost
14 slipped and said secure. That is what I think is
15 pretty funny.

16 MR. MULLENIX: The Court found it amusing.

17 MS. WOLFSON: The Court found it amusing, too.

18 THE COURT: Particularly when you are talking
19 about whether or not people are under arrest. If you
20 missed it, I think you should have -- Go ahead. Ask
21 your next question.

22 MS. WOLFSON: I don't believe he had a chance to
23 answer. Can I have the last question read back?

24 (Whereupon, the reporter

1 read back from the record as
2 requested.)

3 MS. WOLFSON: I will withdraw that.

4 After you left area 2 you proceeded to area
5 1, is that correct?

6 A. That is correct.

7 Q. Who transported defendant Hood and
8 Washington to area 1?

9 A. Myself and Detective Lenihan.

10 Q. Can you tell us how they were transported
11 to area 1?

12 A. Detective Lenihan and I were in the front
13 seat of the squad car, and the two defendants were in
14 the rear. They were explained that the investigation
15 was now going into area 1.

16 And they agreed to accompany us into area 1
17 since we had the third person Joe West now to
18 interview.

19 Q. Were either defendant Hood or Washington
20 handcuffed when they were put into your car to
21 transport them to area 1?

22 A. No, they were not.

23 Q. Did either, did defendant Washington say he
24 wanted to leave, he didn't want to go to area 1?

~~B-60~~
90

1 A. No, he did not.

2 Q. Did defendant Hood say he wanted to leave
3 area 1?

4 A. No, he did not.

5 Q. Up to that point had you had an opportunity
6 to take the statement from defendant Washington yet?

7 A. No.

8 Q. Do you recall approximately what time you
9 did arrive at area 1?

10 A. Yes. It was between, later than 4:30 p.m.
11 It was going on 5:00 p.m.. Because the rollcall for
12 the afternoon was just completing at our arrival.

13 Q. When you got to area 1 where did defendant
14 Washington go?

15 A. Defendant Washington went into the lineup
16 room which is a large unlocked room on the south end
17 of our office.

18 Q. Is there a lock on the door to the lineup
19 room?

20 A. No, there is not. It is incapable of being
21 locked.

22 Q. Where did the defendant Hood go?

23 A. The defendant Hood went to interview room
24 on the same side of our office area, but to the north

~~B-61~~

91

A.319

1 a little bit.

2 Q. Where was Mr. West taken?

3 A. To a similar interview room along the same
4 wall.

5 Q. Shortly after you arrived at area 1 what
6 happened to your partner, Detective Lenihan?

7 A. He had to leave.

8 Q. What is the first thing you did after you
9 secured defendant Hood, defendant Washington and Mr.
10 West in those 3 rooms?

11 A. Okay. Then I sat down with the afternoon
12 shift of detectives and I briefed them on the case.

13 Q. I'd like to move to about 6:00 o'clock that
14 evening. Strike that. About 7:30 that evening. Do
15 you recall where you were?

16 A. Yes. I was in area 1.

17 Q. Did you have an opportunity to talk with
18 defendant Washington at that time?

19 A. Yes?

20 A. I did.

21 Q. Who was present when you spoke to him?

22 A. Myself and detective jack Halloran.

23 Q. After you spoke to him did you go somewhere
24 from the area?

~~B-62~~

92

A.320

1 A. Yes I went across the street to Mc Donald
2 and I got dinner for the 3 individual. West,
3 Washington and Hood.

4 Q. When you were getting ready to go to the Mc
5 Donald's do you know whether defendant Washington had
6 an opportunity to make a phone call?

7 A. Yes, he did.

8 Q. Can you tell us about that?

9 A. Okay.

10 MR. MULLENIX: Objection, your Honor. I have no
11 objection if we are proceeding on both motions at
12 this time through this witness.

13 THE COURT: You are.

14 MR. MULLENIX: Okay. That is fine.

15 THE COURT: They have rested on Washington.

16 MS. WOLFSON: Right.

17 THE COURT: Rested on Hood.

18 MR. MULLENIX: I wasn't sure if Mr. Stanton had
19 rested.

20 THE COURT: Yes. He rested last --

21 MR. MULLENIX: Fine.

22 THE COURT: -- January 20th.

23 Go ahead. Mc Donald's to get the usual
24 food.

~~B-63~~

93

A.321

1 MS. WOLFSON:

2 Q. As you were going to Mc Donald's you said
3 something about a phone call?

4 THE COURT: Phone call.

5 MS. WOLFSON:

6 Q. Can you tell us about Mr. Washington?

7 A. I asked him if he wanted to make a phone
8 call. He said he did. He was allowed to make a
9 phone call.

10 Q. Where did you go when he went to make that
11 phone call?

12 A. I went to Mc Mc Donald's. I got the food.

13 Q. Did you return with the food?

14 A. I did.

15 Q. Who did you feed at that time? When you
16 came back who did you give the food to?

17 A. I gave food to all 3 individuals, West
18 Washington and Hood.

19 Q. During the time you spoke to Mr. Washington
20 at approximately 8:00 in the evening was he
21 handcuffed?

22 A. No, he was not.

23 Q. Was he free to leave at that time?

24 A. Yes, he was.

~~B-64~~

94

A.322

1 Q. Did he ever ask to leave?

2 A. No, he did not.

3 Q. Had he been given an opportunity yet to
4 make his statement with regard to the defendant
5 Hood?

6 A. It was in that two-hour span before I went
7 to get Mc Donald's and after I came back from Mc
8 Donald's that we, myself and Detective Lenihan,
9 interviewed him as to Tyrone Hood.

10 Q. You said Detective Lenihan?

11 A. Detective Halloran. They are similar
12 names. I am sorry.

13 Q. What time did you leave that evening?

14 A. I left that evening approximately 9:00
15 p.m..

16 Q. I'd like to move to the next day, May 28th,
17 1993. Do you recall what time you came to work that
18 day?

19 A. I didn't. I came to work -- I do. I am
20 sorry. I came to work approximately 11:00 o'clock in
21 the morning. I was a little late.

22 Q. What is the first thing you did when you
23 got to the station?

24 A. I checked on the individuals that were

~~B-65~~

95

A.323

1 there, Mr. Washington, and I made sure that everyone
2 had eaten and were. Could get a drink of water,
3 coffee. That kind of thing.

4 Q. Was Mr. Hood still in the interview room
5 when you returned May 28th, 1993 morning?

6 A. No, he was not.

7 Q. Was Mr. Hood still in the interview room
8 when you returned the following morning?

9 A. No. He had left.

10 Q. Only Mr. Washington was still at the
11 station?

12 A. That is correct.

13 Q. And did you speak with Mr. Washington?

14 A. I did.

15 Q. Did you ask him whether he needed
16 anything?

17 A. I did. I asked him if he needed to make
18 anymore phone calls or if he needed to eat again.
19 And I went and got him lunch.

20 Q. Did you also tell him what was happening in
21 the status of the case?

22 A. Yes, I did. I informed him that Tyrone
23 Hood had in fact been charged and that the, and all
24 the particulars as to him being charged.

~~B-66~~
96

A.324

1 Q. What do you mean by that, sir, all the
2 particulars of him being charged?

3 A. Just that we secured, I used the word
4 again. I am sorry.

5 Q. You can use the word secured. Couldn't be
6 afraid of the word.

7 A. It is a police term I am just used to
8 using.

9 Q. That is fine.

10 A. That Joe West had made a statement against
11 Tyrone Hood. That he in fact was charged with the
12 murder and you know everything that had transpired
13 until that time.

14 Q. So, you basically gave the defendant
15 Washington an update on what had transpired since you
16 had last saw him?

17 A. That is correct. And told him that the
18 State's Attorney would hopefully be interviewing him
19 as to what he had stated to us. I didn't get a long
20 opportunity to talk to him.

21 I had to answer a lot of, I was kind of the
22 coordinator that, I had to answer a lot --

23 Q. We will get to that in a minute.

24 After you had the opportunity to bring the

~~B-6T~~
97

1 defendant Washington up to speed on what was
2 occurring how did you spend your afternoon at work
3 that day?

4 A. Since I was the only detective involved in
5 the scene all the way through this investigation I
6 had to communicate with the detective division.
7 There was alot of press inquiries to the case.

8 I had to deal with our own administration.
9 I spent a long time briefing supervisors.

10 Q. After 1:00 o'clock in the afternoon did you
11 have any further contact with the defendant
12 Washington?

13 A. No. I passed that onto the afternoon
14 watch, which I believe was around 5:00 o'clock.

15 MS. WOLFSON: Thank you. May I have a moment,
16 Judge?

17 THE COURT: Certainly.

18 MS. WOLFSON: Judge, I have nothing further.

19 THE COURT: All right. Mr. Stanton, you haven't
20 had a chance to talk all day. Would you like to go
21 first? Or would Mr. Mullenix like to go first?

22 MR. STANTON: I asked Mr. Mullenix that same
23 question. I am willing to let him go first since he
24 may be shorter than I.

1 THE COURT: Well.

2 MR. STANTON: I don't know.

3 THE COURT: You never know.

4 MR. MULLENIX: Now, that is amusing. You can
5 go.

6 THE COURT: Okay. Go ahead.

7 CROSS-EXAMINATION

8 By Mr. Stanton:

9 Q. Officer, you indicate that you got on duty
10 on May 27th, is that correct, 1993?

11 A. That is correct.

12 Q. Do you recall what time you got on duty?

13 A. May 27th?

14 Q. Right?

15 A. Be approximately 8:30 a.m. in the morning.

16 Q. And you were asked whether or not you went
17 to 104th and Corliss around 1:00 o'clock or so. Do
18 you recall for a fact that was 1:00 o'clock in the
19 afternoon?

20 A. I think it was, be more like 2:00. Between
21 1:00 and 2:00 p.m.. It was the early to
22 midafternoon.

23 Q. You never made a notation on your record or
24 on your report as far as what time it was, is that

~~B-69~~
99

1 right?

2 A. I don't think I did. No.

3 Q. So, your recollection is based on your
4 memory alone, is that correct?

5 A. I know it was just after lunch. I know
6 what transpired that afternoon, I went to Mc Donald's
7 at approximately 1:00 to 2:00 p.m..

8 Q. Again your memory is based not on notes,
9 what you have read, only your memory, is that
10 correct?

11 A. It is on my memory refreshed by the reports
12 and report that I have.

13 Q. Is there anything in your reports that
14 indicates what time it was when you went to this
15 location?

16 A. I don't think I noted the exact time in any
17 report, sir.

18 Q. Okay. Now, when you got to this particular
19 location you indicate that you were going there to
20 see about a Mr. West, is that right?

21 A. That is correct.

22 Q. Did you have occasion to go into this
23 particular store?

24 A. I did.

~~B-70~~

100

A.328

1 Q. Did you see anybody in that particular
2 store?

3 A. Yes.

4 Q. Who did you see in that particular store?

5 A. Well, first person I saw in the store was
6 the clerk behind the counter. That is my answer.

7 Q. Did you have occasion to speak to the
8 clerk?

9 A. Yes, I did.

10 Q. Was that in specific relation to Mr. West?

11 A. Yes, it was.

12 Q. At that time did you see anybody else in
13 that store?

14 A. After I concluded that conversation Tyrone
15 Hood walked into the store.

16 Q. Did you have occasion to see Mr. Washington
17 using the phone at that time?

18 A. Tyrone, correction, Wayne Washington walked
19 in. I don't recall if he was using the phone or
20 not.

21 Q. And Mr. Washington you indicated walked in,
22 did you see Mr. Hood then?

23 A. I saw Mr. Hood first then I saw Wayne
24 Washington.

~~B 71~~

101

A.329

1 Q. You didn't notice as to where Mr.
2 Washington went when he came in the store, is that
3 correct?

4 A. No. I remember they looked to be together
5 as if they knew each other, but I don't know where
6 exactly Wayne Washington walked within the room. He
7 was not on my side of the room.

8 Q. Did you see a third individual in that room
9 as well that came in with Mr. Hood?

10 A. No, I did not.

11 Q. Now, you indicate that you spoke to Mr.
12 Hood for a period of time, is that correct?

13 A. I indicated that, I didn't indicate any
14 period of time. I stated that I spoke to him in the
15 store and out on the street.

16 Q. Okay. While he was out on the street do
17 you recall where Mr. Washington was?

18 A. Yes. He walked with my partner, and they
19 were talking initially I believe outside the squad
20 car and then inside the squad car.

21 Q. Did you notice where your partner went when
22 he was speaking with Mr. Washington when you were
23 talking with Mr. Hood?

24 A. Yes. He was behind the driver's side of

1 the car as I recall and Mr. Washington was in the
2 back seat of the car.

3 Q. Did you see your partner ever go toward the
4 phone booth or a phone located within that store?

5 A. No, sir. I don't recall that.

6 Q. Now, you indicate that Mr. Washington was
7 talking to your partner outside, is that correct?

8 A. Could you repeat the question?

9 Q. You indicated that your partner was talking
10 outside with Mr. Washington, is that correct?

11 A. That is correct.

12 Q. And to your recollection that was in
13 relation to Mr. Joseph West?

14 A. Yes, sir.

15 Q. Did your partner ask Mr. Washington as far
16 as what his identification was and who he was and why
17 he was there?

18 A. I believe he asked his name. Yes. I don't
19 recall any inquiry as to why Mr. Washington was
20 there.

21 Q. Do you recall whether or not he inquired as
22 to whether or not Mr. Wayne Washington was any
23 relation to a Janice Washington?

24 A. Yes.

~~B-73~~

103

A.331

1 Q. And was that why Mr. Washington had to get
2 identification, to explain the fact who he was and
3 the fact he was not any relation to Janice
4 Washington?

5 MS. WOLFSON: Objection.

6 THE COURT: What is your objection?

7 MS. WOLFSON: Objection is the form of the
8 question.

9 THE COURT: Overruled.

10 MS. WOLFSON: This witness can't possibly know
11 why the defendant did what he did.

12 THE COURT: If there is something, he is
13 relating a substantive conversation. If there is
14 something in that conversation that declared the
15 intent of Officer Lenihan concerning the subject
16 matter of inquiry, he can testify to that, if Lenihan
17 said something about it.

18 MS. WOLFSON: That is what I am objecting to,
19 the form of the question, the way it is asked.
20 Inquiries as to the defendant's state of mind --

21 THE COURT: No. No. No. No. No. You
22 misunderstand my ruling. Maybe I didn't say it
23 right, but if the witness heard Lenihan talking to
24 Washington about his relationship with this Janice

~~B-74~~

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A.332

1 Washington and they would need to get an idea if
2 there were words exchanged to that effect, this
3 witness could have heard that and he can recall that
4 testimony that would certainly relate to the
5 intention.

6 That is what I get the gist of the question
7 to be. Certainly the witness can't read the mind of
8 either one of the two people.

9 Go ahead. Ask. Why don't you rephrase
10 your question, Mr. Stanton. See how it comes out.

11 MR. STANTON:

12 Q. Well, let's put it this way. Was Mr.
13 Washington requested to get identification?

14 A. It is my recollection one of the reasons
15 that he was stopping by was, his request was to get
16 his, he wanted his, to get his identification. And
17 to notify whoever it was at his residence where he
18 was going.

19 Q. So, he wasn't getting, as to your knowledge
20 he was not getting his identification because of a
21 request by either you or your fellow officer, but
22 because he wanted to get it, is that correct?

23 A. That was part of it, Counsel. I wasn't
24 present during the whole time Detective Lenihan was

1 talking to Wayne Washington. It was only a part of
2 the time.

3 Q. Did you ever take notice whether or not Mr.
4 Washington, when he was brought to area 1 or area 2,
5 had that identification on his person?

6 A. I think he did get some form of ID to
7 establish who he was, Wayne Washington.

8 Q. Did he ever bring that with him to your
9 knowledge?

10 A. I think he did. I am not positive.

11 THE COURT: You mean area 2?

12 MR. STANTON: I am sorry. Area 2 and area 1
13 eventually.

14 You took Mr. Washington to where he lived,
15 is that correct?

16 A. That is correct.

17 Q. In that time he was not in any handcuffs
18 whatsoever, is that also correct?

19 A. That is correct.

20 Q. And you stayed in the car at the time you
21 got to, to where Mr. Washington lived, is that
22 correct?

23 A. That is correct.

24 Q. And your partner went up with Mr.

~~B-76~~
106

1 Washington to his residence, is that also correct?

2 A. He did. He was alone. I was alone with
3 Tyrone Hood.

4 Q. Mr. Hood at that time was in the back of
5 the squad car, is that also correct?

6 A. That is correct.

7 Q. Now, did you have occasion to see your
8 partner come down from where Mr. Washington resided?

9 A. I remember they returned. I don't know if
10 I saw them walk out of the building. No.

11 Q. You recall whether or not you saw your
12 partner by himself without Mr. Washington at first?

13 A. I don't really recall.

14 Q. Do you recall if your partner got into the
15 vehicle with you prior to Mr. Washington coming down
16 from his residence?

17 A. I don't really recall. I know they both
18 came back. Whether they both came back together or
19 not, sir, I don't remember.

20 Q. Do you recall whether or not either you or
21 your fellow officer asked Mr. Washington to step over
22 to the car?

23 A. What point are you talking about?

24 Q. After your partner, at least back with you

~~B-77~~

107

1 at your vehicle with Mr. Hood, this is after the
2 identification was allegedly shown to your partner?

3 A. I am confused by the question. We are
4 still talking about after they went in the Wheel
5 Works and returned?

6 Q. Where Mr. Washington resided, right. You
7 indicate that some point both of them came outside,
8 is that correct?

9 A. I remember them returning to the car. I
10 remember them leaving and returning to the car. I
11 don't specifically --

12 Q. Do you remember asking anyone, anyone
13 asking Mr. Washington to come over to the car?

14 A. No, sir. I don't.

15 Q. Do you recall at that time putting any
16 cuffs either yourself or your fellow Officer Lenihan
17 on Mr. Washington?

18 A. I recall we didn't. Neither party was
19 cuffed at any time.

20 Q. Now, you indicated that you went to area 1
21 and that was for a specific, or area 2 rather, that
22 was for a specific purpose, is that correct?

23 A. Yes.

24 Q. That specific purpose was to talk with Mr.

~~B-78~~
108

1 Washington regarding an alibi that Mr. Hood had
2 indicated he would be able to provide for him, is
3 that correct?

4 A. That is correct.

5 Q. But no time in area 2 did you ever take
6 conversation or information regarding this alleged
7 alibi, is that also correct?

8 A. We never got to that point. That is
9 correct.

10 Q. Now, while you were out with your fellow
11 officer locating Mr. West, Mr. Washington remained at
12 area 2, is that correct?

13 A. Could you repeat that question again? I am
14 sorry.

15 Q. While you and Officer or Detective Lenihan
16 went out to locate Mr. West Mr. Washington was still
17 at area 2, is that correct?

18 A. Yes. That is correct.

19 Q. Do you recall who you left him with?

20 A. We didn't leave him with anyone.

21 Q. Did you give him instructions to stay there
22 until you got back?

23 A. We told him we were just going to be gone a
24 minute, going to try this find this gentleman West

1 and be right back.

2 Q. Your minute turned into more like an hour
3 and a half or so?

4 A. I was just using a term, common term, sir.

5 Q. And you didn't have Mr. Washington
6 handcuffed to any wall at that time, is that right?

7 A. No, I did not.

8 Q. At that point he didn't have any use of a
9 phone, is that correct, to your knowledge?

10 A. I don't think he used the phone at area 2.
11 No, sir.

12 Q. You indicated that some point you did come
13 back?

14 A. Yes.

15 Q. Did you come back with Mr. West as well?

16 A. No. We didn't bring Joe West to area 2, as
17 I recall.

18 Q. How was Mr. West transported, if you
19 recall?

20 A. 5th district transported him.

21 Q. You recall whether or not he was in cuffs
22 when he was transported?

23 A. Yes. He was not.

24 Q. Now, you also indicate then you did come

~~B-80~~
110

1 back to area 2 and you picked up Mr. Washington, is
2 that correct?

3 A. That is correct.

4 Q. Did you inform him at that time that you
5 had located, that you had arrested -- Had you
6 informed Mr. Washington that they had gotten Mr.
7 West?

8 A. Yes.

9 Q. Located Mr. West?

10 A. Yes.

11 Q. And at that time you asked him whether or
12 not you would be willing to come to area 1, is that
13 correct?

14 A. Yes. I explained to him that now we had 3
15 people, and that this would have to go, we would have
16 to move this investigation on to the third watch, get
17 the other detectives involved.

18 It wasn't as simple as little it looked at
19 first. We are going to go to hou office at area 1.
20 He said, fine. He would still hang in there and be
21 interviewed by a State's Attorney.

22 Q. He didn't object at that time, is that
23 correct?

24 A. No, sir. He did not.

~~B-81~~

111

A.339

1 Q. You indicated that it was your intention to
2 have him interviewed by a State's Attorney?

3 A. Potentially we needed to interview him as
4 to the alibi statement. Then given, based on
5 whatever he said then he would either be interviewed
6 or not interviewed by a State's Attorney. I hadn't
7 made that decision at that point.

8 Q. You were anticipating that a State's
9 Attorney may be called, though, is that right?

10 A. No. I explained to him that we needed to
11 interview him, if he wanted to be an alibi witness
12 and speak with us, that he is also agreeing. You
13 know that if we, that he may be speaking to a State's
14 Attorney, if necessary.

15 And he agreed that he would go that far for
16 his friend, Tyrone Hood, to give a statement. He
17 was, he wanted to do that.

18 Q. Did he indicate to you at that time that
19 Mr. Hood was a friend, a personal friend?

20 A. Yes. He did.

21 Q. Did he indicate to you how long he had
22 known Mr. Hood?

23 A. Yes. He said he's known him several
24 years. Kicked it with him.

~~B-82~~
112

1 Q. That he's kicked it with him?

2 A. Well, that is a term, yeah. That he hangs
3 around with him.

4 Q. Okay. He didn't tell you that he had just
5 known him from the neighborhood, is that right?

6 A. I don't think he said just from the
7 neighborhood. No, Counsel.

8 Q. Now, you took Mr. Washington over to area
9 1, is that correct?

10 A. That is correct.

11 Q. And when you took him over there did you
12 put him in cuffs?

13 A. No, sir.

14 Q. Again he got into the car willingly, that
15 is what your testimony is?

16 A. Yes.

17 Q. When you got to area 1 what room was he
18 taken to?

19 A. He was taken to the, Mr. Washington was
20 taken to the lineup room, sir.

21 Q. To the lineup room?

22 A. Yes. I am sorry. I thought you said area
23 2 for a second. I almost answered to area 2. Area 1
24 he went to the lineup room.

1 Q. Okay. And he was there by himself, is that
2 correct?

3 A. Yes, sir.

4 Q. And Mr. West was not there with him?

5 A. In that room?

6 Q. Right?

7 A. No, sir.

8 Q. And Mr. Hood was not in the room with him?

9 A. No, he was not.

10 Q. And again was he cuffed or uncuffed in the
11 room?

12 A. He was not cuffed. There's no rings to
13 cuff anyone to there. And he was not cuffed. That
14 is not a --

15 Q. There is a chair in there, is there not?

16 A. There is as little as no chairs or
17 sometimes 10 or 12 chairs there. Commonly we mostly
18 used it for lineups or witnesses. It is an unsecured
19 room.

20 Q. Were you to cuff individually you could
21 cuff him one arm on the wrist and the other
22 handcuffed to the chair, is that correct?

23 A. Could have.

24 Q. You indicated that at area 1 Mr. Washington

~~B-84~~
114

1 was given some kind of a dinner, is that correct?

2 A. That is correct.

3 Q. He also requested to use the phone, is that
4 correct?

5 A. That is correct.

6 Q. Did you make a notation in your notes that
7 at that period of time he had requested Mc Donald's
8 and the use of a phone?

9 A. No, sir.

10 Q. Did you see him use the phone?

11 A. Yes.

12 Q. Did you overhear his conversation on the
13 phone?

14 A. No.

15 Q. Did you ask him as to who he wished to
16 call?

17 A. No, I did not.

18 Q. Did Mr. Washington, during the course of
19 his stay there, ever indicate he wished to speak with
20 his grandmother?

21 A. Wished to speak with who, Counsel?

22 Q. His grandmother?

23 A. I don't recall if he mentioned his
24 grandmother, Counsel. I know that, that he was

1 allowed to make as many phone calls as he wished,
2 Counsel.

3 Q. Did you --

4 A. He was purely at most a witness in this
5 case.

6 Q. Did he have to ask your permission to use
7 the phone?

8 A. No. No.

9 Q. Was there a phone in that lineup room?

10 A. No, there wasn't. I, he came in with me
11 and I asked him about the food. When I asked about
12 the food I often times ask about phone calls. Say,
13 would you like to use the phone?

14 I believe it was, I don't think there was
15 anyone at his residence to leave a note with.
16 Couldn't communicate with anyone at that time.

17 So, I think he made a phone call to make
18 sure everyone knew where he was.

19 Q. Did you see Mr. Washington use the phone
20 more than once while he was there at the area 2?

21 A. Area 2?

22 Q. I mean area 1? I am sorry.

23 A. I saw him use the phone in my presence that
24 night and the next day.

~~B-86~~
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1 Q. That was when you come back on duty?

2 A. Yes, sir.

3 Q. During that period of time that you were on
4 duty did anybody come down to area 1 regarding Mr.
5 Washington?

6 A. No, sir. Not to my recollection.

7 Q. Now, again you indicate that you went, when
8 you got to the location you started talking with Mr.
9 West, is that right? Area 1 I am talking about?

10 A. When I got to that location I did not have
11 much in the way of a conversation with Mr. West. Mr.
12 West was handled by two other detectives.

13 Q. Okay. So, when did you get off duty that
14 day, if you recall?

15 A. About 9:00 p.m..

16 Q. So, your duties at that time took you
17 either with Mr. Washington or Mr. Hood?

18 A. Primarily Mr. Washington. And primarily
19 relating to what had transpired this afternoon to the
20 next shift.

21 Q. Did you interview Mr. Washington that
22 night?

23 A. Yes, I did.

24 Q. Did you reduce that statement at that time

1 to writing?

2 A. I didn't write anything down that night
3 myself personally. If I could just clarify? Not
4 that night. This was later the subject of a report.

5 Q. Those were the G P R reports?

6 A. Later subject of our final supplementary
7 report.

8 Q. So, you did take some G P R notes during
9 that period of time that you interviewed him?

10 A. No. I think I didn't take those
11 personally, Counsel.

12 Q. Okay. Was there another fellow officer
13 with you when you were talking with Mr. Washington?

14 A. Yes, there was.

15 Q. Was it on the night of the 27th or the in
16 the day of the 28th of May that you had occasion to
17 take Mr. Washington to another location?

18 A. I don't understand your question.

19 Q. Did you have occasion to take Mr.
20 Washington from area 1 to view a vehicle?

21 A. No, I did not.

22 Q. To your knowledge did any of your fellow
23 officers do that?

24 A. Yes.

1 Q. Was that on the night of the 27th? Or was
2 that some time in the morning hours of the 28th?

3 A. I did not do that. I know it happened on
4 the 28th. It didn't happen on the 27th.

5 Q. Had that happened prior to your getting
6 back on duty?

7 A. No. I believe that happened, you are
8 speaking back on duty during the day watch of the
9 28th?

10 Q. Right?

11 A. I believe that happened right after my
12 shift on the 28th, which would be right after my tour
13 would end, 4:30, 5:00 o'clock.

14 Q. Now, Mr. Washington eventually gave you two
15 more statements during the course of the 28th of May,
16 is that correct?

17 A. No. I believe those, you are asking about
18 statement. No. Mr. Washington to me on the 28th of
19 May, not 27th of May.

20 Q. 27th, 28th of May, right?

21 A. You asked me about the 28th of May,
22 though.

23 Q. Mr. Washington, correct?

24 A. I don't believe he gave me any, myself

1 personally any additional statement on the 28th of
2 May.

3 Q. Okay. To your knowledge had anyone spoken
4 with Mr. Washington after you left off duty on the
5 27th?

6 A. Yes. He was interviewed by the detectives
7 from the other shifts and statements were made,
8 detectives from the other shift. I was not in on
9 those statements to my recollection.

10 Q. After you first spoke with Mr. Washington
11 on May 27th did you indicate to him at that time that
12 he was still free to leave?

13 A. Yes.

14 Q. And you had given his Miranda rights at
15 that point, is that correct?

16 A. Mr. Washington?

17 Q. Yes?

18 A. No, sir. He was purely a witness. I never
19 had any reasons to give him any Miranda.

20 Q. So, you never gave him a Miranda right at
21 the first statement, is that correct?

22 A. Statement. First interview?

23 Q. First interview with him?

24 A. That is exactly correct. There is no

~~B-90~~

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A.348

1 reason for the Miranda rights.

2 Q. After that conversation to your mind he was
3 still free to leave, is that correct?

4 A. Mr. Washington?

5 Q. Yes?

6 A. He certainly was.

7 Q. You informed him of that fact?

8 A. Yes. I told him you know, I told him,
9 Wayne, you are not under arrest. And identification
10 in my mind, I had no inkling that he was involved in
11 this matter. He was not told he was under arrest.

12 Q. Did he indicate to you that he wanted to
13 leave after he gave the statement to you?

14 A. No, he did not.

15 Q. Did you request him to remain?

16 A. I told him that, in our conversation we
17 told him that this, nature of the investigation and
18 that his statement for Tyrone Hood as an alibi
19 witness statement is something that, that we were
20 interested in. We wanted to verify, we wanted to
21 talk to him about.

22 And he said, he expressed that he wanted to
23 do the same. He wanted to follow it all the way
24 through.

~~B-91~~
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1 Q. Did you give an impression that other
2 people wanted to talk to him about this statement?

3 A. Well, as I told you I always told him be up
4 front what you say to us, you may have to repeat it
5 to a State's Attorney. That is just a general
6 proviso that I tell people at times.

7 Q. Was a State's Attorney called by you on May
8 27th after your first discussions or talks with Mr.
9 Washington?

10 A. No.

11 Q. When you left May 27th your duty, where was
12 Mr. Washington?

13 A. He was still in the lineup room.

14 Q. When you got back on May 28th on your shift
15 where was Mr. Washington?

16 A. He was still in the lineup room.

17 Q. Were you surprised to still see him there?

18 A. Surprised?

19 MS. WOLFSON: Objection.

20 THE COURT: What is the objection?

21 MS. WOLFSON: This witness' surprise, state of
22 mind, whatever is not relevant.

23 THE COURT: I think it might be. Overruled.

24 A. After I was briefed by the detectives on

~~B-92~~
122

1 what had transpired in the investigation I was not
2 surprised that he was, that he was still there. No.

3 MR. STANTON:

4 Q. All right. And at that point when you came
5 back on duty was it your opinion that he was still
6 free to leave?

7 A. Yes.

8 Q. Did you indicate to him that period of time
9 when you got back on duty that he was still free to
10 leave?

11 A. I may not have said it in those exact
12 words, Counsel, but I told him that you know, we
13 still didn't think he was involved in any way. And
14 we still had to you know, interview him. And a
15 State's Attorney would probably want to talk to him.

16 Q. Now, eventually a State's Attorney did
17 come, is that correct?

18 A. Yes.

19 Q. Were you on duty at that time?

20 A. No, I was not.

21 Q. To your knowledge do you recall when that
22 was?

23 A. I was not there, Counsel. I don't.

24 Q. Have you had occasion to review your report

~~B-93~~

123

1 of your fellow officers?

2 A. Yes. I believe the State's Attorney got
3 there later on that night or early next morning.

4 Q. In fact you are the one that wrote up the
5 report regarding this whole incident, are you not?

6 A. I typed the reports along with my partner
7 and the input of several other detectives.

8 Q. Correct. That was based on the information
9 they had given you?

10 A. That is correct.

11 Q. Based on that information that they gave
12 you you had the knowledge as to when a State's
13 Attorney finally came to speak with Mr. Washington,
14 is that correct?

15 A. Yes. But as we typed the report this is
16 reported, communicated to us by other detectives that
17 contribute. I would have to look at the report right
18 now to refresh my recollection to tell you the
19 truth.

20 THE COURT: Mark it both 1.

21 MR. STANTON:

22 Q. I would ask you to look at what's been
23 marked as Petitioner's Exhibit No. 1?

24 MS. WOLFSON: Can I see it, Counsel?

~~B-94~~

124

A.352

1 MR. STANTON:

2 Q. For Mr. Washington.

3 Is that a copy of the supplemental report
4 that you helped prepar?

5 A. It appears to be. Yes, Counsel.

6 Q. I would you to review that to see if your
7 memory will be refreshed as far as when the statement
8 was, Assistant State's Attorney came on to do the
9 statement?

10 THE COURT: He wasn't there. I don't see how
11 you can do this. I am going to object.

12 MS. WOLFSON: I will objection, Judge.

13 THE COURT: Can't you agree when the State's
14 Attorney came, for god sake?

15 MR. STANTON: It is, I believe hearsay testimony
16 is allowed.

17 THE COURT: I agree. I agree. I agree. He
18 doesn't know.

19 MR. STANTON: He typed up the report.

20 THE COURT: No. He is the paper officer on the
21 case. Everybody tells him, all right, give me your
22 bit. Give me your bit. Give me your bit. It hold
23 them all to the report.

24 But obviously somebody else told him that

~~B-95~~

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A.353

1 because he wasn't there.

2 MR. STANTON: I suppose after this Officer is
3 finished testifying --

4 THE COURT: Read the report, Officer.

5 MR. STANTON: I thought this would be easier
6 just for him to review it and give his answer.

7 THE COURT: Well, that is true. It would have
8 been easier. That is not the right thing to do.

9 The defendants need to go to the washroom.

10 (Whereupon, there was a recess
11 had in the above-entitled
12 cause, after which the
13 following proceedings were had:)

14 THE COURT: Now, I am going to stop at this
15 point. Do you have further questions of the Officer
16 at this time?

17 MR. STANTON: Couple.

18 THE COURT: Miss Wolfson must leave for other
19 commitments before 5:00 o'clock. What I intend to do
20 is have you complete your examination before Mr.
21 Mullenix commences his examination. Because that is
22 all we can get in. Okay? Whether it is okay or not,
23 that is what I am doing.

24 MR. MULLENIX: What we had discussed, Gary just

~~B-96~~

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A.354

1 finishes up. I will do mine when I think the
2 Detective is going to come back.

3 THE COURT: Yeah. Right.

4 MS. WOLFSON: Right.

5 MR. MULLENIX: I thought you wanted me to do my
6 cross as well?

7 THE COURT: Wait a minute. No. No.

8 MR. MULLENIX: I didn't understand.

9 THE COURT: You can examine the witness when you
10 want to. You can have all this time to prepare all
11 those tricky questions.

12 Proceed, Mr. Stanton.

13 MR. STANTON:

14 Q. Did you examine --

15 THE COURT: Petitioner Exhibit 1 for each
16 defendant.

17 MR. STANTON:

18 Q. Right. Did you have occasion to examine
19 that, Officer?

20 A. I did.

21 Q. Is your memory refreshed as to what time
22 the State's Attorney came to speak with Mr.
23 Washington?

24 A. The report does not speak of exact time

~~B-97~~

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1 when the State's Attorney came.

2 Q. Does it say what day?

3 A. From the way the report reads, the time of
4 arrest of the defendant, it appears that the
5 statement he made and the State's Attorney would have
6 been the evening of the 28th. Exact time I cannot
7 say.

8 I would have to look at the, you don't have
9 the written statement here from, that the defendant
10 made.

11 THE COURT: Well, see, you know, go ahead.

12 MR. STANTON:

13 Q. Officer, you indicated that you had seen
14 Mr. Washington at 104th and Corliss and that you
15 eventually had occasion to take him to his residence,
16 correct?

17 A. That is correct.

18 Q. Had you made notation of that taking of him
19 to his residence in your notes?

20 A. No, sir. I don't believe that was included
21 in the report.

22 Q. All right.

23 THE COURT: I have a question. Why do you call
24 that area the Wheel Works?

~~B-98~~
128

1 A. The Wheel Works?

2 THE COURT: Wheel Works?

3 A. The Wheel Works is a converted old Pullman
4 factory that is now a --

5 THE COURT: Okay. That is what I thought it
6 was. I was not sure. I kept on hearing Wheel
7 Works. Wheel Works of Pullman?

8 A. Multi apartment complex.

9 THE COURT: Yeah.

10 MR. STANTON:

11 Q. You were, in fact, in your notes you only
12 indicate that you talked to Mr. Washington at the
13 scene and he was willing to accompany you immediately
14 to area 1, is that correct, or area 2 rather?

15 A. Are you speaking of my notes or my report?

16 Q. Your report?

17 MS. WOLFSON: Judge, I would object.

18 THE COURT: What is your objection?

19 MS. WOLFSON: He is asking him what he put in
20 his report.

21 THE COURT: Sustained.

22 MR. STANTON:

23 Q. Can you estimate the amount of time that
24 Mr. Washington was at area 1 and area 2 from the time

~~B-99~~

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A.357

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)

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

5 THE PEOPLE OF THE STATE)
6 OF ILLINOIS,)
)
7 Plaintiff,)
8 V.)
)
9 WAYNE WASHINGTON) No. 93 CR 14676-01
) No. 93 CR 14676-02
)
)
10 Defendants.)

11 REPORT OF PROCEEDINGS had at the
12 hearing in the above-entitled cause, before the
13 HONORABLE DOMENICA A. STEPHENSON, one of the Judges
14 of said Division, on the 20th of June, 2016.

15 PRESENT:

16 HONORABLE ANITA M. ALVAREZ,
17 State's Attorney of Cook County, by:
18 MR. JAMES PAPA,
19 Assistant State's Attorney,
20 appeared on behalf of the People;

21 MR. STEVEN GREENBERG,
22 MR. STEVEN FINE,
23 appeared on behalf of Defendant
24 Washington.

MR. KARL LEONARD,
Appeared on behalf of Defendant Hood.

22 DANIELLE K. WHITE, CSR, RPR
23 Official Court Reporter
24 2650 S. California Avenue, Room 4C02
Chicago, Illinois 60608
Illinois CSR License No. 084-004215

1 THE COURT: Tyrone Hood, Wade Washington.

2 You're Tyrone Hood and you're Wade Washington?

3 Would the attorneys put their names on the
4 record?

5 MR. LEONARD: Good morning, Your Honor. Karl, with
6 a K, Leonard, L-E-O-N-A-R-D, for Mr. Hood who is
7 present this morning.

8 MR. FINE: Good morning, Judge. For the record, my
9 name is Steven Fine, along with attorney, Steven
10 Greenberg, on behalf of Wayne Washington who is
11 appearing before the Court as well, Judge.

12 MR. PAPA: Jim Papa, P-A-P-A, on behalf of the
13 State.

14 THE COURT: This is set for a hearing today on the
15 petitioner's certificate of innocence.

16 Are the parties ready to proceed?

17 MR. LEONARD: We are ready, Your Honor.

18 MR. FINE: Yes, Your Honor.

19 THE COURT: State?

20 MR. PAPA: Sure.

21 THE COURT: Do you wish to make an opening
22 statement?

23 MR. LEONARD: We do, Your Honor.

24 So our understanding for the plan or our

1 proposal for the plan today is that we will have -- we
2 have two separate petitions pending, but we have a
3 joint hearing --

4 THE COURT: Right.

5 MR. LEONARD: -- where we will have opening
6 statements from me on behalf of Mr. Hood and then I
7 think Mr. Greenberg on behalf of Mr. Washington. We
8 plan to have two live witnesses. Mr. Hood will testify
9 regarding his petition. Mr. Washington regarding his.
10 And then we have stipulations regarding some of the
11 documentary evidence and then also what some other
12 witnesses would say if called.

13 THE COURT: Okay.

14 MR. LEONARD: One thing I would like to do --

15 THE COURT: Could I just ask you: Are those
16 written stipulations or just going to be oral?

17 MR. LEONARD: They are oral stipulations which
18 incorporate written statements which Your Honor will
19 have.

20 THE COURT: Okay.

21 MR. LEONARD: And one housekeeping thing, Your
22 Honor. I now -- I have left Winston & Strawn, but
23 Mr. Hood has graciously decided to let me continue as
24 his lawyer so I need to withdraw Winston & Strawn's

1 appearance in this matter and I'll be continuing with
2 an appearance --

3 THE COURT: Are you going to file a new appearance
4 today?

5 MR. LEONARD: I'm now part of The Exoneration
6 Project, Your Honor, so the appearance that's on the
7 file by The Exoneration Project would be the one that
8 I'm operating under.

9 THE COURT: The motion to withdraw for Winston &
10 Strawn is granted.

11 MR. LEONARD: Thank you, Your Honor.

12 THE COURT: All right. So is there a motion to
13 exclude witnesses?

14 MR. GREENBERG: Judge, we will make a motion to
15 exclude witnesses, although I think these are the only
16 witnesses.

17 THE COURT: Okay. State, do you join in that
18 motion?

19 MR. PAPA: Sure.

20 THE COURT: And, Mr. Leonard?

21 MR. LEONARD: Yes, Your Honor.

22 THE COURT: Motion to exclude is granted.

23 MR. LEONARD: And one other item --

24 THE COURT: You all can be seated.

1 MR. LEONARD: Your Honor, one other item before we
2 get started is --

3 THE COURT: One second.

4 (Discussion off the record.)

5 MR. LEONARD: Regarding the documentary evidence,
6 Your Honor, we reached a stipulation with the State
7 whereby the exhibits that were attached to Mr. Hood's
8 petition for certificate of innocence, there's 46 of
9 them, are deemed authentic and admissible into evidence
10 for purposes of this matter, and so with the State's
11 acknowledgment --

12 MR. PAPA: Yes.

13 MR. LEONARD: -- we would move those into evidence
14 at this time.

15 THE COURT: There's no objection?

16 MR. PAPA: None.

17 THE COURT: Do you have them marked as an exhibit?

18 MR. LEONARD: I have the certificates of innocence
19 that have been tabbed.

20 THE COURT: That's fine. Then that's admitted.

21 MR. GREENBERG: Judge, we had adopted that when we
22 filed our petition, so that --

23 THE COURT: Thank you for reminding me.

24 MR. GREENBERG: -- will go for both of us. Thank

1 you.

2 THE COURT: Then that's admitted for both
3 defendants.

4 MR. LEONARD: Thank you, Your Honor.

5 Would you like me to tender a copy, Your Honor?

6 THE COURT: I would. Thank you. Actually, I think
7 I already -- is this the one that was originally filed?

8 MR. LEONARD: Yes, Your Honor.

9 THE COURT: I still have it.

10 MR. LEONARD: You can have another one, if you'd
11 like.

12 THE COURT: This file is already very, very big.
13 If I need it, I'll ask you, but I know I still have it.
14 It's on the shelf up in my chambers. I am not taking
15 notes, just so you know, but I am going to order the
16 transcript.

17 MR. LEONARD: Well, thank you, Your Honor, for the
18 opportunity to present this morning.

19 As you know, Tyrone Hood and Wayne Washington
20 were convicted in 1996 of a murder that had happened in
21 May 1993. They are both innocent of those charges, and
22 they both deserve certificates of innocence. As I
23 mentioned, my remarks will primarily relate to Mr. Hood
24 and his petition and then Mr. Greenberg's remarks will

1 relate to Washington.

2 Before I discuss the substantive reasons that
3 Mr. Hood is entitled to a certificate of innocence, I
4 did want to put these proceedings in some context
5 because I think that the context in this case is
6 particularly important. The State does not oppose
7 Mr. Hood's petition. They do not oppose Mr. Hood
8 receiving the relief that he's entitled to under the
9 statute. And that relief is enormously important to
10 Mr. Hood. Mr. Hood spent 22 years in prison for a
11 crime he didn't commit. He spent 22 years in the eyes
12 of the State of Illinois as a convicted murderer, so I
13 can't overstate the importance to Mr. Hood of receiving
14 a piece of paper that officially declares that he is
15 innocent. But beyond its emotional significance, the
16 certificate would also have practical significance in
17 his life as well.

18 If you receive a certificate of innocence, your
19 record is expunged, the record of the conviction, the
20 record of the arrest, and that would make it that much
21 easier for Mr. Hood to finally keep employment, to find
22 education if he desires and to finally keep housing.
23 To be clear, Mr. Hood is working now and he does have
24 housing, but as long as those convictions remain on his

1 record and the arrest remains on his record, they will
2 always be an impediment. A certificate of innocence
3 would also allow Mr. Hood to access job training
4 assistance and job placement assistance from the State
5 and it would also entitle him to a certain amount of
6 compensation for the years that he spent wrongfully
7 convicted. So that piece of paper is, to Mr. Hood,
8 extremely important. And Mr. Hood is entitled to that
9 certificate because he meets the standards that are set
10 out in the statute.

11 The statute sets out four requirements and
12 Mr. Hood easily meets all of them and I'll talk about
13 all of them in one second, but before we do that, I'd
14 like to talk about the burden of proof and what
15 Mr. Hood has to prove and what he does not.

16 So the certificate of innocence statute, which
17 is Section 702, explains that a petitioner must meet
18 his burden by a preponderance of the evidence, which
19 means that Mr. Hood needs to show that it's more likely
20 than not that each of the requirements is satisfied.
21 And that is set out in an Illinois Supreme Court case
22 called People v. Brown, which is 229 Il.2d 374.

23 Mr. Hood does not need to meet the standard of
24 actual innocence that's applicable in post-conviction

1 proceedings. There, we are looking for evidence that's
2 of a conclusive character, and we are not undertaking
3 any inquiry like that here. Here the question is is
4 there a greater than 50 percent chance that Mr. Hood
5 has satisfied each of the four requirements under the
6 statute. And, Your Honor, I submit that after you have
7 heard the evidence that I will introduce today, the
8 only answer you will be able to reach is that he has.

9 So what are the requirements? The first is --
10 these are all from Section 702(g) -- is that the
11 petitioner was convicted of one or more felonies by the
12 State of Illinois and subsequently sentenced to a term
13 of imprisonment and has served all or part of any of
14 the sentence.

15 Mr. Hood was convicted of felonies,
16 specifically murder and armed robbery, by the State of
17 Illinois; he was sentenced to 75 years in prison; and
18 he served 22 years of that sentence until his sentence
19 was commuted in January of 2015 by Governor Quinn.

20 I don't think there's any question that
21 Mr. Hood satisfies this prong. You'll hear Mr. Hood
22 testify to the ways in which he satisfied this prong,
23 but I would also point the Court to Exhibit 1 attached
24 to his petition, which is the commutation order signed

1 by Governor Quinn. It indicates that Mr. Hood was
2 sentenced to felonies or sentences for felonies to a
3 term in prison and served part of that term.

4 The second requirement is that the judgment of
5 conviction was reversed or vacated and the indictment
6 or information dismissed. There's, again, no doubt
7 this is met. I point you to Exhibit 2, which is an
8 order signed by Judge Walsh which vacated Mr. Hood's
9 judgment of conviction. Afterwards, the charges were
10 nolle and the indictment and information dismissed.

11 Step three is the prong that requires that he
12 demonstrate his innocence by a preponderance of the
13 evidence. I'll set that aside for one second because I
14 think we can deal with the fourth prong much more
15 quickly, which is that the petitioner did not by his or
16 her own conduct voluntarily cause or bring about his or
17 her conviction. Mr. Hood in no way voluntary brought
18 about his conviction. He never confessed. He never
19 pleaded guilty. He's consistently maintained his
20 innocence since he first encountered the police and he
21 will tell the Court today the same true story he told
22 the police 23 years ago when he was first arrested,
23 specifically, that he had nothing to do with this crime
24 which gets us to the third prong, that the petitioner

1 is innocent of the offenses charged in the indictment
2 or information.

3 Mr. Hood is innocent. As I mentioned, he's
4 maintained his innocence since day one. He'll shortly
5 testify that he had nothing to do with this crime.
6 And, Your Honor, because the testimony that Mr. Hood
7 will give will be unimpeached, will be unrebutted, Mr.
8 Hood's testimony alone satisfies the requirements of
9 this prong. And the reason that's true is that under
10 Illinois law, uncontested evidence must, and I
11 emphasize must, be taken as true.

12 And for that, I direct the Court to a case
13 called Bucktown Partners v. Johnson. It's 119
14 Ill.App.3d 346. It's a First District case. And
15 there, the appellate court explains that unimpeached
16 testimony must be taken as established unless one of
17 the recognized exceptions is present. And I'll talk in
18 a moment about what the three recognized exceptions
19 are, but I first point out that this applies even where
20 the person offering the testimony is an interested
21 party. And that's a quote from a case called Sweilem,
22 that's S-W-E-I-L-E-M, it's 372 Ill.App.3d 475, another
23 First District case.

24 So what are the recognized exceptions? The

1 first is where the testimony is contradicted by
2 positive testimony or circumstances. And this is all
3 from a supreme court case called People Ex Rel. Brown.
4 It's 88 Ill.2d 81. And Your Honor will see that
5 Mr. Hood's testimony will not be contradicted by any
6 positive testimony or circumstances. The State has
7 represented that they don't intend to present any
8 witnesses or any positive testimony of their own so
9 there will be no contradiction.

10 The second exception is that the testimony has
11 been impeached. Mr. Hood's testimony will not be
12 impeached, because, again, the State has represented
13 that they don't plan to cross-examine Mr. Hood.

14 The third and final exception is if the
15 testimony is inherently improbable. And the appellate
16 court in the Bucktown Partners case I mentioned earlier
17 explained what's meant by inherent improbability. And
18 it's where the testimony is contrary to the laws of
19 nature or universal human experience so as to be
20 incredible and beyond the limits of human belief.
21 There's nothing in the testimony you'll hear, Your
22 Honor, from Mr. Hood that it's beyond the limits of
23 human belief, not even close.

24 So, Your Honor, because none of those

1 exceptions apply, Mr. Hood's testimony standing by
2 itself is sufficient as a matter of law to satisfy the
3 requirement that Mr. Hood demonstrate his innocence by
4 a preponderance of the evidence, and although it's,
5 therefore, not necessary to look any further, there is
6 a substantial amount of additional evidence that also
7 corroborates Mr. Hood's innocence. Your Honor will
8 hear and see uncontradicted evidence that the few
9 witnesses who implicated Mr. Hood at his trial were
10 lying. You'll hear uncontradicted evidence suggesting
11 that the real killer was the victim's father, Marshall
12 Morgan, Sr. Marshall Morgan, Sr. is a twice convicted
13 murderer. He's in prison right now for a murder and
14 he'll spend the rest of his life there. He's not
15 eligible for parole until he's 128 years old. He's
16 there because he confessed to killing his girlfriend,
17 Deborah Jackson, leaving her partial nude body in the
18 back of her own car under the exact same circumstances
19 in which the victim here, Marshall Morgan, Jr., was
20 found.

21 Morgan, Sr. confessed to killing a friend of
22 his in 1977. It was in a car. It was over money.
23 Mr. Morgan, Sr. also explained that the killing in 2001
24 of Deborah Jackson for which he is in jail now was over

1 money. And the uncontradicted evidence that Your Honor
2 will hear suggests that Morgan, Sr. is responsible for
3 at least two other murders beyond the two that he was
4 convicted of. As I mentioned, one is the one that took
5 place here and the other is of a woman named Michelle
6 Soto. Michelle Soto was murdered in 1996.

7 And I point Your Honor to a table that we
8 included in Mr. Hood's petition at page 17 which shows
9 the pattern, the well-defined modus operandi that
10 Morgan, Sr. operates with. He kills loved ones for
11 money. He leaves their bodies in the back of their own
12 car. He leaves them nude or partially nude. The
13 pattern has repeated itself four times, Your Honor.

14 In this instance, Morgan, Sr. had been absent
15 from his son's life for quite some time, about 17
16 years. He reappeared out of the blue after his son
17 became successful in college basketball. We know at
18 the time he was in a terrible financial situation. We
19 have a sworn affidavit that Your Honor has as Exhibit 7
20 from around the time of the murder that he submitted in
21 some divorce proceedings showing his income and his
22 debts and showing that he was losing money month over
23 month. We know that his house was in foreclosure.
24 That's Exhibit 8. We know that he had been sued for

1 child support by a girlfriend. That's Exhibit 9. But
2 he nevertheless came up with money to take out a life
3 insurance policy on his healthy, college-aged son.
4 That's Exhibit 10. And after his son's murder, he
5 collected on that policy. That's Exhibit 23. A few
6 years later, Morgan, Sr. would be in financial
7 difficulties again and he would take out another life
8 insurance policy. This time on his girlfriend,
9 Michelle Soto. He took the policy out from the same
10 agent that he had taken the policy out on his son and
11 immediately after his girlfriend was murdered, he again
12 submits the paperwork to file a claim on that policy
13 and he again collects money after her death. He
14 collected still more money because he transferred the
15 deed to her house into his name and sold the house
16 after her death. Nobody has been charged with Michelle
17 Soto's murder, but we now know -- and this is -- you'll
18 hear through stipulated testimony and also as part of
19 Exhibit 27 and 28 that Morgan, Sr. confessed to that
20 murder to a friend.

21 Ultimately, Your Honor, Mr. Hood will present
22 unchallenged, unrebutted evidence that thoroughly
23 undermines each and every basis of his conviction and
24 establishes his innocence.

1 Thank you, Your Honor. And with that, I
2 believe Mr. Greenberg will present for Mr. Washington.

3 THE COURT: Thank you.

4 Mr. Greenberg or Mr. Fine?

5 MR. FINE: Mr. Greenberg will represent.

6 MR. GREENBERG: Judge, I'll adopt all of that
7 instead of restating it. The difference when it comes
8 to Mr. Washington, it's a little bit different
9 situation.

10 Mr. Washington pled guilty and the scenario
11 about that I guess is of somewhat of importance. He
12 filed a motion -- he gave a written statement. The
13 detectives that took Mr. Washington's written
14 statement, at least one of them is, for lack of a
15 better term, a serial Fifth Amender. In other
16 words, when he's now deposed about other cases where he
17 took statements and was asked about these statements,
18 he takes the Fifth Amendment and refuses to answer
19 questions.

20 Mr. Washington filed motions challenging the
21 introduction of the statement in the trial court, lost
22 those motions, went to trial. The jury hung. They
23 said they were going to retry him, but in the interim,
24 they tried Mr. Hood. And when Mr. Hood was convicted

1 and then sentenced on the -- I believe the same day
2 that Mr. Washington was supposed to pick his jury,
3 Mr. Hood got 75 years and the State's Attorney
4 approached Mr. Washington's lawyers and said 75 years
5 is a long time. There's no reason to believe your
6 client is not going to get the same thing. We'll give
7 him 25 years.

8 He was 23 years old. He had been locked up for
9 three years. Every single thing he had done had fallen
10 on deaf ears. Every single time he tried to get out of
11 trouble or get out of the case or get found not guilty,
12 he hadn't been able to, and he sat back and he thought
13 about it and he said, I'm 23 years old. I'm going to
14 be 35 when I get out. If I get 75 years, I'm going to
15 be 60 when I get out. And so he got out of jail. He
16 did his time. He got out of jail. And when they came
17 to him, Mr. Hood's lawyers -- you know, Mr. Washington
18 went and moved and started literally flipping burgers
19 at Burger King or McDonald's working wherever he could
20 for year after year after year. Because he was a
21 convicted murderer, that was the only work he could
22 find.

23 Eventually, he was approached by people for
24 Mr. Hood. They were reinvestigating everything. There

1 was much more known about Mr. Morgan. And I might
2 point out, at the original trials, they tried to put in
3 some of the evidence about Marshall Morgan, Sr., but at
4 that point, this was I think his second murder so there
5 wasn't enough. And calling it a close call, Judge
6 Bolan said I'm not allowing it into evidence.

7 And so Mr. Washington told them, you know, I
8 didn't commit this crime. I didn't really know Tyrone
9 Hood. We didn't hang out together. They are ten years
10 different in age. They weren't buddies from the
11 neighborhood. They happened to be at the same place at
12 the same time when the police came looking and that's
13 how they both ended up here. This is the only thing
14 they have in common in their lives is this case.

15 So Mr. Washington, Judge, tried to get his
16 conviction undone through a post-conviction petition
17 because he was out of custody. It was jurisdictionally
18 barred and eventually, he filed a motion to vacate his
19 conviction. The State reinvestigated the case, and the
20 State said, we're going to vacate these two
21 convictions. Mr. Hood had just been released from jail
22 by the governor, but they agreed to vacate the
23 convictions. So when we're trying to figure out are
24 they innocent or not, well, we don't have the documents

1 of the State's reinvestigation. I think that it's
2 pretty clear from the record that the State believes
3 that these two gentlemen are innocent because there
4 would be no reason to vacate their convictions unless
5 they were innocent.

6 The importance of the ruling, Judge, the
7 importance of a certificate of innocence is -- excuse
8 me, I have got a little bit of a cold -- as Mr. Leonard
9 pointed out, there's great significance because
10 Mr. Washington to this day, he goes for job interviews
11 and it shows up, you know, that he was convicted of
12 murder and it shows up on the background check that the
13 conviction was vacated, but, you know, trying to
14 explain that during a job interview, you know, I did 12
15 years for a crime I didn't commit. People are going to
16 figure you did something.

17 Mr. Washington, this was the first time he was
18 ever arrested. It was the last time he was ever
19 arrested. He has nothing else on his sheet. If he
20 gets this certificate and he can expunge this, he will
21 have an absolute clean sheet, which is pretty
22 impressive considering he grew up on the west side of
23 Chicago and didn't get arrested on this case until he
24 was 20 and has now been out of jail for a decade.

1 Judge, it's very significant there's no evidence that
2 they committed these crimes. Under any burden, they
3 are clearly innocent, and we would ask that you grant
4 the petition at the end.

5 THE COURT: Thank you.

6 State, do you wish to make an opening
7 statement?

8 MR. PAPA: No, Judge. We waive.

9 THE COURT: Okay. Before we call any witnesses,
10 I'm going to pass this for just a second.

11 (The above-entitled cause was passed
12 and later recalled.)

13 THE COURT: Tyrone Hood, Wayne Washington.

14 Is Mr. Hood always going to go first and then
15 Mr. Washington second?

16 MR. GREENBERG: Yes.

17 THE COURT: It doesn't matter to me, but that's how
18 we have been going, so let's keep it the same way.

19 MR. LEONARD: Thank you, Your Honor.

20 With that, we would call Mr. Hood to the stand.

21 THE COURT: Okay. If you could please remain
22 standing and raise your right hand to be sworn.

23 (Witness sworn.)

24 THE COURT: Please be seated.

1 Is that chair broken?

2 THE WITNESS: No. It just don't move.

3 THE COURT: Okay.

4 TYRONE HOOD,

5 called as a witness herein, having been first duly

6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. LEONARD:

9 Q. Sir, could you please state your name and spell
10 your last name for the record, please.

11 A. Tyrone Hood. Hood, H-O-O-D.

12 Q. Thank you. Mr. Hood, where do you live
13 currently?

14 A. Currently, I stay in Arlington Heights,
15 Chicago, Illinois.

16 Q. Arlington Heights, Illinois?

17 A. Yes.

18 Q. Are you employed?

19 A. Yes.

20 Q. Where do you work?

21 A. Pace bus company.

22 Q. How long have you been at Pace?

23 A. Eight months.

24 Q. And what do you do for Pace?

1 A. I put up signs and shelters.

2 Q. The bus shelter?

3 A. Bus stop signs and bus shelters, yes.

4 Q. Did you go to high school, Mr. Hood?

5 A. Yes, I did.

6 Q. Where did you go?

7 A. DiSalvo High School (phonetic).

8 Q. Did you graduate?

9 A. Yes.

10 Q. What year?

11 A. 1982.

12 Q. After high school, did you get any additional
13 education?

14 A. Yes, I did.

15 Q. What did you do?

16 A. I went one semester at Kennedy-King College for
17 auto mechanic. And I did one semester at Olive-Harvey
18 for data entry.

19 Q. And we will get into it in a moment, but you
20 were obviously incarcerated. Did you take any classes
21 while you were incarcerated?

22 A. Yes, I did.

23 Q. What did you study?

24 A. This was in the county jail. It was called

1 PACE program.

2 Q. What types of classes did you take?

3 A. Just basic English, math, social studies.

4 Q. Before you moved to Arlington Heights, where

5 did you live?

6 A. I lived in Dalton, Illinois.

7 Q. Who did you live with?

8 A. My niece.

9 Q. When did you move in with her?

10 A. The day I got out of prison. That was in

11 January 2015.

12 Q. You said you moved in with her the day you got

13 out of prison. What prison were you in?

14 A. I was in Menard Correctional Center.

15 Q. And what sentence were you serving?

16 A. 75 years.

17 Q. And you were convicted in 1996 of a murder that

18 occurred in '93; is that right?

19 A. Yes.

20 Q. How long were you in custody?

21 A. 22 years.

22 Q. How come you were released before you completed

23 your 75-year sentence?

24 A. I was commuted. My sentence was commuted by

1 Governor Quinn.

2 Q. While you were in the IDOC, did you work any
3 jobs?

4 A. Yes, I did.

5 Q. What jobs did you have?

6 A. I worked in the inmate kitchen for three and a
7 half years. I worked as a porter off and on for years.
8 I worked in a knit shop in Menard, which is -- I worked
9 there for 9 years, which is we sold clothes, T-shirts,
10 towels, sweatpants, sweatshirts, shorts. It was like a
11 tailor. I was a tailor there.

12 Q. You mentioned a porter. I'm not familiar with
13 that.

14 A. A porter, we cleaned -- we just cleaned up the
15 galleries. We might go in the cell and clean out a
16 cell.

17 Q. What happened right after Governor Quinn signed
18 the order commuting your sentence?

19 A. Well, I was scheduled to go to court in
20 February. February the 9th, my conviction was vacated.

21 Q. So let's turn your attention to the timeframe
22 of the crime that you were convicted of. It was a
23 murder. Do you know when that happened?

24 A. Well, it happened in May 1993. I can't give no

1 certain date because I don't know what day this person
2 was killed, but I was told from around the 8th to the
3 10th of May 1993.

4 Q. And the 8th and 9th were on a weekend in May?

5 A. On Mother's Day.

6 Q. Mother's Day weekend?

7 A. Yes.

8 Q. How old were you in May 1993?

9 A. I was 28.

10 Q. Where were you living at the time?

11 A. In Chicago. 105th and Maryland.

12 Q. What neighborhood is that?

13 A. That's the Pullman area.

14 Q. Did you live near a school?

15 A. Yes, the high school. It was called Corliss,
16 Corliss High School.

17 Q. Who did you live with?

18 A. I lived with my wife and three kids.

19 Q. How old were your kids?

20 A. My daughter was four. My two sons was six and
21 seven.

22 Q. What are their names?

23 A. My daughter is Shantay Hood. And my two sons,
24 one is named Tyrone and Antonio.

1 Q. At that time, in May 1993, were you working?
2 A. Yes, I was.
3 Q. What were you doing?
4 A. I was rehabbing buildings and I was an auto
5 mechanic. I used to work on cars.
6 Q. Did you work anywhere else?
7 A. No. I did some work at Catholic Charity
8 downtown.
9 Q. What type of work did you do with them?
10 A. I just -- it was me loading and unloading
11 trucks of material that came in for homeless people or
12 they might have events for the homeless people, so,
13 like, throughout the city, I would load and unload
14 trucks.
15 Q. You mentioned being an auto mechanic. Whose
16 cars did you work on?
17 A. Mostly relatives and people that was in the
18 neighborhood.
19 Q. People that you knew from the neighborhood?
20 A. Yeah.
21 Q. So do you remember that Mother's Day weekend in
22 1993?
23 A. Yes, I do.
24 Q. So Saturday was May 8. How much of that day do

1 you remember?

2 A. Most of it. Two-thirds of that day I remember.

3 Q. And how come you don't remember everything?

4 A. Because it has been 22 years ago. I can't
5 remember every step of what -- just important -- I
6 remember relatives coming to visit me.

7 Q. So who do you remember coming to visit?

8 A. Earlier that Saturday, my grandmother came to
9 visit with her sister to my auntie's house. My auntie
10 stays on 104th and Corliss. And by me being in the
11 neighborhood on that block, I saw them. So I went home
12 to go get my kids so they could see their great
13 grandmother, spend time with their great grandmother.
14 So we spent a few hours with them. That's how I know
15 -- I remember that because that was the only time that
16 I had to get my kids to see their great grandmother.

17 Q. So after you and your kids visited with your
18 grandmother --

19 A. Yeah.

20 Q. -- the day before Mother's Day, what did you do
21 next?

22 A. We went home. We went home to 105th and --
23 just down the street, 105th and Maryland, and I let
24 them play outside for a couple of hours. From that, my

1 wife's in law -- her sisters came into Chicago from
2 Aurora, so I had to entertain them for a few hours.

3 Q. Were they visiting for Mother's Day?

4 A. They wasn't there Mother's Day, but they was
5 there the day before Mother's Day.

6 Q. How long did your sisters-in-law visit?

7 A. They stayed up until about 10:00 o'clock at
8 night on May 8.

9 Q. And what happened next?

10 A. She went -- they went back to Aurora and I went
11 to pick up some items from a store for my
12 mother-in-law. My mother-in-law stayed on the third
13 floor in the same building I stayed in. She wanted me
14 to go to the store for her so I went to this munch
15 shop, a little candy shop.

16 Q. That was munch, M-U-N-C-H?

17 A. Yes. Munch shop on 104th and Corliss.

18 Q. Is that just down the street from your house?

19 A. Yes. Yes, it is.

20 Q. Do you remember what she wanted you to get for
21 her?

22 A. Yes. She wanted me to get her a pack of
23 cigarettes and two pops, sodas.

24 Q. Did you get them?

1 A. Yes, I did.

2 Q. After you bought those items at the munch shop,
3 what did you do?

4 A. I went straight back home.

5 Q. What happened next?

6 A. I gave her her cigarettes. I went back
7 downstairs at my house and just laid on the bed
8 watching TV until I fell asleep.

9 Q. So the next morning was May 9. That was
10 Mother's Day.

11 A. That was Mother's Day.

12 Q. Do you remember that day?

13 A. Yes.

14 Q. What do you remember doing?

15 A. I wanted to take that whole day away from my
16 wife and let her just enjoy the whole day without even
17 having being bothered with the kids. I cooked
18 breakfast for her and the kids.

19 Q. What happened after breakfast? Do you
20 remember?

21 A. Well, yeah. I -- well, I went on the front
22 porch for about 30 minutes, come back. I started
23 putting up clothes -- I put up a clothesline that day.
24 My wife, she was visiting relatives. Her sister stay

1 on the second floor of my building. Like I said
2 earlier, the mother -- her mother stayed on the third.
3 So she was visiting -- she was in and out of the house
4 visiting relatives, not only just in the building, but
5 down the street. She had relatives down the street as
6 well.

7 Q. And what did you do while your wife was in and
8 out?

9 A. I had to babysit the kids. I had to watch the
10 kids.

11 Q. Was your wife in and out for the whole day?

12 A. Yes, up until about 8:00 o'clock. She went to
13 -- she went with her friend to a Mother's Day party, a
14 lounge that's, like, two blocks away from the house and
15 she got back in at about 2:00 o'clock. And I'm like,
16 man, 2:00 o'clock. Well, it is what it is. I had to
17 babysit, so I gave her that day. And when she came in,
18 you know, we just went to sleep, you know, and just
19 waited for the next day. That was my Mother's Day, to
20 watch the kids.

21 Q. Other than your kids and your wife, did you see
22 anybody that day?

23 A. Mother's Day?

24 Q. On Mother's Day.

1 A. No, no.

2 Q. When your wife was out, were you home with the
3 kids the whole time?

4 A. Yes, I was.

5 Q. Let's talk about some of the people that were
6 involved in your case. The victim was a college kid
7 named Marshall Morgan, Jr. Do you know that?

8 A. Yes.

9 Q. Did you know him?

10 A. No, I didn't.

11 Q. Did he live in your neighborhood?

12 A. No.

13 Q. Have you ever met Marshall Morgan, Jr.?

14 A. No.

15 Q. When was the first time you heard of Marshall
16 Morgan, Jr.?

17 A. From the police. When the police took me to
18 the police station.

19 Q. At some point, did you learn that Marshall
20 Morgan, Jr. had a father named Marshall Morgan, Sr.?

21 A. Yes.

22 Q. Did you know Marshall Morgan, Sr.?

23 A. No.

24 Q. Did he live in your neighborhood?

1 A. No.

2 Q. When was the first time you learned about
3 Marshall Morgan, Sr.?

4 A. When I was going to court, that's the first
5 time I saw him. This was, like, in the early '90s,
6 like, '93, '94, '95, '96. That's the first time I ever
7 saw him.

8 Q. Did he work in your neighborhood?

9 A. Well, I later found out that he worked at
10 Corliss High School, the same school my daughter went
11 to. My daughter was four years old and Corliss High
12 School, they had a preschool inside of that high school
13 and I used to drop my daughter off there for preschool.
14 And at that time, I didn't even know nothing about that
15 man. I just used to drop my daughter off at the door
16 and then leave.

17 Q. Do you remember ever seeing Marshall Morgan,
18 Sr. in the neighborhood?

19 A. No.

20 Q. One of the people who testified at your trial
21 was named Jody Rogers. Do you remember that?

22 A. Yes.

23 Q. And his brother also testified, Michael Rogers?

24 A. Yes.

1 Q. Did you know Michael or Jody Rogers?
2 A. Yeah, I knew them.
3 Q. How did you know them?
4 A. I know them through their father. I used to
5 work on their father, Mike -- I forgot his name. I
6 think his name was Michael Rogers, Sr., but I used to
7 work on his cars.
8 Q. Where did he live?
9 A. He lived on 104th and Maryland.
10 Q. Where was that in relation to your house?
11 A. Down the street from my house.
12 Q. Were you friends with Michael or --
13 A. No.
14 Q. Michael, Jr. or Jody?
15 A. No.
16 Q. But you worked with his father --
17 A. Yes.
18 Q. -- on the car sometimes?
19 A. Yes.
20 Q. Another person who testified at your trial was
21 named Emanuel Bob, right?
22 A. Yes.
23 Q. Did you know Emanuel Bob?
24 A. No.

1 Q. Did he live in your neighborhood?

2 A. Yes.

3 Q. How did you learn that he lived in your
4 neighborhood?

5 A. After I got locked up.

6 Q. How did you find that out?

7 A. I found out about Emanuel Bob through my
8 attorney, and this was in -- I think '95 or '96 when I
9 found out about Emanuel Bob.

10 Q. Before your trial?

11 A. Yes, way -- yeah. Actually, it was a few days
12 before my trial.

13 Q. When was the first time you ever saw Emanuel
14 Bob?

15 A. When he testified at my trial in '96.

16 Q. Your co-defendant was Wayne Washington?

17 A. Yes.

18 Q. Did you know him in 1993?

19 A. Yeah, I knew him in '96, in '93 and '96.

20 Q. How did you know Mr. Washington?

21 A. From the neighborhood I live in.

22 Q. Did you live in the same neighborhood?

23 A. Yes.

24 Q. Were you and Mr. Washington friends?

1 A. No.

2 Q. How would you describe him?

3 A. Well, I would see him off and on coming and
4 going. When you are talking about friends, you're
5 talking about -- friends, they hang out together. We
6 didn't hang out together. You know, I just -- he saw
7 me coming and going. I saw him coming and going.

8 Q. Were the two of you about the same age?

9 A. No, no, no, no.

10 Q. How is it different?

11 A. I'm ten years older than him.

12 Q. How did you first learn that Marshall Morgan,
13 Jr. had been murdered?

14 A. In May 1993.

15 Q. Who told you?

16 A. The police.

17 Q. When did you first come into contact with the
18 police?

19 A. That was May 20, 1993, I was walking down the
20 street, and they was driving past me in the opposite
21 direction and they backed up. Two of the officers got
22 out of the car and called me over to the car.

23 Q. What happened then?

24 A. And when I came over to the car, they asked me

1 what was my name. I told them and they asked me do I
2 have any drugs on me. I said no. They asked me did I
3 have any guns on me. I said no. They asked me did I
4 know who has some drugs or guns. I said no, I don't
5 know none of that. And he was telling me that, well,
6 do you mind -- they was telling me, do you mind coming
7 down to the police station. We want to ask you some
8 questions about a murder. I said okay. But then I had
9 to be handcuffed to go down there in the police
10 station. I didn't understand that.

11 So when I got in the car with them, I asked
12 them -- I started asking them what kind of questions.
13 They told me you'll see once you get to the police
14 station and they told me to shut up. I'm like, what.

15 So when I went to the police station, they put
16 me in this little room and I was handcuffed to a -- to
17 this little ring that was on the wall. And I sat on
18 this stainless steel bench for hours and hours. And I
19 was fed information about Marshall Morgan's murder.

20 Q. What do you mean? Who was telling you about
21 this?

22 A. The police was.

23 Q. And what happened -- did they question you
24 about the murder?

1 A. Yes. They was asking me did I kill him. It
2 was a group of officers coming in telling me that I did
3 kill him. They was asking me -- telling me -- asking
4 me where did I shoot him. I mean, in my mind, I didn't
5 shoot anybody. I was telling them -- I just kept
6 telling them that. Telling them, telling them I don't
7 know this guy, never saw this guy in my life.

8 Q. Other than telling you about the murder and
9 asking you about the murder, did anything else happen
10 while you were --

11 A. I mean, yeah. I was physically abused and
12 verbally abused, kicked, choked, punched, not -- well,
13 yeah, I was -- all of that was done to me.

14 The first time when we was -- I was at the police
15 station, I remember going to take a polygraph test on
16 111th and State. As I was going up the stairs to the
17 second floor or third floor, whatever, I was kicked
18 towards the ground on the stairs. And from there, we
19 went back to the police station.

20 Q. So you went from one police station to another?

21 A. To another one, right.

22 Q. Did you take a polygraph exam?

23 A. Yes, I did.

24 Q. Did they ask you about the murder?

1 A. Yes. Yes, they did.

2 Q. What did you tell them?

3 A. They asked me did I know him, did I ever see
4 Marshall Morgan, Jr. And I told them, no. Did I kill
5 him. I said no. I told them no to every question
6 relating to this murder because I don't know anything
7 about his murder.

8 Q. You mentioned that you were kicked and punched.
9 Did anything else like that occur?

10 A. The first -- yeah, after the second time they
11 arrested me.

12 Q. We will take it step by step. After the
13 polygraph exam, what happened next?

14 A. Well, we was taken back to 51st Street.

15 Q. You said we. What is we?

16 A. Well, me and the detectives, the two detectives
17 that took me, we went back to 51st Street. I stayed at
18 51st Street for a few hours and then was let go.

19 Q. How long were you in custody?

20 A. I was in the police station and, again, I was
21 trying to ask them let me make my phone call. They
22 kept prolonging that. I wanted to go home. You will
23 go home. But I stayed there from May the 20th until
24 May the 22nd and there was two detectives who gave me

1 -- I told them I don't have any way to get home, so
2 they gave me \$2 to catch the bus. So after that, I
3 went straight over to my mother's house.

4 Q. Why did you go to your mom's house?

5 A. Because I felt safe over there. I knew she was
6 worried about me, so I went straight over there and let
7 her know that I was okay.

8 Q. During those two or three days that you were in
9 custody, did the police tell you that they had any
10 evidence that connected you to the crime?

11 A. They said my prints were found close to a crime
12 scene. And that was another question they kept asking
13 me, well, your prints was -- I said I don't know how my
14 prints got there. I really don't. Even right to this
15 day I don't know how they got there.

16 Q. So after you were let go on May 22, did the
17 police ever come back?

18 A. Yes.

19 Q. When did they come back?

20 A. They was in the neighborhood the 27th of May.

21 Q. And where were you at the time?

22 A. I was in the munch shop.

23 Q. That same store?

24 A. Yes.

1 Q. Why were you there?

2 A. I was dropping my daughter off at Corliss High
3 School/Preschool and I was spending that time that she
4 stayed in the school over there at the little munch
5 shop because I did some work on the owner's tow truck
6 and he owned that store. That's why I was in there.

7 Q. So you were friendly with the owner of the
8 store?

9 A. Yes.

10 Q. Where is that store in relation to Corliss High
11 School?

12 A. Right across the street.

13 Q. How long -- you mentioned you dropped your
14 daughter off.

15 A. Yes.

16 Q. How long was her preschool?

17 A. About an hour, an hour and a half. About an
18 hour and a half.

19 Q. So you were going to wait that hour and a
20 half --

21 A. Yes.

22 Q. -- with your friend --

23 A. Right.

24 Q. -- at the munch shop?

1 A. Right.

2 Q. Aside from the owner that you were hanging out
3 with, was there anybody else there with you?

4 A. Well -- well, the owner wasn't there. It was a
5 cashier named Larry Simpson. He was there. But it was
6 the owner's -- that was his store, but nobody was there
7 except for I seen Wayne Washington come in the store.

8 Q. What did Mr. Washington do in the store?

9 A. When he came in, he got on the phone.

10 Q. And --

11 A. And right after he got on the phone, the
12 detectives, the same detectives who pulled me off the
13 street of Maryland that was back five days ago, they
14 came right in the store and they -- I spoke to them.
15 They spoke to me back. And they said, do you know what
16 time it is. I said yeah, it's around 11:30. They said
17 no, it's time to go to jail. I'm like, what. Yeah,
18 put your hands behind your back.

19 I put my hands behind my back. They took me in
20 the car. I waited in the car until the other
21 detectives came out of the store.

22 Q. And was Wayne arrested at that time also?

23 A. Well, yes. Wayne -- when -- a few minutes
24 after I was in the car, Wayne Washington and the other

1 detectives got in the car. Wayne Washington got in the
2 backseat.

3 Q. So if you were arrested at that time, while
4 waiting to pick your daughter up for preschool, what
5 happened to her?

6 A. Well, my daughter -- we went down -- we went
7 down Maryland, down the block I lived, and I asked --

8 Q. I'm sorry. You went down the block in the
9 police car?

10 A. Yeah, yeah. I was in the police car and they
11 drove down Maryland on the block that I lived. And I
12 seen this lady named Josie. And I asked the detectives
13 let me get my keys to her so she could tell my wife
14 that my daughter need to get out of school, because
15 they wasn't going to let me wait to go get my daughter.

16 Q. Were you able to give your keys to her?

17 A. Yes, I did. I gave the keys up to the
18 neighbor.

19 Q. And where did the police take you?

20 A. They took me to a 11th, me and Wayne
21 Washington to 11th police station.

22 Q. What happened next?

23 A. Some more questioning, a little physical abuse.
24 But we stayed in that -- I stayed in that police

1 station. We stayed in that police station until
2 evening I noticed, because when we got in the car, it
3 was rush hour and I could tell by the day -- the
4 daylight out there. It was evening. So they kept us
5 in that police station from at least 11:00 o'clock
6 until around 5:00.

7 Q. Were you charged with the crime, the murder at
8 that time?

9 A. No.

10 Q. When did they charge you?

11 A. Later on that day, I was charged. When I got
12 to 51st Street, 51st and Wentworth.

13 Q. The next time you were released was in 2015; is
14 that right?

15 A. Yes.

16 Q. Did you murder Marshall Morgan, Jr.?

17 A. No.

18 Q. Did you steal money from Marshall Morgan, Jr.?

19 A. No.

20 Q. Did you steal anything from Marshall Morgan,
21 Jr.?

22 A. No.

23 Q. You understand that Marshall Morgan, Jr.'s body
24 was found in the back of his mother's car?

1 A. Yes, I do.

2 Q. Did you ever drive that car?

3 A. No.

4 Q. Have you ever been inside that car?

5 A. No.

6 Q. Aside from any photos you may have seen of the
7 car at your trial or from the police, have you ever
8 seen that car?

9 A. No.

10 Q. Have you ever talked to anybody about wanting
11 to commit an armed robbery?

12 A. No.

13 Q. Have you ever called an armed robbery a stang?

14 A. No.

15 Q. Did you ever tell the police if I don't say
16 anything to explain, I'll go to jail for a long time.
17 If I do tell what happened, I will go to jail?

18 A. No.

19 Q. Did you ever confess to the crimes you were
20 charged with?

21 A. No.

22 Q. Did you ever pled guilty to those charges?

23 A. No.

24 Q. Did you have anything whatsoever to do with the

1 death of Marshall Morgan, Jr.?

2 A. No.

3 MR. LEONARD: Mr. Hood, thank you.

4 THE COURT: State?

5 MR. PAPA: I have no questions, Judge.

6 THE COURT: All right. Thank you. You're excused.
7 You may step down.

8 (Witness excused.)

9 THE COURT: Do you have any other live witnesses,
10 Mr. Leonard?

11 MR. LEONARD: Not on behalf of Mr. Hood, no.

12 THE COURT: Then, Mr. Greenberg, any live
13 witnesses?

14 MR. GREENBERG: I would call Mr. Washington.

15 THE COURT: Okay. You can do so.

16 MR. GREENBERG: Judge, we'll also adopt that
17 testimony.

18 THE COURT: Okay.

19 MR. GREENBERG: I think it will avoid
20 duplicitousness.

21 THE COURT: Okay. You can adopt it.

22 State, is there any cross based upon the fact
23 that they're adopting that testimony?

24 MR. PAPA: No.

1 THE COURT: Raise your right hand to be sworn.

2 (Witness sworn.)

3 THE COURT: You may proceed.

4 MR. GREENBERG: Thank you.

5 WAYNE WASHINGTON,

6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GREENBERG:

10 Q. State your name.

11 A. Wayne Washington.

12 Q. Where do you live now?

13 A. (Inaudible.)

14 THE COURT: I'm going to ask you --

15 BY MR. GREENBERG:

16 Q. Mr. Washington, you're going to have to speak
17 loud and slow.

18 THE COURT: That's exactly what I was going to say.

19 THE WITNESS: Wayne Washington. I live in
20 Cassopolis, Michigan.

21 THE COURT: How do you spell that?

22 THE WITNESS: C-A-S-S-O-P-O-L-I-S.

23 THE COURT: Thank you.

24 BY MR. GREENBERG:

1 Q. I'm going to give you a little help here.
2 Scoot up. And if you'd kind of sit up, it will project
3 better.

4 A. No, I can't.

5 THE COURT: It's attached.

6 BY MR. GREENBERG:

7 Q. How long have you lived there?

8 A. Since May of 2007.

9 Q. When did you get released from the department
10 of corrections?

11 A. May of 2007.

12 Q. So you moved right to Michigan when you got
13 released?

14 A. Yes.

15 Q. Wayne, what have you been doing since you got
16 released?

17 A. Working.

18 Q. What kind of jobs?

19 A. For the first five years, I worked at
20 McDonald's and eventually became a manager. Now, I
21 work in an RV factory in Elkhart, Indiana.

22 Q. And do you have a wife?

23 A. Yes.

24 Q. How long have you been married?

1 A. Since '09. June of '09.

2 Q. Were you ever married before that?

3 A. No.

4 Q. Do you have any kids?

5 A. Yes.

6 Q. How many kids do you have?

7 A. I have ten remaining. One passed away.

8 Q. When did the one pass away?

9 A. In '09.

10 Q. In 2009?

11 A. Yes.

12 Q. And you have ten. What are their age ranges?

13 A. Age 31 to 19.

14 Q. So when you went to jail, how many kids did you

15 have?

16 A. Seven.

17 Q. And do you still -- do you visit your kids and

18 communicate with all of your kids?

19 A. Yes.

20 Q. How old was the oldest when you went to jail?

21 A. Eight.

22 Q. And how old was the youngest at that time when

23 you went to jail?

24 A. Four.

1 Q. And you went to jail for 12 years?

2 A. Yes.

3 Q. So they were 20 and 16, right?

4 A. Give or take.

5 Q. And you had five that were between the ages of

6 four and eight?

7 A. I had children I didn't find out about until

8 after I was incarcerated.

9 Q. So you didn't know you had so many at that

10 time?

11 A. Yeah.

12 Q. You were arrested and charged with the murder

13 of Marshall Morgan when?

14 A. May 27, 1993.

15 Q. Did you know Marshall Morgan, Jr.?

16 A. No.

17 Q. Had you ever met him?

18 A. No.

19 Q. Did you ever see him play basketball?

20 A. No.

21 Q. Did you know Marshall Morgan, Sr.?

22 A. No.

23 Q. Where were you living back then?

24 A. 901 East 104th Street, Apartment C-324.

1 Q. Who did you live with?

2 A. With a friend of mine named Ferris Greene.

3 Q. Would you spell that?

4 A. Ferris Greene, F-E-R-R-I-S, Greene,

5 G-R-E-E-N-E.

6 Q. Where were you when you were arrested?

7 A. The munch shop on 104th and Corliss.

8 Q. With Mr. Hood?

9 A. We weren't together.

10 Q. The same store --

11 A. Yes.

12 Q. -- that Mr. Hood described; is that right?

13 A. Yes, sir.

14 Q. What were you doing there?

15 A. Using the pay phone.

16 Q. Were you friends with Mr. Hood?

17 A. I knew him from the neighborhood.

18 Q. How old were you at that time?

19 A. 20.

20 Q. And he was 30; is that right?

21 A. Yeah.

22 Q. How many times had you been arrested before
23 that day?

24 A. None.

1 Q. How many times have you been arrested since you
2 got out of jail?

3 A. None.

4 Q. Tell the Court what you remember of the police
5 coming into the store that day.

6 A. The police came into the store that day.
7 Tyrone Hood; the store clerk; and I believe it was
8 Tyrone Hood's uncle, I think his name was Spanky, who
9 lived directly adjacent to the store was already in the
10 store when I first came in the store.

11 I came in the store. I bought a pack of
12 cigarettes, used the payphone. Seen a detective go
13 right past because the payphone was right by the door.
14 The detective car, when they spotted Mr. Hood in the
15 store, backed up, stopped, came in the store and asked
16 Mr. Hood do you know what time it is. Mr. Hood said I
17 don't remember exactly what time. He said no, it was
18 time to go to jail.

19 Q. Who said that?

20 A. One of the detectives.

21 Q. Okay.

22 A. They carried Mr. Hood outside, put handcuffs on
23 him, put him in the back of the car.

24 While all of this was going on, I was telling the

1 person I was talking to on the telephone that they were
2 taking this guy to jail.

3 One of the detectives came back in and told me he
4 needed to speak to me for a minute. I told him I was
5 on the phone. He hung up the telephone and told me I
6 wasn't on the phone no more.

7 I came outside. They asked me what my name was. I
8 told them my name was Wayne Washington. He asked me
9 was Janice Washington my mother. I told him no. He
10 said, well, we believe Janice Washington is your
11 mother. Where do you live. I live right there,
12 pointed to the Pullman WheelWorks Apartment Complex.
13 He asked me did I have any ID. I told him no, but I
14 live right there. I can go get some.

15 I ran, got my driver's license. He followed
16 me.

17 Q. Did he go with you?

18 A. Yes, he came to my apartment with me, looked at
19 my driver's license. He left. When I came back
20 downstairs, the detective car was parked on the corner
21 of 105th and Maryland. Mr. Hood was still in the
22 backseat. Both detectives was standing outside of the
23 car. They told me to come over to the car, told me
24 that they needed me to come to the station and answer

1 some questions. I told them I didn't want to go to the
2 police station. I was wrestled to the car. Handcuffs
3 was placed on me and I was put in the backseat with
4 Mr. Hood. We was taken to 111th and Ellis police
5 station. I was locked in the room for four and a half
6 hours before anybody said anything to me.

7 Q. What kind of room was it?

8 A. I believe an interrogation room. I'm not sure.

9 Q. One of the small rooms?

10 A. Yes.

11 Q. Were you handcuffed?

12 A. Not at that time.

13 Q. Continue, please.

14 A. When they came and took me out of that room,
15 they told me they didn't like that police station.
16 They was going back to their police station. I asked
17 where was their police station at. They said 51st and
18 Wentworth. They put us back in the car.

19 When they put me in the car, Tyrone Hood once again
20 was already in the car. He had already looked like he
21 had been beaten up.

22 We rode to the 51st and Wentworth police station.
23 I was locked in the interrogation room, handcuffed to a
24 chair similar to the one I'm sitting in, an office

1 chair, both hands handcuffed to the handles of the
2 chair.

3 Q. Both hands?

4 A. Yes.

5 Q. Together or to each side?

6 A. Each side of the chair, like this (indicating).
7 And that's where I remained for a couple of hours.

8 MR. GREENBERG: If the record could reflect, Judge,
9 he put a hand down on each side of him by the arms on
10 the left and right side of the chair.

11 THE COURT: The record will so reflect.

12 BY MR. GREENBERG:

13 Q. Go ahead.

14 A. I was left in there for a couple of hours.
15 Then they started coming and telling us about the
16 murder.

17 Q. Do you know who came in?

18 A. It wasn't one of the detectives that brought me
19 in. It was another detective. I believe his name was
20 Boudreaux.

21 Q. And he started doing what?

22 A. He started asking me questions about a murder.
23 I had no idea what he was talking about. First he said
24 man, your buddy, Tyrone, is in a lot of trouble. At

1 the time, I didn't even know Mr. Hood as Tyrone. I
2 knew him in the neighborhood as Tony Hood. And I
3 didn't even know who Tyrone was. And he said, yeah,
4 well, his name isn't Tony. His name is Tyrone and he's
5 in a lot of trouble and you're in a lot of trouble too
6 if you don't tell us what we need to know.

7 Q. Then what happened?

8 A. I told him I didn't know anything about a
9 murder. I didn't know anything about Mr. Hood being in
10 trouble. And I was pushed around, slapped around. The
11 chair was knocked over a few times, picked back up,
12 knocked over again. And they kept on telling me to
13 tell them about a murder.

14 Q. So are you saying you were physically struck by
15 the officers?

16 A. Yes.

17 Q. And the chair you were seated in, was it
18 kicked?

19 A. Yes, it was pushed over.

20 Q. Pushed over?

21 A. And the impact from what they were doing to me
22 physically was knocking the chair over.

23 Q. And that was all in that room?

24 A. Yes.

1 Q. Did you ever tell anybody that?
2 A. Yes. I told Gary Stanton that.
3 Q. Gary Stanton was your lawyer?
4 A. Yes.
5 Q. And did Gary Stanton ever file a motion to
6 suppress in your case?
7 A. Yes.
8 Q. Did you testify in that motion to suppress?
9 A. Yes, I did.
10 Q. Did you explain to the judge that the chair had
11 been pushed and you had been hit?
12 A. Yes.
13 Q. But you lost the motion to suppress, correct?
14 A. Yes.
15 Q. Please continue with what was going on in the
16 police station.
17 A. I guess with the similarity in my last name and
18 the person they asked me about, Janice Washington, and
19 the guy that they was looking for was somebody named
20 Joseph West. And I guess either he dated or was
21 married to Janice Washington once upon a time because
22 they kept accusing her of being my mother. And I told
23 him no, I didn't know Joe West or Janice Washington.
24 They showed me a picture of Joe West. It was an

1 old mug shot. I didn't recognize it. Then I guess
2 later on that night, they found Joe West and they
3 showed an up-to-date picture and he was actually
4 somebody that lived in the same apartment complex that
5 I lived in.

6 Q. Okay.

7 A. I recognized him. And they said, well, we knew
8 you knew him. Well, not from the picture you all
9 showed me.

10 So this went back and forth. Then they were
11 telling me all these guys, they came in, what they said
12 about Tyrone, and all I had to do was tell them the
13 same thing that these guys told him and I could be just
14 like them and I could go home.

15 Q. So you didn't know anything about the crime,
16 right?

17 A. No.

18 Q. So how did you find out -- you eventually
19 signed a handwritten statement, correct?

20 A. Yes.

21 Q. And that was with an Assistant State's
22 Attorney, James Brown?

23 A. Yes.

24 Q. Did you meet James Brown at the police station?

1 A. Yes.

2 Q. There's also another name on there. It appears
3 to be written in a different pen, ASA Michael Sherwin.
4 You have seen that, right?

5 A. Yes, I've seen it.

6 Q. Did you ever meet a Michael Sherwin?

7 A. No, sir.

8 Q. Did Michael Sherwin testify in court?

9 A. Not to my recollection.

10 Q. How did you get the information that went into
11 that -- well, did you say any of the things in the
12 written statement?

13 A. No.

14 Q. Did you -- how did -- how was that statement
15 taken?

16 A. It was pretty much given to me.

17 Q. What do you mean?

18 A. The police was telling me basically everything
19 everybody else said and what everybody else said to go
20 home. And if I said the exact same thing, I could go
21 home too.

22 Q. So the police told you if you said certain
23 things, you would be able to go home?

24 A. Yes.

1 Q. Did you know Emanuel Bob?
2 A. No.
3 Q. Did you know either of the Rogers?
4 A. Yes.
5 Q. How did you know them?
6 A. They lived across the street from the apartment
7 complex I lived in.
8 Q. Did you ever discuss committing any murders
9 with them?
10 A. No.
11 Q. Did they ever see you commit any crimes?
12 A. No.
13 Q. Did you know --
14 MR. GREENBERG: One moment, Judge.
15 THE COURT: Take your time.
16 (Brief pause.)
17 BY MR. GREENBERG:
18 Q. Did you know the detectives before you were
19 arrested?
20 A. No.
21 Q. Did you know that this took place -- this
22 murder took place on May 8 of 1993, right?
23 A. Yes.
24 Q. On May 8 of 1993, were you on Michelle Rogers'

1 porch?

2 A. No.

3 Q. At 104th and Maryland?

4 A. No.

5 Q. Were you with Tyrone Hood, Jody Rogers, and
6 Tarnika Rogers on that day?

7 A. No.

8 Q. By the way, were you in a gang back then?

9 A. Yes, sir, I was.

10 Q. What gang were you in?

11 A. I was a member of the Black P Stones.

12 Q. You never got arrested, though?

13 A. No.

14 Q. Did you sell cocaine for them?

15 A. No.

16 Q. Were you selling cocaine on May 8?

17 A. No.

18 Q. Did you ever have a discussion that day with
19 Jody Rogers about putting cocaine in a cigarette and
20 smoking it?

21 A. No.

22 Q. Did you do cocaine?

23 A. No.

24 Q. Did you smoke?

1 A. No -- I smoked cigarettes, yes.

2 Q. Did you smoke cocaine?

3 A. No.

4 Q. Did you and Tyrone plan to do a robbery that
5 day?

6 A. No.

7 Q. Did you ever commit a crime with Tyrone Hood --

8 A. No.

9 Q. -- at any time in your life?

10 A. No.

11 Q. Did you own a .38 caliber revolver?

12 A. No.

13 Q. Did you have a .38 caliber revolver that day?

14 A. No, sir.

15 Q. So Tyrone didn't give you a revolver?

16 A. No.

17 Q. Do you even know what kind of car Mr. Morgan
18 was found in?

19 A. I do now today, sir.

20 Q. Did you know back then?

21 A. No.

22 Q. How did you find out?

23 A. Pictures at the police station.

24 Q. The police showed you picture of the car?

1 A. Yes.

2 Q. Did you ever see Tyrone Hood point a gun at
3 Mr. Morgan?

4 A. No, sir.

5 Q. You weren't with Tyrone Hood, right?

6 A. No.

7 Q. And in the statement -- you said they told you
8 that you could go home; is that right?

9 A. Yes, sir.

10 Q. And of course, in the statement, as they were
11 dictating it to you, you actually don't shoot anybody,
12 correct?

13 A. No.

14 Q. That's not correct or that is correct?

15 A. No, in the statement, I don't shoot anyone.

16 Q. Right. You understood that you were giving a
17 statement saying you were merely present?

18 A. Yes.

19 Q. And, of course, other people the police told
20 you had said they were present, like the Rogers and so
21 forth at --

22 A. Yes.

23 Q. -- various times, and they got to go home,
24 correct?

1 A. Yes.

2 Q. This is your first experience with the police?

3 A. Yes.

4 Q. Did you have anything to do with the murder of
5 Marshall Morgan, Jr.?

6 A. No, sir.

7 Q. But you pled guilty?

8 A. Yes, sir, I did.

9 Q. Why?

10 A. Because on the morning that I was scheduled to
11 start my trial, Tyrone Hood and I were on the same wing
12 in the Cook County Department of Corrections and he was
13 leaving out to go to the penitentiary.

14 Q. So he wasn't sentenced that day. He had
15 already been sentenced.

16 A. He had already been sentenced and he was
17 leaving to go the penitentiary that morning.

18 Q. And did you talk to him?

19 A. Yes.

20 Q. What did he tell you?

21 A. To be perfectly honest, he told me he's praying
22 for me.

23 Q. And did you learn how much time he had gotten
24 from the judge?

1 THE COURT: Mr. Leonard?

2 MR. LEONARD: Your Honor, at this time, I think we
3 had discussed the stipulations that we've reached. We
4 already talked about the stipulation regarding the
5 admissibility of documents. We also have stipulations
6 regarding what five individuals would testify to if
7 they were called. And I apologize I don't have them in
8 hard copy form, but I can read them.

9 THE COURT: That's fine because I'm going to order
10 the transcript, as I'm unable to write today.

11 MR. LEONARD: I see that. So the first is a
12 stipulation as to the testimony of James Mullenix. The
13 agreement is that if called to testify, James Mullenix
14 would testify that he is an attorney, that he
15 represented Mr. Hood at his trial in People v. Hood,
16 Case No. 93 CR 14676. He would further testify
17 consistent with the statements in his declaration
18 attached to Mr. Hood's petition as Exhibit 18 which is
19 made part of this stipulation.

20 The second stipulation is as to the testimony
21 of Robert Nattress.

22 I apologize. Mullenix is M-U-L-L-E-N-I-X. And
23 Nattress, N-A-T-T-R-E-S-S.

24 And if called to testify, Robert Nattress would

1 testify that he is a pastor and a former friend of
2 Marshall Morgan, Sr. He would testify consistent with
3 the statements in his videotaped statement attached to
4 Mr. Hood's petition as Exhibit 27, which is the
5 videotape, and 28, which is the transcript, which are
6 both made part of this stipulation.

7 Stipulation 3 is as to the testimony of
8 Micaela, M-I-C-A-E-L-A, Soto, S-O-T-O. And if called
9 to testify, Micaela Soto would testify that she is the
10 daughter of Michelle Soto. She would further testify
11 consistent with the statements in her affidavit
12 attached to Mr. Hood's petition as Exhibit 34, which is
13 made part of the stipulation.

14 Fourth, a stipulation as to the testimony of
15 Richard Brzeczek, B-R-Z-E-C-Z-E-K. And if called to
16 testify, he would testify that he's the former
17 superintendent of police for the Chicago Police
18 Department and an expert in police and investigatory
19 practices. He would further testify consistent with
20 the statements in his expert report attached to
21 Mr. Hood's petition as Exhibit 14 which is made a part
22 of the stipulation.

23 And last, a stipulation as to the testimony of
24 Shari, S-H-A-R-I, Berkowitz, B-E-R-K-O-W-I-T-Z, Ph.D.

1 If called to testify, Dr. Berkowitz would testify that
2 she's a professor of forensic psychology and an expert
3 in the field of human memory and eyewitness
4 identification. She would further testify consistent
5 with the statements in her affidavit and expert report
6 attached to Mr. Hood's petition as Exhibit 20 which is
7 made part of this stipulation.

8 MR. PAPA: So stipulated.

9 THE COURT: Those stipulations are received and
10 admitted then.

11 MR. LEONARD: Thank you, Your Honor. And I think
12 we're ready for closing arguments in that case.

13 THE COURT: Mr. Greenberg?

14 MR. GREENBERG: Judge, with all the admitted
15 evidence, we are joining in.

16 THE COURT: Are you joining in those stipulations
17 as well?

18 MR. GREENBERG: Yes.

19 THE COURT: It was for both?

20 MR. LEONARD: Correct.

21 MR. GREENBERG: Yes.

22 THE COURT: Then it's admitted for your client as
23 well.

24 MR. GREENBERG: We're ready.

1 THE COURT: Okay. Before arguments, though --
2 because, if I'm not mistaken, those were all of the
3 things that I had before my previous ruling which I
4 vacated, correct?

5 MR. LEONARD: You had the documents, correct, Your
6 Honor.

7 THE COURT: I did.

8 MR. LEONARD: Yes.

9 THE COURT: There are additional things that I
10 would like to consider that I didn't have before, such
11 as, does anybody have that common law record or
12 transcript from the trial or the motion to suppress,
13 because you're not giving me anything different than I
14 had before other than the testimony of your clients?

15 MR. LEONARD: Correct, Your Honor. And I think for
16 the reasons that we outlined, that, as a matter of law,
17 is enough.

18 THE COURT: No, I understand what you're saying,
19 but I also know what I would like to have.

20 MR. LEONARD: Sure. But also, Your Honor -- we can
21 certainly provide it. I think it would be -- I think
22 the consideration of those items would be over our
23 objection. I think -- and there's a number of reasons
24 for that.

1 First is the distributiveness of the statute
2 itself in Section 702(f) which says that the Court may
3 take judicial notice of prior sworn testimony or
4 evidence admitted at the criminal proceedings. The
5 statute does not say or state the Court shall take
6 judicial notice of those things. And in this case,
7 neither side has asked the Court to take judicial
8 notice of those things. So for those reasons, we think
9 it would be -- it's unnecessary and inappropriate for
10 the Court to take judicial notice.

11 THE COURT: I'm not asking to take judicial notice.
12 I'm just asking if I could have them, because to make a
13 decision -- and I've said this to the parties more than
14 once -- I would like to have everything --

15 MR. LEONARD: Right.

16 MR. GREENBERG: Judge --

17 THE COURT: -- before making a decision. I don't
18 know -- I'm not saying it would be more advantageous to
19 one side or the other. I don't know because I wasn't
20 there.

21 MR. LEONARD: I think to continue, though, Your
22 Honor, while the Court may take judicial notice -- I'm
23 not sure what the Court would do with evidence that's
24 not in the record if not take judicial notice since

1 that's the only option the statute gives the Court, but
2 if the Court were to undertake some other analysis with
3 respect to that record, the Court shall take
4 consideration of under the statute -- this is from
5 702(a) is that the Court shall, in the interest of
6 justice, give due consideration to difficulties of
7 proof caused by the passage of time, the death or
8 unavailability of witnesses, the destruction of
9 evidence, or other factors, which means that in this
10 case, the Court must take into consideration that the
11 crime here took place 23 years ago, that memories have
12 faded, that witnesses have died.

13 Mr. Washington brought up Joe West. Joe West
14 is deceased. Witnesses have moved out of state and are
15 unavailable, for example, Emanuel Bob, who is beyond
16 our subpoena power. And so our ability to counter any
17 sort of particular piece of evidence, which are, again,
18 not in the record in this proceeding, but our ability
19 to counter those non-record pieces of evidence is
20 fundamentally impaired by the passage of time which is
21 a consideration, unlike the trial record that the Court
22 must take into consideration.

23 So for all of those reasons, because the
24 statute says it's unnecessary unless it's a -- the

1 statute says that you may take judicial notice and
2 nobody has asked the Court to because of the passage of
3 time and because the unrebutted testimony as a matter
4 of law is sufficient, we think it's entirely
5 unnecessary for the Court to be weighing evidence
6 that's not before the Court.

7 In addition, because this is not a
8 post-conviction proceeding where we're looking for new
9 evidence -- the Court mentioned a moment ago that this
10 was all before you -- before and in the prior now
11 vacated decision, the Court talked about how Judge
12 Bolan had all of this evidence before it, but that is
13 not what we are talking about here.

14 This is not looking for new evidence. There is no
15 limitation of whether the evidence is new or old. It's
16 simply a preponderance of all of the evidence that's
17 been presented.

18 And so for all of those reasons, Your Honor, we
19 don't think it's necessary to be looking at the common
20 law record or any of the exhibits and testimony from
21 the trial.

22 THE COURT: Okay. Thank you.

23 Mr. Greenberg, did you have anything to say?

24 MR. GREENBERG: I do. Judge, my problem with

1 looking at things from the original trial -- and I know
2 that more so in Mr. Hood's ruling than in ours, you
3 said that Judge Bolan had considered evidence and so
4 forth. My original trial was not a Judge Bolan trial.
5 Mine was a jury trial.

6 THE COURT: A jury.

7 MR. GREENBERG: And they hung. I don't know what
8 -- I don't know if it was 11 to 1 guilty or not guilty
9 or what the vote was. I don't know what that was.

10 THE COURT: Mr. Greenberg, I'm going to stop you
11 right there. I'm not going to ask the parties to give
12 that to me at this time. If I feel that it becomes
13 necessary, as I review what you've already given to me
14 and taking into consideration the testimony of Mr. Hood
15 and Mr. Washington, if I find that I would like
16 additional items before I make my decision, then I'll
17 ask the parties and we'll advance it and I'll ask if I
18 think it's necessary. We will just deal with it that
19 way.

20 MR. GREENBERG: Okay.

21 THE COURT: Okay.

22 MR. GREENBERG: Understood.

23 THE COURT: So, State, do you have any witnesses?

24 MR. PAPA: No.

1 THE COURT: Okay. Then we are in the point of
2 closing arguments.

3 Mr. Leonard?

4 MR. LEONARD: Thank you, Your Honor.

5 Thank you, again, Your Honor, for your time
6 today. I know this matter has been before the Court
7 for a long time and we do appreciate the amount of time
8 that the Court has put into it. And the decision that
9 Your Honor must make is obviously a very important
10 decision, but I think that as a matter of law, it is an
11 easy decision.

12 As a legal matter, the law, as I mentioned
13 earlier, says that unrebutted testimony must be taken
14 as true unless one of the three exceptions are present.
15 And in this case, Mr. Hood's testimony was not
16 contradicted. Mr. Hood was not impeached. There was
17 no cross-examination at all and his testimony on the
18 stand was not beyond the realm of human comprehension,
19 which is the standard.

20 Mr. Hood has testified to this court that he's
21 innocent and he's done it in at least three forms.
22 Attached to his petition for certificate of innocence
23 was a signed verification. Also attached to his
24 petition was an affidavit swearing to his innocence.

1 And he testified again to this court this morning. All
2 of that testimony is entirely un rebutted, and that is
3 all that's required. That alone satisfies Mr. Hood's
4 burden of proving his innocence by a preponderance of
5 the evidence.

6 And I'd like to expand on that just a little
7 bit more with what the State Supreme Court said in the
8 People Ex Rel. Brown case that I mentioned in the
9 opening arguments. The Court said that when un rebutted
10 testimony is rational, reasonably consistent, and
11 certain, that that is all that's needed. That at that
12 point, the testimony is to be taken as true.
13 Mr. Hood's testimony was rational. It's been entirely
14 consistent for 23 years. And it's certain. Mr. Hood's
15 demeanor on the stand today was I believe that of
16 someone who was telling the truth, the same truth that
17 he's told at every opportunity for 23 years.

18 But even if the Court were to disagree with me
19 and the Court were to think that there was something
20 about his demeanor that was less than truthful, that,
21 Your Honor, is still not enough to counter his
22 un rebutted testimony.

23 This, again, comes from the People Ex Rel.
24 Brown case where the supreme court said that while

1 demeanor is undoubtedly an important consideration, a
2 court may not make an affirmative finding that the
3 exact opposite of a witness's testimony is true if
4 there is no evidence to support such a finding. And
5 here, Your Honor, there is no evidence to support a
6 finding that anything Mr. Hood said was not true.
7 There's nothing in the record that we've presented that
8 contradicts anything he said. And the State has
9 introduced no evidence at all. There's nothing before
10 this court that contradicts what Mr. Hood has said.

11 And we talked a moment ago, the Court may say,
12 well, what about the trial record, what about evidence
13 that's not before me that was before Judge Bolan? And
14 for all of the reasons that we just discussed, there's
15 no need and it would be inappropriate for the Court to
16 undertake that analysis. So, again, for all the
17 reasons that I mentioned earlier, we think it would be
18 inappropriate for the Court to look to that record.

19 But let's say the Court does disagree. It's
20 not persuaded and the Court does decide to delve into
21 the trial record. What the Court will still find is
22 that there's not a shred of credible evidence that
23 remains that actually implicates Mr. Hood in any crime.
24 And that's all the more true because of what the burden

1 that we have here is.

2 Mr. Hood has to prove his innocence by a
3 preponderance of the evidence. Mr. Hood is not
4 required to prove that Marshall Morgan, Sr. or anyone
5 else is guilty. The certificate of innocence statute,
6 Section 702 doesn't require extraordinary proof of that
7 kind. The requirement is just that he prove that
8 there's a 51 percent chance that he's innocent. It's
9 more likely than not that he's innocent.

10 He's also not required to come forward with any
11 sort of new evidence. This is not a post-conviction
12 proceeding. He has brought forward evidence under the
13 civil standard, the preponderance of the evidence
14 standard, which demonstrates his innocence and that's
15 what's required, but he's also satisfied his burden via
16 the stipulated testimony and the documents that have
17 now been admitted into evidence. The Court has before
18 it sworn statements from Michael and Jody Rogers who
19 falsely implicated Mr. Hood at his trial. They have
20 now provided these affidavits which say that everything
21 that they told the trial court was untrue, that they
22 have no idea who killed Marshall Morgan, Jr. As far as
23 they know, Tyrone Hood had nothing to do with it.

24 Your Honor has the stipulated expert testimony

1 from Dr. Berkowitz who has testified to the multitude
2 of reasons that Emanuel Bob's alleged identification of
3 Mr. Hood in the victim's car is unreliable as a
4 scientific matter.

5 And I would point the Court here to recent
6 supreme court precedent, Illinois Supreme Court, which
7 supports Dr. Berkowitz's conclusion. This is People
8 vs. Lerma, L-E-R-M-A. It's 47 N.E.3d 985, Illinois
9 Supreme Court 2016. And the supreme court said that
10 the type of analysis that Dr. Berkowitz has presented
11 here is widely accepted by scientists and is well
12 settled and well supported and is admissible --
13 although there's no question of admissibility here,
14 it's admissible to support the exact type of conclusion
15 that we're advancing here.

16 Now, I don't plan to summarize all of the
17 stipulated testimony or documents. The Court has it,
18 but I would like to draw the Court's attention to the
19 evidence regarding Marshall Morgan, Sr.'s culpability.
20 We know -- and this is Exhibit 10 -- that he had a life
21 insurance policy on his son. We know that at the time
22 of his son's murder, he was practically destitute. He
23 testified as much to the Cook County Court. That's
24 Exhibit 7.

1 We know that he was in mortgage foreclosure
2 proceedings at the time of the murder at the time that
3 he took out the life insurance policy. That's Exhibit
4 8. We know that he -- as soon as the mortgage
5 proceedings are instituted, he immediately -- the
6 mortgage proceedings were instituted in September of
7 1992. October of 1992, he takes out the life insurance
8 policy. That's Exhibit 10.

9 We know that in January 1993, he was sued for
10 child support by a different girlfriend about a kid who
11 is not Marshall Morgan, Jr. That's Exhibit 9. We know
12 the house was foreclosed on on April 23, 1993. That's
13 Exhibit 8. And we know Morgan, Jr. disappeared days
14 later in May 1993. That's Exhibit 5.

15 We know that Morgan, Sr. waited all of nine
16 days after his son's body was found, nine days to
17 submit a life insurance claim on his son's policy. And
18 we know that he profited from his son's death to the
19 tune of about \$45,000. That's Exhibit 23. We know
20 that Marshall Morgan, Sr. is a violent man. He
21 confessed to killing his friend, William Hall, over
22 \$700 in 1977. That's Exhibit 22. We know that his
23 ex-wife was granted a restraining order against him in
24 1992. That's Exhibit 14. We know that he confessed to

1 murdering his fiancée in 2001. That's Exhibit 30 and
2 31. And we know he did so because of yet another
3 dispute regarding money. That's Exhibit 39.

4 We know that his girlfriend, Michelle Soto, was
5 murdered in 1996 under circumstances that are
6 practically identical to the three other murders,
7 William Hall; Marshall Morgan, Jr.; and Deborah
8 Jackson. We know he profited from Michelle Soto's
9 death by virtue of a life insurance policy that he had
10 just taken out on her immediately before her death,
11 which is Exhibits 24, 32, and 33. We know he profited
12 from her death still further by transferring the deed
13 to her house into his name and reselling it. That's
14 Exhibits 34, 36, and 37.

15 We also know, Your Honor, that at the time of
16 his son's disappearance, Marshall Morgan, Sr. was a
17 custodian at Corliss High School on the south side. We
18 know that his duties included emptying trash cans. We
19 know that trash belonging to several people who either
20 lived or frequented the area around Corliss High School
21 were found in the victim's car. The only person that
22 was ever charged in relation to this was Tyrone Hood,
23 despite the fact that a number of other people had the
24 exact same type of physical evidence tying them to the

1 crime. And all of that trash from the Corliss High
2 School area was found in the victim's car, even though
3 there is no suggestion and there never has been any
4 suggestion that this crime took place near Corliss High
5 School. The victim was not from there. The car was
6 not found near there. The only connection to Corliss
7 High School and that area is Marshall Morgan, Sr.

8 Marshall Morgan, Sr. told the trial court that
9 his son, Morgan, Jr., visited him the day he
10 disappeared at Corliss High School. He said the
11 purpose of the visit was so that Morgan, Sr. could give
12 his son \$350. \$350 that we know he didn't have based
13 on what he told the Court in 1992. He said that his
14 son followed him back to his house about ten miles away
15 from the school because he had forgotten the money and
16 he needed to bring him back to the house to give it to
17 him. And we know that that's the last time anybody
18 ever saw his son. There's no evidence in the record of
19 anybody ever seeing Marshall Morgan, Jr. after that.

20 We also know, Your Honor -- and this is from
21 Exhibit 46 -- that Morgan, Sr. treated his insurance
22 policies as an ATM. He repeatedly took out loans from
23 these policies and he did it time and time again.

24 All added up, what the Court has before it is a

1 substantial amount of evidence indicating that the
2 crime at issue here was more likely than not committed
3 not by Tyrone Hood or Wayne Washington, but by Marshall
4 Morgan, Sr.

5 And so just to wrap up, Your Honor, Mr. Hood
6 has today presented unrebutted, uncontradicted evidence
7 that satisfies all four requirements of the certificate
8 of innocence statute. There's no question he was
9 convicted of felonies by the state of Illinois and
10 spent time in prison as a result. There's no question
11 that the conviction was vacated and the indictment
12 dismissed. There's no question, Your Honor, that he is
13 innocent of those offenses, nor is there any question
14 that did not by his own conduct voluntarily bring about
15 this conviction. And so, Your Honor, for those
16 reasons, we ask that the Court grant Mr. Hood the
17 certificate of innocence that he has requested.

18 Thank you.

19 THE COURT: Thank you.

20 Mr. Greenberg?

21 MR. GREENBERG: Judge, not surprisingly, I'm going
22 to adopt all of that.

23 THE COURT: All right. You can adopt it.

24 MR. GREENBERG: Thank you. And I just have a

1 couple of things to add to that. While Mr. Washington
2 was convicted and the judgment was vacated that's not
3 disputed and I think that the judgment was vacated on
4 the State's motion after they reinvestigated the case,
5 so I don't really think there's a dispute as to whether
6 or not these people are innocent of these crimes and so
7 I'm going to limit myself, rather than getting into the
8 facts as to what the Court had addressed earlier, which
9 was the prong of bringing about his own conduct
10 voluntarily causing or bringing about his conviction.

11 In the statute that they drafted -- and let's
12 think about why they drafted this statute, Judge. They
13 drafted this statute because people have been
14 wrongfully convicted and they wanted a mechanism
15 whereby they could get a completely clean slate. It's
16 essentially an expungement almost for people who have
17 been convicted once upon a time of certain kinds of
18 crimes.

19 They put in the statute that you are convicted
20 of one or more felonies, sentenced to a term of
21 imprisonment and served all or part of the sentence.
22 They do not have as part of the statute that the means
23 by which you were convicted is at all material. And by
24 that, I mean it does not say in the statute that you

1 were convicted at a trial or, you know, you were
2 convicted at a jury trial or a bench trial or whatever.
3 They didn't exclude from this statute the fact that
4 people may have pled guilty. By using the word
5 conviction, they're just talking about the operative
6 fact being that you were convicted of the crime by
7 whatever means, trial or plea. And that's a matter of
8 statutory construction, but they certainly could have
9 said that people who plead are excluded. And they
10 could have said it twice. They could have said the
11 petitioner was convicted by trial and didn't plea or
12 they could have said it under paragraph 4 where they
13 said petitioner did not bring -- did not by his or her
14 own conduct voluntarily cause or bring about his or her
15 conviction. They could have said and the petitioner
16 did not plead guilty to the crime and they could have
17 excluded people who pled guilty very easily in the
18 statute and they didn't do so.

19 So the question becomes what does that mean
20 then that you did not by your own conduct cause or
21 bring about the conviction? I mean, everyone can argue
22 it many different ways. I think in this case, we could
23 look at what did Mr. Washington do? Mr. Washington got
24 coerced and physically abused, it's uncontested, into

1 giving a statement. That certainly isn't his own
2 conduct. That's not a voluntary act in any way, shape,
3 or form. He went to trial, which is certainly
4 consistent with someone who you think is innocent going
5 to trial, especially knowing that there was the written
6 statement and that he lost the motions. He still went
7 to trial. The jury hung. And then faced with the
8 decision of doing very little time, barely over the
9 minimum, or potentially being in Mr. Hood's predicament
10 and seeing the rest of his life end up in jail, yes, he
11 pled.

12 Now, did he voluntarily cause that or was that
13 caused by the circumstances that he was put in when he
14 was just talking on the phone one day in a store and
15 the police took him out of that store, along with
16 Mr. Hood, and he got caught up in all of that? I don't
17 think that you could look at what happened here and say
18 that he voluntarily did anything. He didn't
19 voluntarily go to the police station. He didn't
20 voluntarily give his statement. He may have
21 voluntarily pled guilty, but that was certainly after
22 many other circumstances of involuntary conduct put him
23 in that position.

24 If they wanted people who pled guilty -- if

1 they were saying that if you plead guilty, that is
2 voluntarily bringing about your conviction, they would
3 have put that in the statute, Judge. And they didn't
4 do it here. They would have excluded people who pled
5 guilty from the statute, and they didn't do it here.
6 So I don't know exactly what they mean by that phrase,
7 frankly. I have wrestled with what they mean, but
8 certainly, if you look at just basic issues of
9 statutory construction, if they wanted to exclude
10 people who had pled guilty, they would have put that in
11 there. And by not putting it in there, they're
12 certainly not excluding people who pled guilty.

13 Beyond that, what you have is completely
14 un rebutted evidence, uncontested evidence, truthful
15 evidence that he's innocent, that he's absolutely
16 innocent of this crime. By a preponderance, by a
17 reasonable doubt, by whatever standard you want,
18 there's no contradictions here that he's innocent of
19 the crime. So the only question I guess is if on a
20 technical basis that, you know, you think there's
21 something voluntary here and I haven't found any case
22 that gives that reading to it, and I think just as a
23 matter of statutory construction, you can't. So I
24 would ask that you grant the petition.

1 THE COURT: Thank you.

2 State?

3 MR. PAPA: We waive.

4 THE COURT: Okay. Then all of the testimony and
5 the evidence and arguments are concluded. I am going
6 to take a date. I am going to order the transcript
7 from today. I want to review everything that you have
8 given to me and take a date to rule then. I'm going to
9 be gone for some period of time, ten days or so at the
10 beginning of July, so I would like to go into August.
11 And I apologize. It is going to take me some time to
12 look through everything, and I want to give it all of
13 the time that it deserves. So I apologize for the
14 delay for everybody, but at least the middle of August.
15 Give me until at least the middle of August. The only
16 day that's probably not good for me is August 24.

17 Anybody have any dates that they're
18 suggesting?

19 MR. LEONARD: I'm free any time, Your Honor.

20 THE COURT: State?

21 MR. GREENBERG: Judge, do you want to go to the
22 week of the 15th?

23 THE COURT: It doesn't matter. I'm just saying the
24 only bad date is August 24 and then I think I'm

1 starting a jury August 29.

2 The week of the 15th is good.

3 MR. GREENBERG: The 18th, Judge?

4 THE COURT: The 18th, does that work for you,
5 Mr. Leonard?

6 MR. LEONARD: It does, Your Honor.

7 THE COURT: State?

8 MR. PAPA: Yes.

9 THE COURT: Order of Court, August 18 for my
10 ruling.

11 As I said, if I think I need anything else,
12 I'll notify the parties and we'll go from there. Okay.

13 MR. GREENBERG: Judge, on behalf of Mr. Washington,
14 we have no objection if you want to e-mail if you need
15 anything.

16 THE COURT: Well --

17 MR. GREENBERG: I mean, as opposed to everyone
18 coming to court.

19 THE COURT: No, I would just notify one of you to
20 notify everybody else --

21 MR. GREENBERG: Oh, okay.

22 THE COURT: -- to be here.

23 MR. GREENBERG: Okay.

24 THE COURT: If I need to unless there's an

1 agreement, we can do it over the phone probably. I
2 don't know if I have everybody's e-mails or not, but I
3 do have a few cell phone numbers.

4 MR. LEONARD: And just as a reminder, Your Honor,
5 the contact information --

6 THE COURT: I have that, but if I don't -- I know
7 it's on the shelf. If I don't have it, I'll call you,
8 Karl.

9 MR. LEONARD: Sure. I was just pointing out the
10 contact information I have on it is out of date since
11 I'm at The Exoneration Project.

12 THE COURT: Mr. Greenberg knows how to get ahold of
13 you?

14 MR. LEONARD: He does, yes.

15 THE COURT: Mr. Papa knows how to get ahold of you,
16 right?

17 MR. LEONARD: He does.

18 THE COURT: We are all good then.

19 MR. LEONARD: Thank you.

20 (Which were all the proceedings had
21 in the above-entitled cause.)

22

23

24

1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS:

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

6 THE PEOPLE OF THE)
7 STATE OF ILLINOIS,)
8 Plaintiff,) No. 93 CR 14676(02)
9 vs.)
10 TYRONE HOOD,)
11 Defendant.)

12 REPORT OF PROCEEDINGS had at the
13 hearing of the above-entitled cause before the Honorable
14 DOMENICA A. STEPHENSON on the 18th day of August, A.D.,
15 2016.

16 PRESENT:

17 HON. ANITA M. ALVAREZ, State's Attorney
18 of Cook County, by:
19 MR. JIM PAPA,
20 Assistant State's Attorney
21 on behalf of the People;

22 MR. KARL LEONARD, appeared on
23 behalf of the Defendant;

24 MR. STEVE GREENBERG,
appeared on behalf of the Co-Defendant
Wayne Washington.

25 REPORTED BY;
26 Magdalena Perez, CSR 084-004569
27 Official Court Reporter

1 MR. GREENBERG: Good morning, Judge. Steve
2 Greenberg on behalf of Mr. Washington who is not here. I
3 think it was up for your ruling on the certificates of
4 innocence --

5 THE COURT: Correct.

6 MR. GREENBERG: That are not opposed.

7 THE COURT: I understand that.

8 MR. LEONARD: And, your Honor, Karl Leonard,
9 L-e-o-n-a-r-d, from the Exoneration Protect for Mr. Hood
10 who is here with me this morning.

11 MR. PAPA: Jim Papa, P-a-p-a, on behalf of the
12 State.

13 THE COURT: Okay. I need more time. In addition,
14 on the last court date indicated that I would not read
15 anything in addition to what was tendered to the Court
16 without asking the attorney's because there was an
17 objection to my reading anything in addition to what was
18 tendered to the Court. I am going to read additional
19 documents because you're asking me to rule on something in
20 a vacuum and just a partial record and partial transcript.
21 So it's over your objection. I understand, but I'm going
22 to do it. There's nothing that prevents the Court from
23 doing it and I believe it should be done.

24 MR. GREENBERG: What additional documents?

1 THE COURT: If anybody has a copy of the record or
2 the transcript.

3 MR. LEONARD: We can provide it, your Honor.

4 THE COURT: All right.

5 MR. LEONARD: Again we would just reiterate the
6 objection. Under the statute the only option for the
7 Court to take judicial notice, which nobody has asked the
8 Court to do so you doing so is certainly over our
9 objection.

10 THE COURT: Okay. And it's noted.

11 MR. GREENBERG: Judge, we do not have the
12 transcript from Mr. Washington's trial.

13 THE COURT: For the motion?

14 MR. GREENBERG: We have the transcript on the
15 motion to suppress that was heard.

16 THE COURT: I would like that.

17 MR. GREENBERG: Okay. But we do not have the
18 first trial. It was a hung jury. Even though they had a
19 supposed confession from him and then he, of course, made
20 a pleading after it was heard. We are getting the
21 transcript, but it dates back to the 90's so I think two
22 volumes are prepared and the rest is in the process. I
23 expect I'll have it within a month.

24 THE COURT: Mr. Leonard.

1 MR. LEONARD: We have our's and can provide it at
2 any time.

3 THE COURT: Okay. What date do you want to come
4 back? Mr. Leonard, how voluminous is it?

5 MR. LEONARD: It's several binders.

6 MR. GREENBERG: Each of the trials were more then
7 a week.

8 MR. LEONARD: They were concurrent. So it's two
9 weeks of overlapping trials, your Honor.

10 THE COURT: Okay.

11 MR. GREENBERG: No. No. No. They were separate
12 trials.

13 MR. PAPA: Yeah, they were.

14 MR. GREENBERG: It was separate --

15 MR. LEONARD: -- a second trial too.

16 MR. GREENBERG: No. No. We have almost a two week
17 transcript and Mr. Hood has almost a two week transcript.

18 MR. PAPA: Right.

19 THE COURT: Was there a simultaneous bench and
20 jury at one point?

21 MR. GREENBERG: No.

22 THE COURT: They were two completely separate
23 trials?

24 MR. LEONARD: There was a jury trial.

1 MR. GREENBERG: There was a jury --

2 THE COURT: I know there was a jury trial.

3 MR. GREENBERG: There was a jury trial for
4 Mr. Washington and there was a jury trial that was begun
5 for Mr. Hood and then a mistrial. I don't believe any
6 evidence was presented at that trial because it was a
7 mistrial during jury selection. That took three or four
8 days and then there was a bench trial for Mr. Hood. But
9 the bench trial for Mr. Hood took almost two weeks. Two
10 weeks of time. It was in front Judge Bolin(phonetic) back
11 in the early 90's so there was many breaks.

12 THE COURT: Okay.

13 MR. LEONARD: And just a quick correction.
14 Mr. Greenberg said that Mr. Hood had a mistrial with the
15 jury that was Mr. Washington Mr. Hood never had a jury.

16 MR. GREENBERG: No. Mr. Hood had a --

17 DEFENDANT HOOD: Bench trial.

18 MR. GREENBERG: But you started picking a jury.

19 DEFENDANT HOOD: Yeah, and the I got rid of them.

20 MR. GREENBERG: Right. So he had a mistrial with
21 a jury. Anyway.

22 THE COURT: Okay. If you can get that to me. Are
23 you in the building any day this week or are going to have
24 to messenger it over?

1 MR. LEONARD: I'll messenger but that's totally
2 fine, your Honor. We'll get it to you.

3 THE COURT: I just hate extra things like that.

4 MR. GREENBERG: Judge, if they give it to me, I
5 can drop it off.

6 THE COURT: I'm sure you can use a messenger, but
7 I don't know. You don't need to go through the trouble if
8 you're just going to be in the building.

9 MR. GREENBERG: Do you want the transcripts
10 printed or would you like them in digital format?

11 THE COURT: Do you have them digital?

12 MR. GREENBERG: Eventually. I mean we have to
13 scan them.

14 THE COURT: Oh, no. I don't want anybody going to
15 any extra work.

16 MR. GREENBERG: No. No. I mean --

17 THE COURT: Whatever you have --

18 MR. GREENBERG: -- if I copy them, they'll be
19 scanned at the same time they're copied. It will be
20 simultaneous.

21 MR. LEONARD: Our's are available in both formats,
22 Judge. Whatever you prefer.

23 THE COURT: You already have them scanned?

24 MR. LEONARD: We do.

1 THE COURT: Just give it to me in digital format
2 then.

3 MR. LEONARD: Sure. We'll do that.

4 THE COURT: You can either put it on a disk or
5 after I can give you my e-mail and you can just e-mail
6 them to me.

7 MR. GREENBERG: Judge, so the next date will
8 likely just be status again.

9 THE COURT: I really would like to just read
10 everything and rule, but if I don't have everything.
11 We'll take a status date.

12 MR. GREENBERG: Okay. And then I'm going to
13 suggest whatever date is convenient because I'm going to
14 be on trial in federal court four days a week for a couple
15 of months.

16 THE COURT: But you're going to get me the
17 transcripts from the motion?

18 MR. GREENBERG: Yes. I will get them to you on a
19 rolling basis. As I get them I will get them to you. And
20 I will get you the motion transcript next week.

21 THE COURT: Sure. Okay. When do you want to come
22 back?

23 MR. LEONARD: Whenever is convenient for your
24 Honor. However much time you need. The sooner the better

1 on our end, but whatever works for your Honor.

2 THE COURT: Mr. Greenberg, let's work around your
3 schedule then.

4 MR. GREENBERG: Judge, if it's just a status,
5 whatever works for Mr. Leonard and I'll talk to him
6 beforehand because my schedule makes it impossible.

7 THE COURT: All right. Then we're going to work
8 around my schedule when I really think I can get this.
9 I've already got everything else read so I just want to do
10 this. Let's try to do the end of September. Do you want
11 to do maybe any day the week of September 26th? Are you
12 here that week?

13 MR. LEONARD: Any day that week works for me, your
14 Honor.

15 THE COURT: All right. Let's do September 28th.
16 Is that by agreement?

17 MR. LEONARD: Yes, your Honor.

18 THE COURT: Mr. Greenberg?

19 MR. GREENBERG: Yes, Judge.

20 THE COURT: All right. By agreement September
21 28th. I'll see you then. I'll make it status.

22 (Conclusion of today's proceedings.)

23

24

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT-CRIMINAL DIVISION

6 I, MAGDALENA PEREZ, an Official Court
7 Reporter of the Circuit Court of Cook County, County
8 Department-Criminal Division, do hereby certify that I
9 reported in shorthand the evidence had in the
10 above-entitled cause and that the foregoing is a true
11 and correct transcript of all the evidence heard before
12 the HONORABLE DOMENICA A. STEPHENSON, Judge of said
13 court.

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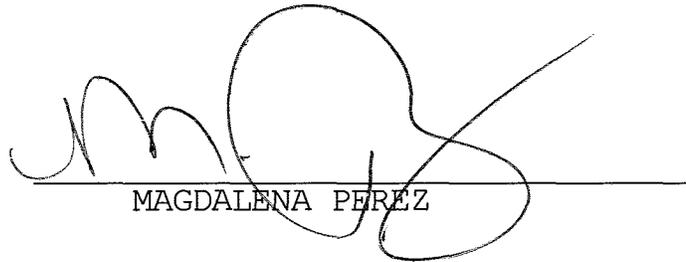
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23 Dated this 27 day

24 of February, 2017.



MAGDALENA PEREZ

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**NO. 16-3024
(CONSOLIDATED WITH NO. 16-2964)**

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

PEOPLE OF THE STATE OF ILLINOIS,)	
	)	Appeal from the Circuit Court
	)	of Cook County, Illinois.
Respondent-Appellee,)	
	)	Circuit No. 93 CR 14676
v.)	
	)	Honorable Domenica Stephenson,
WAYNE WASHINGTON,	)	<i>Judge Presiding.</i>
)	
Petitioner-Appellant.)	

**BRIEF AND ARGUMENT OF
PETITIONER-APPELLANT WAYNE WASHINGTON**

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NATURE OF THE CASE

Wayne Washington was beaten by the police and forced to sign a false confession for a murder he did not commit. After his jury failed to reach a verdict, and his co-defendant, Tyrone Hood (with whom he is now consolidated) was convicted and sentenced to 75 years, Mr. Washington accepted an offer of 25 years in prison and pleaded guilty. Throughout his term in prison, and after, he maintained his innocence. More than two decades after his arrest, on February 9, 2015, former state’s attorney Anita Alvarez moved to vacate Mr. Washington’s conviction, and the charges against him were dismissed. (A2).¹

On February 18, 2015, Mr. Washington filed a Petition for Certificate of Innocence. (A9). The State advised the trial court that it “took no position.” (R. A2, A3, I6, T2, U87). Nonetheless, the circuit court *sua sponte* denied the Petition on May 28, 2015. (Sup. C. 7). The court noted that Mr. Washington had pleaded guilty, thereby—in the court’s view—causing or bringing about his conviction, and that he had failed to provide evidence in support of his Petition. (*Id.*). Mr. Washington asked the court to reconsider, based on the fact that he had never been given an opportunity to present evidence or argument. The court agreed and “struck” its denial of the unopposed Petition. (R. H3-H4).

Thereafter, the circuit court held a joint hearing wherein Mr. Washington and Mr. Hood presented both uncontradicted evidence and uncontradicted testimony supporting their innocence. Further, Mr. Washington explained why he pleaded, despite his

¹ Citations to the record are as follows: citations to the common law volumes which were filed under Mr. Hood’s consolidated case No. 16-2964, are denoted as C; citations to the supplemental record filed in Mr. Washington’s case are denoted as Sup. C; citations to the appendix are denoted as A; and citations to the reports of proceedings are denoted as R.

innocence. The State remained mute throughout the proceedings. Still, the circuit court denied Mr. Washington's Petition, finding once again that because he pleaded guilty and gave a written statement, he had brought about his own conviction. (Sup. C. 75).

This timely appeal now follows. State's Attorney Kim Foxx has advised this Court that her office will not take part in this appeal, will not appear, and will not file any briefs or present arguments in opposition. (A11).

This appeal is not based on the judgment of a jury verdict, and no question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

I. The circuit court improperly imposed a procedural bar which is not included in the Petition for Certificate of Innocence Statute, 735 ILCS 5/2-702, when it held that a petitioner who pleaded guilty can not receive a Certificate of Innocence.

II. The circuit court improperly relied upon evidence which was not part of the evidentiary record in the Certificate of Innocence proceedings to contradict the unrebutted and uncontradicted evidence that Wayne Washington had been coerced to give a confession and did not voluntarily bring about his conviction.

III. Wayne Washington is entitled to a Certificate of Innocence where he and his co-defendant presented unrebutted and uncontradicted evidence demonstrating innocence.

JURISDICTION

Mr. Washington appeals the denial of his Petition for a Certificate of Innocence filed under 735 ILCS 5/2-702. The denial was made by written ruling on October 31, 2016. (A1, Sup. C. 73). A notice of appeal was timely filed. (A7). Jurisdiction lies in this

Court under article VI, section 6 of the Illinois Constitution and Supreme Court Rules 301 and 303.

STATUTE INVOLVED

This case involves the interpretation of 735 ILCS 5/2-702. A copy of that statute is included in the appendix pursuant to Illinois Supreme Court Rule 341(h)(5). (A16).

STATEMENT OF FACTS

I. Background

Mr. Washington and Tyrone Hood were charged with the May 1993 murder of Marshall Morgan, Jr. Mr. Washington was beaten by police and forced to give a “confession” to the murder. (R. U59). He initially had a jury trial, but the jury failed to reach a verdict. (R. U65). Next, Mr. Hood took his case to a bench trial, lost, and was sentenced to 75 years in prison. (C. 1248). Because Mr. Washington could not imagine serving such a long sentence for a crime he did not commit, he pleaded guilty in exchange for a 25-year sentence. (R. U65).

Since his release from prison, he has worked in fast food and factory jobs in Michigan. (R. U48). This case was Mr. Washington’s first arrest, and he has not been arrested since his release. (R. U51-52).

On February 9, 2015, the State moved to vacate Mr. Washington’s conviction (as well as Mr. Hood’s), grant him a new trial, and dismiss the charges against him. (A2).

On February 18, 2015, Mr. Washington filed his Petition for Certificate of Innocence. (Sup. C. 5). The Cook County State’s Attorney “appeared” in the case solely for the purpose of advising the court that they would not oppose Mr. Washington and Mr. Hood’s petitions. (R. A2). The State has consistently maintained its position that it does

not oppose the petitions. (R. A2, A3, I6, T2, U87). Not only did the State take no position in the circuit court, it has now represented to this Court that it did not even intervene in the circuit court proceedings, and it will not appear here or oppose the appeal. (A11).

Nevertheless, on May 28, 2015, the circuit court issued its first Order denying the unopposed petitions, without holding a hearing or allowing argument. (A12). The court found that Mr. Washington was not entitled to a Certificate of Innocence because he had pleaded guilty, thereby causing or bringing about his own conviction. (A13). The court also found that he had not met his burden of proving his innocence because he provided no evidence to support his Petition. (*Id.*). The court similarly denied Mr. Hood's petition for failure to present evidence of his innocence at a hearing, despite never holding a hearing to hear evidence. (C. 1199, 1201).

On June 24, 2015, Mr. Washington and Mr. Hood moved for reconsideration of the court's May 28, 2015, ruling. (Sup. C. 79). On September 9, 2015, the circuit court "struck" its previous ruling and allowed the parties to present evidence in support of their petitions, although the court did not believe it had to do so. (R. H3-H4).

On June 20, 2016, a hearing was held in the circuit court. (R. U1). Both Mr. Washington and Mr. Hood testified at the hearing and explained that they were innocent. (R. U46, U65). They also relied upon voluminous evidence in the record establishing that the detectives had framed them for the crimes, that the officers had a history of fabricating and coercing confessions, and that it was more likely than not that the victim's father had actually killed him. (*See infra* Statement of Facts Sections II and IV).²

² This evidence of abusive practices by the relevant detectives was presented within Mr. Washington's petition to vacate his plea, dated August 2, 2013, and was incorporated along with all exhibits as part of the record in his Petition for Certificate of Innocence

The State did not ask a single question; introduce any evidence contradicting the testimony or other evidence; and did not otherwise attempt to rebut their claims of innocence. (R. U46, U65). Yet, the court once again denied Mr. Washington's Petition, writing that he "failed to satisfy the fourth prong because, by his own conduct, he voluntarily brought about his own conviction by giving a statement to police and pleading guilty." (A3). The court further wrote that Mr. Washington's testimony on his Petition differed from his testimony at a hearing in 1995, finding that he was not credible. (A4). Mr. Washington's testimony in the 1995 hearing was not part of the evidentiary record provided to the circuit court.

Mr. Washington timely appealed. (A7).

II. Mr. Washington's False Confession

Mr. Washington was arrested out of the blue, seemingly only because he had the misfortune of being in the same store as Mr. Hood. (R. U52-53). He was taken to the police station and handcuffed to a chair while detectives interrogated him, beat him, and repeatedly kicked his chair over. (R. U53-55). After enduring this abuse for an extended period of time, Mr. Washington signed a written statement containing information fed to him by the police. (R. U59). The statement was false; he merely signed it because he could not stand the beatings any longer, and the police promised him he would go home if he did. (C. 920; R. U59). Mr. Washington's testimony was not rebutted or impeached. (R. U65).

(cont. from p. 4) proceedings. (R. U6). Mr. Washington also incorporated all of Mr. Hood's filings. (Sup. C. 80).

When questioned at an unrelated deposition about this interrogation, Detective Halloran did not deny that he abused Mr. Washington; instead he invoked his Fifth Amendment right to remain silent. (C. 1159-60).

The second detective who coerced Mr. Washington's statement was Detective Boudreau. (R. U55). Mr. Washington provided expert testimony from retired Superintendent Brzeczek that Detectives Boudreau and Halloran "have been previously identified as engaging in patterns of similar coercive conduct." (R. U67, C. 930). Lastly, Mr. Washington introduced evidence exposing the detectives' history of fabricating and coercing confessions. (Sup. C. 15-44).

III. Mr. Washington's Guilty Plea

At Mr. Washington's trial, the jury was unable to reach a verdict. (R. U65). On the morning he was to be retried, he spoke with Mr. Hood, who was about to be transferred to IDOC to serve the 75-year sentence he received following his trial. (R. U64). Mr. Hood told Mr. Washington that "he was praying for him." (R. U64). Mr. Washington knew he could not spend 75 years in prison, so when the State offered him a plea deal that included a 25-year sentence, he took the deal, despite his innocence. (R. U65).

IV. Mr. Washington's and Mr. Hood's Innocence

The only information in this case which ties Mr. Washington to the murder was his own coerced statement and the statement of Jody Rogers. Rogers only gave a statement implicating Mr. Washington after detectives abused him and threatened to charge him with the murder. (C. 937, 939). He repudiated his statement shortly thereafter and maintained that his statement was false. (C. 937, 939-41, 956, 958). Rogers'

statement was also obtained by Detectives Halloran and Boudreau. (C. 930). Detective Halloran has likewise invoked the Fifth Amendment as to whether he coerced Rogers into giving his statement. (C. 1152-57).

To the contrary, there is ample evidence that Mr. Washington is innocent in this matter. He did not know Marshall Morgan, Jr. (R. U50). On the day of the murder, he was not with Hood or Jody Rogers. (R. U61). He did not own or even have a .38 caliber revolver (the type of weapon used in the murder). (*Id.*).

In fact, the overwhelming evidence is that the victim's father, Marshall Morgan, Sr., killed his son to collect on a life insurance policy. (C. 870-73, 882-84). Since 1977, Morgan, Sr. has been involved in four other murders—all with similar modus operandi to Morgan, Jr.'s murder—where he collected or attempted to collect life insurance proceeds or other debts from the victim. (*See* Hood Brief 8-12). Morgan, Sr. has confessed to two of these murders. (C. 1013, 1087-88). Morgan, Sr. invoked his Fifth Amendment right when asked whether he killed his son.³

In further support, Mr. Washington adopts and incorporates herein the Statement of Facts, Section II, made by his co-petitioner-appellant Tyrone Hood in his Brief and Argument at 7-16.

³ Morgan, Sr. invoked his Fifth Amendment right in relation to killing his son after the circuit court ruled on the petitions in this matter, so the invocation was not considered by the court.

ARGUMENT

Pursuant to Section 5/2-702 of the Illinois Code of Civil Procedure, a petitioner is entitled to a Certificate of Innocence if he satisfies the four requirements of the statute:

1. He was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
2. The judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed . . . ;
3. The petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment...; and
4. The petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction.

735 ILCS 5/2-702(g-h).

The circuit court correctly found that Mr. Washington had met the first two requirements. (A3). However, the court incorrectly found that Mr. Washington had not met the fourth prong. The circuit court's finding was wrong because (1) the court imposed an improper procedural bar when it held that a petitioner who had pleaded guilty was not entitled to a Certificate of Innocence and (2) the court erred when it ignored Mr. Washington's un rebutted evidence that his confession was not voluntary but was obtained through police abuse and coercion.

The circuit court did not specifically address the third requirement. However, the un rebutted evidence presented to the circuit court establishes that Mr. Washington was innocent.

I. THE CIRCUIT COURT IMPROPERLY IMPOSED A PROCEDURAL BAR WHICH IS NOT INCLUDED IN THE PETITION FOR CERTIFICATE OF INNOCENCE STATUTE, 735 ILCS 5/2-702, WHEN IT HELD THAT A PETITIONER WHO PLEADED GUILTY CAN NOT RECEIVE A CERTIFICATE OF INNOCENCE.

1. Standard of Review

The denial of a petition for a Certificate of Innocence is ordinarily reviewed for abuse of discretion. See *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11. However, in this case, the standard of review is *de novo* because it deals with the issue of statutory construction. See *Davis v. Toshiba Mach. Co.*, 186 Ill. 2d 181 (1999) (holding that standard of review on cases of statutory construction is *de novo*). As explained below, the circuit court improperly found that a plea of guilty is a bar to a Certificate of Innocence, in contradiction of the plain meaning of the statute. (See *infra* at 9-12). Because the circuit court misinterpreted the statute, its holding is entitled to no deference. See *People v. Hernandez*, 2012 IL App (1st) 092841, ¶ 28 (where threshold issue involves statutory construction, “a deferential standard of review is inapplicable”).

2. The Circuit Court Improperly Held that Mr. Washington’s Plea of Guilty Barred Him from Obtaining a Certificate of Innocence.

The circuit court erred in finding that Mr. Washington had had voluntarily brought about his own conviction by treating his guilty plea as a procedural bar to obtaining a Certificate of Innocence, although the statute allows for it. (Sup. C. 73-78). The circuit court’s language in its Order denying the Petition demonstrates that it clearly thought a petitioner who had pleaded guilty was barred from obtaining a Certificate of Innocence: “Petitioner contends that, *even if his plea would normally bar him* from obtaining a Certificate of Innocence, it should be discounted because he was coerced by

police and afraid of a longer sentence.” (A4) (emphasis added). The court inserted a non-existent requirement.

Indeed, the statute, while requiring a prior conviction, does not require that prior conviction be a finding of guilty at trial. In other words, the statute does not limit its application to only those defendants who contested the charges to verdict. Rather, it is available any time a petitioner was convicted of a felony and “the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed.” 735 ILCS 5/2-702 (g)(1)-(2).

“The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. The best indication of legislative intent is the statutory language, given its plain and ordinary meaning.” *People v. Ramirez*, 214 Ill. 2d 176, 179 (2005). It is well established that courts may not read into a statute any conditions or provisions that the legislature did not expressly include. *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 398 Ill. App. 3d 510, 537 (1st Dist. 2009). Here, the circuit court ignored the plain meaning of the statute to improperly impose a bar that is not included. The Certificate of Innocence statute clearly does not prohibit a petitioner who has pleaded guilty from obtaining a Certificate of Innocence, and the circuit court erred when it denied Mr. Washington's Petition based on the fact that he pleaded guilty. See *People v. Simon*, 2017 IL App (1st) 152173, ¶ 28 (holding that the circuit court erred when imposing an additional requirement which was not enumerated in the statute, namely proof that the State engaged in misconduct).

Despite claiming to follow the plain meaning of the statute, the court ignored the canons of statutory construction by imposing a condition that is not included anywhere within the statute. (A4). The court said the statute “is constructed to also address situations where defendants have taken substantial steps toward their arrest and subsequent prosecution *but did not plead guilty.*” (*Id.*) This requirement that the defendant has not pleaded guilty is nowhere to be found in the statute; it also is not found in the Second District case, *People v. Dumas*, 2013 IL App (2d) 120561, ¶19, which the circuit court cited to support its position. *Dumas* stresses that the focus is on whether the petitioner is innocent, and that the mechanism of the prior conviction or acquittal is of little import. *Id.* As explained *infra*, Mr. Washington is innocent.

The fact that Mr. Washington pleaded guilty, as opposed to being convicted at trial, does not bar him from succeeding on his Petition under the statute. If the legislature intended for a guilty plea to be an outright bar to obtaining a Certificate of Innocence, it would have included language to that effect.⁴ Because it did not include such language, the circuit court erred in holding that Mr. Washington’s guilty plea prevented him from prevailing on his Petition.

Moreover, the circuit court’s finding ignores the purposes of the Certificate of Innocence statute. The statute is intended to allow “men and women who have been

⁴ Other states have written such language into their similar statutes. *See, e.g.*, IOWA CODE § 663A.1(1)(b) (“The individual did not plead guilty to the public offense charged, or to any lesser included offense, but was convicted by the court or by a jury of an offense classified as an aggravated misdemeanor or felony.”); MASS. GEN. LAWS ch. 258D, § 1(c)(iii) (“he did not plead guilty to the offense charged, or to any lesser included offense, unless such guilty plea was withdrawn, vacated or nullified”); OHIO REV. CODE ANN. § 2743.48(A)(2) (“The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony.”).

wrongfully convicted of a crime [and who] never should have been in jail in the first place” to clear their names and return to being equal members of society. 95th Ill. Gen. Assem., House Proceedings, May 18, 2007, at 7. Those who were wrongfully imprisoned after giving false confessions due to police abuse are the ones most deserving of having their names cleared. Drawing a distinction between those who pleaded guilty after these involuntary, coerced confessions and those who lost at trial following their confessions does not serve the purpose of clearing the names of all those who never should have been in jail in the first place.

Had the circuit court properly applied the statute, it would have granted Mr. Washington’s Petition. The plain wording of the statute is that “the petitioner did not by his or her own conduct *voluntarily cause* or bring about his or her conviction.” 735 ILCS 5/2-702(g) (emphasis added). Mr. Washington did not voluntarily cause or bring about his conviction because his guilty plea was not voluntary but was instead proximately caused by his “confession” which was involuntarily extracted through police abuse and coercion.

II. THE CIRCUIT COURT IMPROPERLY RELIED UPON EVIDENCE WHICH WAS NOT PART OF THE EVIDENTIARY RECORD TO CONTRADICT THE UNREBUTTED AND UNCONTRADICTED EVIDENCE THAT WAYNE WASHINGTON HAD BEEN COERCED TO GIVE A CONFESSION AND DID NOT VOLUNTARILY BRING ABOUT HIS CONVICTION.

1. Standard of Review

The denial of a petition for a Certificate of Innocence is ordinarily reviewed for abuse of discretion. See *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11. However, in this case, the Court should apply *de novo* review, because the circuit court reached its ruling based on evidence outside of the record. Where courts hearing a case during a

bench trial rely on evidence outside of the record, their findings must be reversed and warrant no deference. *People v. Simon*, 2017 IL App (1st) 152173, ¶ 26 (reversing denial of petition for Certificate of Innocence because circuit court ruled based on evidence not included in the record); *People v. Hamilton*, 361 Ill. App. 3d 836, 849 (1st Dist. 2005) (“In a bench trial, a judge's determination based on his own private knowledge, that is untested by cross-examination or the rules of evidence, amounts to a denial of due process. Reversal is warranted where the defendant was not informed of the facts of which the court took notice, did not know the evidence upon which his conviction was based, and was unable to dispute the truth of the facts on which the court relied.”); *Cook County Dep't of Environmental Control v. Tomar Industries, Div. of Polk Bros.*, 29 Ill. App. 3d 751 (1st Dist. 1975) (reversing trial court decision because court relied on evidence that was not part of the record).

2. The Court Relied Upon Improper Evidence to Rebut Mr. Washington's Evidence.

The evidence at the hearing, which was not rebutted or contested by the State in any way, proved that Mr. Washington's “confession” was caused by police abuse and coercion. Mr. Washington's testimony was supported by voluminous evidence, affidavits, exhibits, and stipulated testimony that the detectives in question engaged in similar abusive and coercive conduct in scores of other investigations. However, the court sought out and improperly relied upon things that were not part of the record in order to impeach Mr. Washington's testimony that his confession was the subject of police abuse and coercion. The court erred in relying on this extrinsic material.

The material which the circuit court improperly relied upon was Mr. Washington's testimony at a 1995 hearing, which the circuit court used to

conclude that he had given “differing versions” about being tortured. (A5). However, this 1995 hearing was not in evidence in this proceeding. As the trier of fact, the court was akin to a jury. Much like a jury is not permitted to conduct investigation outside of facts presented at trial, a judge is not permitted to conduct their own investigation.

Exacerbating the court’s error was the fact that the court located this transcript *after* the hearing. Mr. Washington had no opportunity to challenge the evidence, or explain any so-called discrepancies.

In a similar case, this Court recently found that it was improper for a circuit court to rely on evidence which was not part of the record in a petition for Certificate of Innocence hearing:

[P]etitioner should not be deprived of his right to respond to the evidence used as the basis for finding that he caused his own conviction. The court, on its own, pointed to certain evidence and used it to deny petitioner's request without giving him a meaningful opportunity to object to it. Just as in any other adversarial proceedings, petitioner must have opportunity to object to the admissibility and the probative value of the evidence used to deny his claim. A contrary position would place the State at a strategic advantage by simply not taking any position in the proceedings and lead to unfair surprise for the petitioner.

People v. Simon, 2017 IL App (1st) 152173, ¶ 26 (citing *People v. Hawkins*, 181 Ill. 2d 41, 50 (1998)). The circuit court engaged in this very type of “unfair surprise” by relying on the 1995 transcript. In so doing, the court deprived Mr. Washington of the opportunity to explain any discrepancies in his testimony.

3. The Unrebutted Evidence Established that Mr. Washington’s “Confession” Was the Result of Police Coercion and was Involuntary.

The court further erred in finding that Mr. Washington had not shown his “confession” was coerced, by ignoring the evidence Mr. Washington presented. The

circuit court claimed that there was no evidence to substantiate Mr. Washington’s testimony that his confession was obtained by coercion, or that there was evidence the officers on the case are implicated in similar cases of abuse. (Sup. C. 77). This conclusion wholly ignores the voluminous record, which includes affidavits from Mr. Washington describing two days of abuse at the hands of Detectives Boudreau and Halloran. (C. 920). Two other witnesses in the case—Jody and Michael Rogers—also provided affidavits admitted as evidence affirming that they were subject to abuse and gave false statements in this case. (C. 937-965). A third witness, Mr. Terry King, who was at one time a suspect in the murder, won a civil award for the abuse he suffered at the hands of detectives during this “investigation.” (Sup. C. 18; *King v. Lenihan, et. al.*, 93 CV 3532).

Mr. Washington also presented evidence that the detectives assigned to the case had a history of fabricating and coercing confessions. (Sup. C. 15-54). Additionally, former Chicago Police Superintendent Richard Brezerek provided an uncontested stipulation which concluded that a “pattern of investigative malpractice on the part of these detectives is significantly and obviously present in this investigation.” (C. 929, 930, 933).

Notably, Detective Halloran did not deny that he abused Mr. Washington. Rather, the detective invoked the Fifth Amendment when asked. (C. 1159-1160). The circuit court should have drawn a negative inference from Detective Halloran’s invocation of the Fifth Amendment. See *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 107 (holding that the court should have drawn a negative inference against a police officer accused of torturing a suspect). A negative inference is wholly proper in this case because the State produced no evidence to rebut Mr. Washington’s allegations of torture. *Id.* (“Given that

the State produced no evidence to rebut the evidence of torture and abuse by Pienta, we believe Pienta's invocation of his fifth amendment rights is significant and a negative inference *should have been* drawn") (emphasis added).

Thus, even with the improperly admitted testimony, the evidence is still overwhelming that Mr. Washington only gave his "confession" as the result of coercion and abuse. He was consistent throughout all testimony that he was beaten by the police, and that the information in his statement was not true. These minor differences in testimony should not invalidate Mr. Washington's claims of abuse, especially in light of the other evidence that these detectives abused and coerced not just Mr. Washington, but that they have a long history of coercing and fabricating statements. The circuit court should have found that Mr. Washington's statement was coerced and involuntary, and that he did not voluntarily cause his conviction, as it was proximately caused by the involuntary confession.

The fact that the State has not taken a position in this case demonstrates that it believes that Mr. Washington's statement was coerced. Not only has the State not contested this proceeding, but it took the step to vacate Mr. Washington's conviction long after he had completed his sentence because its investigation revealed that it was the just thing to do. The obvious conclusion to be drawn from this conduct is that the State believes that Mr. Washington's "confession" was not true, and in fact, was the result of police coercion and abuse.

III. WAYNE WASHINGTON IS ENTITLED TO A CERTIFICATE OF INNOCENCE WHERE HE AND HIS CO-DEFENDANT PRESENTED UNREBUTTED AND UNCONTRADICTED EVIDENCE DEMONSTRATING INNOCENCE.

1. Standard of Review

The denial of a petition for a Certificate of Innocence is ordinarily reviewed for abuse of discretion. See *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11. However, the standard of review as to Mr. Washington's innocence should be *de novo* because the circuit court erroneously required Mr. Hood and Mr. Washington to satisfy a standard of "actual innocence" that the Illinois Supreme Court has called "extraordinarily difficult to meet" and which is dramatically greater than that required for a Certificate of Innocence. As explained in Mr. Hood's brief, the circuit court turned to the requirements for demonstrating "actual innocence" in a post-conviction petition and evaluated the testimony and evidence through that standard. (See Hood's Brief at 18-21). However, the requirements in a petition for Certificate of Innocence are vastly different. Because the circuit court applied the wrong law, its holding is entitled to no deference. *People ex rel. Graf v. Vill. Of Lake Bluff*, 206 Ill. 2d 541, 549 (2003).

2. The uncontradicted and un rebutted evidence demonstrates that Mr. Washington is innocent.⁵

The record in this case provides ample evidence to support the fact that Mr. Washington is innocent of these charges.⁶ He testified at the circuit court hearing that he did not commit the murder and that his confession was the result of police brutality and coercion. This testimony was un rebutted; the State put

⁵ Mr. Washington adopts and incorporates herein the arguments made by his co-petitioner-appellant Tyrone Hood in his Brief and Argument Section II at 18-45.

⁶ The circuit court did not expressly address whether Mr. Washington demonstrated his innocence. The court did, however, find Mr. Hood had not proven his innocence.

forward no contradictory evidence. During his testimony, Mr. Washington described how he had been arrested out of the blue, seemingly only because he had the misfortune of being in the same store as Mr. Hood. (R. U52-53). He was then taken to the police station and handcuffed to a chair while detectives interrogated him, beat him, and repeatedly kicked his chair over, slamming him into the ground. (R. U53-55). After an extended period of time, Mr. Washington signed a written statement containing information fed to him by the police. (R. U59). The statement was false, but he signed it because he could not tolerate the beatings any longer, and the police promised him he could go home if he did. (C. 920; R. U59).⁷ The circuit court had no other evidence tying Mr. Washington to the crime.

Moreover, the detectives who coerced Mr. Washington's confession "have been previously identified as engaging in patterns of similar coercive conduct." (R. U67, C. 930). In fact, Detective Halloran, one of the detectives who interrogated Mr. Washington, when asked at a deposition in a civil case, refused to deny that he abused Washington to obtain his conviction and instead invoked the Fifth Amendment. (C. 1159-60).

The evidence before the circuit court also demonstrated that it was more likely than not that the victim's father committed the murder to collect on a life insurance policy. (C. 870-73, C. 882-84). Since 1977, Morgan, Sr. has been involved in four other murders—all with similar modus operandi to Morgan, Jr.'s

⁷ Mr. Washington, like many others, did not understand concepts such as accountability and felony murder. In his statement, he does not say he had a weapon, nor did he do any shooting.

murder, where he collected or attempted to collect life insurance proceeds or other debts from the victim. (*See Hood Brief* at 8-12). Morgan, Sr. confessed to two of these murders. (C. 1013, 1087-88). When the State sought to speak with him, Morgan, Sr. invoked his Fifth Amendment right not to testify about whether he killed his son.

Most importantly, Mr. Washington testified that he did not commit the murder. This testimony was not impeached or contradicted in any way. “. . . [U]n impeached testimony of a witness *must* be taken as established unless one of the recognized exceptions is present.” *Bucktown Partners v. Johnson*, 119 Ill. App. 3d 346, 352 (1st Dist. 1983) (emphasis added). This is true even for witnesses that are interested parties. *Sweilem v. Illinois Dep’t of Revenue*, 372 Ill. App. 3d 475, 485 (1st Dist. 2007).

“There are indeed circumstances in which a fact finder is bound by testimony. That is, the fact finder may not make an affirmative finding that is the exact opposite of what was stated in the testimony.” *People v. Ortega*, 209 Ill. 2d 354, 367 (2004) (internal citation omitted). “The circumstances under which the trier of fact may disregard uncontradicted and unimpeached testimony are *severely limited*.” *People v. Bavas*, 251 Ill. App. 3d 720, 723 (2d Dist. 1993) (emphasis added). There are four, limited circumstances under which a court may disregard uncontradicted testimony:

1. the testimony is “contradicted, either by positive testimony or by circumstances;”
2. the testimony is “inherently improbable;”
3. the witness was “impeached;” or
4. the testimony “contains so many omissions as to discredit it.”

Bucktown Partners, 119 Ill. App. 3d at 351.

None of these exceptions apply to Mr. Washington's testimony. First, his testimony was not contradicted by positive testimony or any other evidence. The only evidence—which included testimony from Mr. Washington and Mr. Hood, stipulated testimony, and voluminous exhibits—all supported the petitions. Mr. Washington testified that he did not commit the crime, and there was no evidence that contradicted this.

Second, Mr. Washington's testimony was not "inherently improbable." The standard for inherent improbability is high. Indeed, it is error to find testimony "inherently improbable" even if that testimony is "unlikely." *People v. Szymanowski*, 182 Ill. App. 3d 885, 889 (1st Dist. 1989). "A witness' testimony is inherently improbable if it is contrary of the laws of nature or universal human experience, so as to be incredible and beyond the limits of human belief, or if facts stated by the witness demonstrate the falsity of the testimony. . . ." *Bucktown Partners*, 119 Ill. App. 3d at 354. (internal quotations removed). It is not beyond the limits of human belief, nor does it contradict the laws of nature and universal experience, that a suspect would falsely confess at the hands of abusive police or plead guilty despite his innocence when faced with a lifetime in prison.

Third, Mr. Washington's testimony was not "impeached." In fact, he was not even cross-examined, and the State introduced no evidence which would impeach his testimony. As discussed *supra*, the only material which could

impeach Mr. Washington's testimony was not part of the evidentiary record on the Petition proceedings. (See *supra* at 13-15).

Finally, Mr. Washington's testimony contained no omissions, let alone being "rife" with omissions. He needed only to testify that he was innocent of this offense, and he did so.

Crucially, the State has all but conceded that Mr. Washington and Mr. Hood are innocent. Although neither State's Attorney Foxx nor her predecessor have advised this Court that they believe the Petition should be granted, they have done everything in their power to signal to both the circuit court and this Court that it should be granted. An assistant state's attorney would show up before the circuit court and tell the court that they were taking no position, presenting no evidence, and not contesting anything. (See, e.g., R. A2, A3, I6, T2, U87). This was after the State had moved to vacate both Mr. Washington's and Mr. Hood's convictions, and dismissed the case. By the time that happened, Mr. Washington had long since completed his sentence, and Mr. Hood had been awarded clemency by the governor. Neither was still in custody. Still, the State moved to vacate the convictions and dismiss the case, because based on its investigation, it was the right thing to do. The only obvious conclusion to be drawn from all of this is that the State, based on everything available to it, believes these two men to be innocent.

CONCLUSION

For the foregoing reasons, Wayne Washington respectfully requests that this Court reverse the judgment of the circuit court and remand this matter for entry of an order granting him a Certificate of Innocence.

Respectfully Submitted,

/s/ Michael P. Hohenadel

Steven A. Greenberg

Michael P. Hohenadel

Steven A. Greenberg & Associates, Ltd.

53 W. Jackson Blvd., Suite 1260

Chicago IL 60604

(312) 879-9500

*Attorneys for Petitioner-Appellant Wayne
Washington*

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 22 pages.

/s/ Michael P. Hohenadel
Michael P. Hohenadel

Steven A. Greenberg
Michael P. Hohenadel
Steven A. Greenberg & Associates
53 W. Jackson, Suite 1260
Chicago IL 60603
(312) 879-9500

Attorneys for Petitioner-Appellant Wayne Washington

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

PEOPLE OF THE STATE OF ILLINOIS,)

Plaintiff-Respondent,)

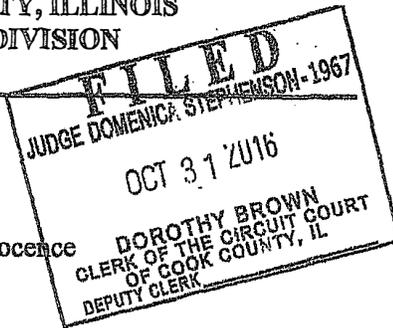
v.)

WAYNE WASHINGTON,)

Defendant-Petitioner.)

) Certificate of Innocence
) 93CR1467601

) Honorable Domenica A. Stephenson
) Judge Presiding



ORDER

Petitioner, Wayne Washington, requests that this Court grant him a Certificate of Innocence pursuant to 725 ILCS 5/2-702 for the judgment of conviction entered against him on October 21, 1996, for first-degree murder, Ill Rev. Stat. 1992, Ch. 38, par. 9-1-A. On February 9, 2015, the court vacated the conviction and dismissed the indictment against petitioner. Petitioner claims that he is actually innocent and has not voluntarily brought about his conviction. After a careful review of the pleadings and supporting documentation this Court finds that petitioner has failed to meet his burden and this petition is DENIED.

BACKGROUND & PROCEDURAL HISTORY

On October 21, 1996, petitioner entered a plea of guilty to first-degree murder. The court sentenced petitioner to serve a term of 25 years' imprisonment in the Illinois Department of Corrections.

On December 5, 2003, petitioner filed a *pro se* petition for habeas relief. On February 27, 2004, the court denied the petition.

On June 13, 2013, petitioner filed an initial *pro se* petition for post-conviction relief. Petitioner claimed actual innocence based on newly discovered evidence. On July 2, 2013, the

circuit court dismissed the petition because petitioner had completed his sentence and lacked standing to bring his claims.

On February 9, 2015, the State moved to vacate petitioner's conviction and sentence, grant petitioner a new trial, and nolle prosequi the charges against petitioner pursuant to 735 ILCS 5/2-1401. The court granted the motion.

On February 18, 2015, petitioner filed a petition for a certificate of innocence pursuant to 735 ILCS 5/2-702. On May 28, 2015, the court denied the petition. On June 24, 2015, petitioner's co-defendant, Tyrone Hood, filed a motion to reconsider. On September 9, 2015, the court vacated its prior ruling in petitioner's case based on the argument set forth in Hood's motion to reconsider. On June 20, 2016, the court heard testimony and took the matter under advisement.

ANALYSIS

Section 2-702 of the Illinois Code of Civil Procedure provides that "[a]ny person convicted and subsequently imprisoned for one or more felonies by the State of Illinois which he or she did not commit may, under the conditions hereinafter provided, file a petition for certificate of innocence in the circuit court of the county in which the person was convicted." 735 ILCS 5/2-702(b) (LEXIS 2015). Pursuant to Subsection 5/2-702(g) petitioner must prove by a preponderance of the evidence that:

- (1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
- (2)(A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; ***;
- (3) the petitioner is innocent of the offenses charged in the indictment or information ***; and
- (4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction."

“If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated.” 735 ILCS 5/2-702(h). In determining whether a defendant shows by a preponderance of evidence that he is innocent of the murders, the court must consider the materials attached to the defendant’s petition in support of his innocence claim in relation to the evidence presented against him at trial. *People v. Fields*, 2011 IL App (1st) 100169, ¶ 19. The court’s decision shall generally not be disturbed absent abuse of discretion. *People v. Pollock*, 2014 IL App (3d) 120773, ¶ 27; *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11.

Based on the pleadings, supporting evidence, and a review of the common law record, this Court finds that petitioner has met the first and second prongs of Subsection 5/2-702(g). Petitioner was convicted for murder, sentenced to serve a term of imprisonment, and served his entire sentence. That conviction was subsequently vacated and the indictment in his case was dismissed. The State has taken no position on the third or fourth prong.¹

At the outset, it is clear that petitioner has failed to satisfy the fourth prong because, by his own conduct, he voluntarily brought about his own conviction by giving a statement to police and pleading guilty. Petitioner argues that, based on the statute’s construction, his plea is not a procedural bar to relief. Petitioner contends that the legislature could have simply barred anyone who pled guilty from seeking a Certificate of Innocence, but they did not do so. Accordingly, petitioner believes that his plea does not, in itself, constitute a procedural bar. This argument is unavailing. Petitioner has not presented any legal authority to support his reasoning. Furthermore, it is clear from the plain text of the statute that if a defendant voluntarily takes steps that caused or brought about his conviction, he is barred from receiving a Certificate of

¹ The State’s abstention is not tacit support for the petition. At best, the State’s decision eliminates a potential hurdle petitioner may face, but it is not a sufficient cause, in itself, to grant the petition.

Innocence. *See Fields*, 2011 IL App. (2d) 120561, ¶ 17 (“the best indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning”). The statute was not written to be limited to only defendants that have pled guilty. Rather, it is constructed to also address situations where defendants have taken substantial steps toward their arrest and subsequent prosecution, but did not plead guilty. *See People v. Dumas*, 2013 IL App (2d) 120561, ¶ 19 (defendant ineligible under the fourth prong where he took steps toward orchestrating a drug deal).

Petitioner also contends that, even if his plea would normally bar him from obtaining a Certificate of Innocence, it should be discounted because he was coerced by police and afraid of a longer sentence. Petitioner testified before this court on June 20, 2016. Petitioner stated that he was arrested by police in connection with the murder. Police subsequently handcuffed him in an interrogation room and questioned him about the murder. Petitioner alleged that, when he denied knowledge of the murder, police struck him repeatedly and knocked him to the ground. Petitioner further alleged that police told him he could leave if he gave a statement, which led to his inculpatory statement. Petitioner stated that he pled guilty after he learned of his co-defendant’s conviction and the length of his sentence. Petitioner asserted that he feared receiving a comparable sentence. Finally, petitioner denied all knowledge or involvement in the murder.

On June 20, 2016, Washington testified before this court. Washington stated that he was arrested by police in connection with the murder. He testified that police handcuffed him in an interrogation room and questioned him about the murder. When he denied knowledge, police allegedly struck him and knocked him to the ground repeatedly. He claimed that he was told he could leave if he gave a statement, which he did. Washington now denies all knowledge or

involvement in the murder. Washington stated that he pled guilty because he learned that petitioner was convicted and sentenced and feared receiving a comparably long sentence.

This argument is also unavailing. First, petitioner's allegations are vague and non-specific. Petitioner does not identify the officer or officers who allegedly coerced his statement and only makes generalized statements that he was knocked to the ground. Petitioner has also failed to substantiate this claim with any evidence. Petitioner has not attached affidavits or other documents to support the allegation that he was abused or that the unnamed detectives responsible are implicated in similar cases of abuse. Finally, fear of a harsher sentence does not invalidate an otherwise voluntary plea. *People v. Mason*, 29 Ill. App. 3d 121, 126 (5th Dist. 1975); *See also People v. Wilbourn*, 48 Ill. 2d 187 (1971) (fear of death penalty insufficient to invalidate a plea). Accordingly, this Court finds no basis to discount petitioner's plea as a voluntary act which helped to bring about his conviction.

Washington's credibility cannot go without mention based upon the differing versions that he gave under oath at various hearings. Most significant, on August 24, 1995, he testified under oath in front of Judge Bolan that he was slapped once in the face and the chair that he was sitting in was pushed. He never testified that the police provided the information to put in his statement. He testified at his jury trial on August 14, 1996, again under oath, that he made up the information in his handwritten statement on his own. In contrast, at the hearing on June 20, 2016, he testified that the information in his written statement was essentially force fed to him. He testified that the police told him basically everything everybody else said and that if he said the exact same thing that he could go home. As such, this court finds that petitioner lacks credibility.

CONCLUSION

Based on the foregoing analysis and after a careful review of the pleadings, this Court finds that petitioner has not met his burden pursuant to 735 ILCS 5/2-702 because he is unable to demonstrate that he did not knowingly bring about his conviction through his own voluntary conduct. Therefore, petitioner's request for a Certificate of Innocence is hereby DENIED.

ENTERED: *Domenica A. Stephenson* 1967
Honorable Domenica A. Stephenson
Circuit Court of Cook County
Criminal Division

DATED: 10-31-16

ENTERED
JUDGE DOMENICA STEPHENSON-1967
OCT 31 2016
DOMENICA BRUWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

NOTICE OF
NOTICE OF APPEAL

To: Honorable Lisa Madigan
Attorney General of Illinois
Springfield, Illinois 62706

Honorable Anita Alvarez
State's Attorney of Cook County
Daley Center, Room 573

Honorable Steven M. Ravid
Clerk of the Appellate Court
160 N. LaSalle, 14th Floor
Chicago, Illinois 60601

In Death Penalty Matters:
Honorable Juleann Hornyak
Clerk of the Supreme Court
Supreme Court Building
200 East Capitol
Springfield, IL 62701

People of the State of Illinois
v.
WASHINGTON, WAYNE

Case Number: 93 CR 14676 01

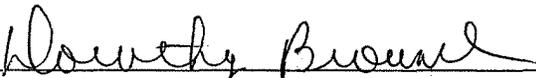
YOU ARE HEREWITH NOTIFIED that pursuant to Rule 606E of the Illinois Supreme Court, effective January 1, 1967, a Notice of Appeal was filed with the Clerk of the Circuit Court of Cook County, County Department, Criminal Division on: A copy of which is hereto attached.

Submitted by:

State of Illinois

Cook County

} ss:



DOROTHY BROWN

Clerk of the Circuit Court of Cook County, Illinois
County Department, Criminal Division

I, Dorothy Brown, Clerk of the Circuit Court of Cook County, County Department, Criminal Division certify that the foregoing Notice and Copy of the Notice of Appeal attached thereto was served upon each of the above named persons by personal service and/or by depositing same in the United States Mail Depository in a sealed envelope, first class postage prepaid addressed to the named persons on

Date: 11-4 , 2016

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

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

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff-Appellee,)
)
vs.)
)
WAYNE WASHINGTON,)
)
Defendant-Appellant)

Appeal from the Cook County
Circuit Court

NO.: ⁹³ CR 14676

Honorable Judge Stephenson,
Presiding

NOTICE OF APPEAL

Wayne Washington, the Defendant-Appellant in the above-captioned matter and numbered cause, gives Notice that an appeal is taken from the order of judgment described below:

1. Court to which appeal is taken: First District Appeals Court
2. Notice for Appellant: State Appellate Defender's Office
Steven Greenberg
203 N. LaSalle
24th floor
Chicago, Illinois 60601
53 W Jackson
#1260 chgo. IL 60604
3. Notice for Appellee: Cook County State's Attorney's Office.
Attn: Criminal Appeals Division
69 W. Washington Blvd
Chicago, Illinois 60601
4. Date of Ruling: October ~~25~~ ³¹, 2016. ✓
5. Denial of Washington's Certificate of Innocence

FILED
OCT 31 2016
DO ROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
STEPHENSON-1967

Respectfully Submitted,

Attorney for Washington

Law Office of Steven H. Fine
Law Office of Steven Greenberg
53 W. Jackson Blvd.,
Suite 1260
Chicago, IL 60604
312-922-0855
#39450

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

WAYNE WASHINGTON,

Petitioner-Defendant

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent-Plaintiff

FILED

2015 FEB 18 PM 12:23

DOUGLAS BROWN
CLERK OF CIRCUIT COURT
OF COOK COUNTY, ILL.

Hon. Judge Walsh

PETITION FOR A CERTIFICATE OF INNOCENCE

The Defendant petitions the Court for a Certificate of Innocence pursuant to 735 ILCS 5/2-702. In support of this verified petition, the Defendant/Petitioner states that he/she will establish by a preponderance of the evidence that:

1. I was convicted of murder in the above captioned case, by the State of Illinois in the County of Cook, was subsequently sentenced to a term of imprisonment, and have served all of the sentence; and
2. My judgment of conviction was vacated, and the indictment dismissed;
3. I am filing the Petition within two (2) years of the dismissal of the indictment;
4. I did not, by my own conduct, voluntarily cause or bring about my conviction;
5. I have attached to this verified Petition documentation demonstrating the statements in paragraph 1-5, above;
6. I understand that the decision to grant or deny a Petition for a Certificate of Innocence shall be binding only with respect to claims filed in the Court of Claims and shall not have res judicata effect on any other proceedings. 735 ILCS 5/2-702(j);
7. I will serve a copy of this Petition on the Attorney General and the State's Attorney of the county where the conviction was had. 735 ILCS 5/2-702(e).

WHEREFORE, the Defendant/Petitioner prays that the Court find the Defendant/Petitioner is innocent of all offenses for which he/she was incarcerated in the above-stated case number(s) and grant a Certificate of Innocence.



(Signature of Defendant/Petitioner)

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

February 13, 2015



(Signature of Defendant/Petitioner)

STEVEN A. GREENBERG
53 W. JACKSON BLVD., SUITE 1260
CHICAGO, ILLINOIS 60604
(312) 879-9500
ATTORNEY NO.: 15703



OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS

KIMBERLY M. FOXX
STATE'S ATTORNEY

CRIMINAL APPEALS DIVISION
RICHARD J. DALEY CENTER, 3rd Fl.
CHICAGO, ILLINOIS 60602
Phone: (312) 603-5496

July 6, 2017

Mr. Thomas Palella
Acting Clerk of the Court
Illinois Appellate Court, First District
160 N. LaSalle
Chicago, Illinois 60602

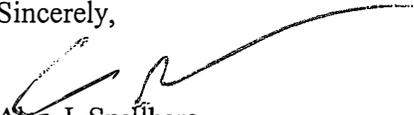
RE: Case Nos. 1-16-2964 – People v. Tyrone Hood
1-16-3024 – People v. Wayne Washington

Dear Mr. Palella:

This letter is to notify you that the Cook County State's Attorney's Office does not represent the Appellee in the above referenced cases. These appeals are from the denial of Mr. Hood's and Mr. Washington's petitions for Certificates of Innocence pursuant to 735 ILCS 5/2-702. However, the Cook County State's Attorney's Office did not intervene in the proceedings in the Circuit Court as permitted by 735 ILCS 5/2-702(e) and is therefore not a party to these appeals.

Thank you for your assistance.

Sincerely,


Alan J. Spellberg
Supervisor, Criminal Appeals Division
Cook County State's Attorney's Office
eserve.CriminalAppeals@cookcountyil.gov

cc: Gail Horn & Karl Leonard
The Exoneration Project
at the University of Chicago
311 N. Aberdeen St., 3rd Floor
Chicago, IL 60607
Counsel for Mr. Hood

Steven A. Greenberg
53 W. Jackson Blvd., Suite 1260
Chicago, IL 60604
Counsel for Mr. Washington.

A011

A.520

taking a position is not the equivalent of agreeing to or not objecting to the Petition. Not taking a position merely means that the State is not making an argument one way or the other. As such, this Court will review the Petition as required under the statute.

A Certificate of Innocence provides an avenue for innocent persons who have been wrongly convicted of crimes in Illinois and subsequently imprisoned to obtain relief through a petition in the Court of Claims. The petition shall request a Certificate of Innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated. 735 ILCS 5/2-702(b)(West 2014). A person is entitled to a certificate of innocence if he can prove by a preponderance of the evidence that:

(1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(2) (A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed, or, if a new trial was ordered *** the petitioner was not retried and the indictment or information dismissed***;

(3) the petitioner is innocent of the offenses charged in the indictment or information***;

(4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction.

735 ILCS 5/2-702(g)(West 2014)

If the court finds that the petitioner is entitled to a judgement, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated.

735 ILCS 5/2-702(h)(West 2014).

In the instant petition the first two prongs of the statute are clearly satisfied and the parties have not contested them. However, in looking at the fourth prong the petitioner did plead guilty, and therefore, the petitioner did arguably “bring about his...conviction.”

I. Petitioner Washington’s Plea of Guilty

As a threshold consideration, this Court will address the fact that the petitioner entered into a guilty plea to the crime of first degree murder and this must carry weight in this innocence proceeding under 735 ILCS 5/2-702(g)(3). Petitioner asserts that he was convicted of murder by the State of Illinois and subsequently sentenced to a term of imprisonment. In actuality, the petitioner pled guilty and was sentenced to a term of imprisonment in an agreed upon disposition. At no time did Petitioner move to vacate his guilty plea nor did he attach any

affidavits to his petition. In addition, petitioner did not present any testimony to this court regarding his plea of guilty or any reasons why his plea was not made knowingly, intelligently, or voluntarily.

Guilty pleas are different from findings or verdicts of guilty after a bench or jury trial due to the fact that in a guilty plea the defendant himself asserts his guilt and he knows whether or not he is actually guilty of the crime charged. As such, this Court cannot say that petitioner did not by his own conduct voluntarily cause or bring about his conviction. Therefore, petitioner Washington has not satisfied the fourth prong under 735 ILCS 5/2-702(g)(West 2012).

II. Petitioner's Burden

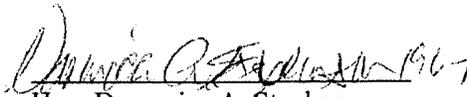
The petitioner has the burden of proof in this proceeding and must affirmatively demonstrate his innocence. A finding of not guilty and a finding of actual innocence are not the same. See *People v. Fields*, 2011 IL App (1st) 10069. As this is a civil proceeding, the burden is proof by a preponderance of the evidence. The standard for "a preponderance of the evidence is evidence that renders a fact more likely than not." *People v. Brown*, 229 Ill.2d 374 (2008) (quoting *People v. Urdiales*, 225 Ill. 2d 354, 430 (2007)). "A proposition proved by a 'preponderance of the evidence' is one that has been found to be more probably true than not true." *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill.2d 100, 191 (2005). Stated differently, this Court must deny relief "where it believes only that it is as likely as not that the [petitioner] qualifies[for a certificate of innocence]." *People v. Wilhoite*, 228 Ill. App. 3d 12, 15 (1st Dist 1991).

The onus is on petitioner to affirmatively demonstrate his innocence, and he must meet his burden by a preponderance of the evidence. Petitioner's primary evidence of innocence was presented in the form a Petition without any basis for his granting his petition, and without supporting documentation or Affidavits. After careful consideration of the petition this Court is led to conclude that petitioner is most likely guilty of this crime. This court cannot conclusively state that the petitioner did not by his own conduct voluntarily cause or bring about his conviction.

CONCLUSION

Based on the foregoing analysis and after a careful review of the pleadings pursuant to 735 ILCS 5/702, this Court finds that petitioner has not met his burden under the statute because he is unable to demonstrate that he did not by his own conduct voluntarily cause or bring about his conviction. Therefore, the petitioner's request for a Certificate of Innocence is hereby DENIED.

ENTERED:



Hon. Domenica A. Stephenson
Circuit Court of Cook County
Criminal Division

DATED: May 28, 2015

735 ILCS 5/2-702

Statutes current through P.A. 100-554, except for portions of P.A. 100-201, 100-317, 100-363, 100-437, 100-471, 100-537, 100-540, and 100-542 of the 2017 Regular Legislative Session

Illinois Compiled Statutes Annotated > Chapter 735 CIVIL PROCEDURE > Code of Civil Procedure > Article II. Civil Practice > Part 7. Action for Declaratory Judgment

735 ILCS 5/2-702 Petition for a certificate of innocence that the petitioner was innocent of all offenses for which he or she was incarcerated

- (a) The General Assembly finds and declares that innocent persons who have been wrongly convicted of crimes in Illinois and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue to obtain a finding of innocence so that they may obtain relief through a petition in the Court of Claims. The General Assembly further finds misleading the current legal nomenclature which compels an innocent person to seek a pardon for being wrongfully incarcerated. It is the intent of the General Assembly that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this Section, shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.
- (b) Any person convicted and subsequently imprisoned for one or more felonies by the State of Illinois which he or she did not commit may, under the conditions hereinafter provided, file a petition for certificate of innocence in the circuit court of the county in which the person was convicted. The petition shall request a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated.
- (c) In order to present the claim for certificate of innocence of an unjust conviction and imprisonment, the petitioner must attach to his or her petition documentation demonstrating that:
- (1) he or she has been convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and
 - (2) his or her judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either he or she was found not guilty at the new trial or he or she was not retried and the indictment or information dismissed; or the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois; and
 - (3) his or her claim is not time barred by the provisions of subsection (i) of this Section.
- (d) The petition shall state facts in sufficient detail to permit the court to find that the petitioner is likely to succeed at trial in proving that the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State of Illinois, and the petitioner did not

by his or her own conduct voluntarily cause or bring about his or her conviction. The petition shall be verified by the petitioner.

- (e) A copy of the petition shall be served on the Attorney General and the State's Attorney of the county where the conviction was had. The Attorney General and the State's Attorney of the county where the conviction was had shall have the right to intervene as parties.
- (f) In any hearing seeking a certificate of innocence, the court may take judicial notice of prior sworn testimony or evidence admitted in the criminal proceedings related to the convictions which resulted in the alleged wrongful incarceration, if the petitioner was either represented by counsel at such prior proceedings or the right to counsel was knowingly waived.
- (g) In order to obtain a certificate of innocence the petitioner must prove by a preponderance of evidence that:
 - (1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
 - (A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; or (B) the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois;
 - (3) the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State; and
 - (4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction.
- (h) If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated. Upon entry of the certificate of innocence or pardon from the Governor stating that such pardon was issued on the ground of innocence of the crime for which he or she was imprisoned, (1) the clerk of the court shall transmit a copy of the certificate of innocence to the clerk of the Court of Claims, together with the claimant's current address; and (2) the court shall enter an order expunging the record of arrest from the official records of the arresting authority and order that the records of the clerk of the circuit court and Department of State Police be sealed until further order of the court upon good cause shown or as otherwise provided herein, and the name of the defendant obliterated from the official index requested to be kept by the circuit court clerk under Section 16 of the Clerks of Courts Act in connection with the arrest and conviction for the offense but the order shall not affect any index issued by the circuit court clerk before the entry of the order. The court shall enter the expungement order regardless of whether the petitioner has prior criminal convictions.

All records sealed by the Department of State Police may be disseminated by the Department only as required by law or to the arresting authority, the State's Attorney, the court upon a later arrest for the same or similar offense, or for the purpose of sentencing for any subsequent felony. Upon conviction for any subsequent offense, the Department of Corrections shall have access to all sealed records of the Department pertaining to that individual.

Upon entry of the order of expungement, the clerk of the circuit court shall promptly mail a copy of the order to the person whose records were expunged and sealed.

- (i) Any person seeking a certificate of innocence under this Section based on the dismissal of an indictment or information or acquittal that occurred before the effective date of this amendatory Act of the 95th General Assembly [P.A. 95-970] shall file his or her petition within 2 years after the effective date of this amendatory Act of the 95th General Assembly. Any person seeking a certificate of innocence under this Section based on the dismissal of an indictment or information or acquittal that occurred on or after the effective date of this amendatory Act of the 95th General Assembly shall file his or her petition within 2 years after the dismissal.
- (j) The decision to grant or deny a certificate of innocence shall be binding only with respect to claims filed in the Court of Claims and shall not have a res judicata effect on any other proceedings.

No. 1-16-3024

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County
)	
v.	)	No. 93 CR 14676
)	
WAYNE WASHINGTON,	)	The Honorable
	)	Domenica Stephenson,
Petitioner-Appellant.	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court, with opinion.
JUSTICE COGHLAN concurred in the judgment and opinion.
JUSTICE WALKER dissented.

OPINION

¶ 1 Petitioner, Wayne Washington, appeals from the denial of his petition for a certificate of innocence filed pursuant to section 2-702 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-702 (West 2016)). Washington argues that the circuit court abused its discretion in denying his petition for a certificate of innocence because the court improperly imposed a procedural bar when it found that a petitioner, who pled guilty, could not receive a certification of innocence and because the trial court relied on improper evidence. For the following reasons, we affirm the circuit court's judgment.

¶ 2

I. BACKGROUND

¶ 3 Washington and co-defendant Tyrone Hood¹ were convicted of the May 1993 armed robbery and murder of college basketball star Marshall Morgan, Jr. Washington had a jury trial where the jury failed to reach a verdict, resulting in a mistrial. Hood was convicted following a bench trial and was sentenced to 75 years' imprisonment.² After Hood was convicted and sentenced, Washington entered a plea of guilty in exchange for a 25-year sentence.

¶ 4 On December 5, 2003, Washington filed a *pro se* petition for *habeas corpus* relief, which was denied on February 27, 2004. He subsequently filed a *pro se* petition for postconviction relief alleging actual innocence based on newly discovered evidence. On July 2, 2013, the petition was dismissed because Washington had served his sentence and had been released and therefore had no standing to bring the petition.

¶ 5 Hood fought his conviction through a series of appeals and postconviction petitions. After a 2014 investigative article in *The New Yorker*, then Governor Quinn commuted Hood's sentence. The January 12, 2015, commutation order indicated that Governor Quinn was granting "commutation of sentence to time considered served leaving the mandatory supervised release period in effect."

¶ 6 Thereafter, on February 9, 2015, the State, on its own motion, moved to vacate Hood's and Washington's convictions, and grant them a new trial. The State then *nolle prosequi* the charges against both Hood and Washington pursuant to section 2-1401 of the Code. 735 ILCS 5/2-1401 (West 2014).

¹ Hood's (1-16-2964) and Washington's (1-16-3024) cases were originally consolidated in this court upon the parties' request. We have vacated that consolidation and will consider each petitioner's case separately.

² A lengthy discussion of the evidence adduced at Hood's trial can be found in *People v. Hood*, No. 1-97-0342 (July 8, 1999) (unpublished order pursuant to Supreme Court Rule 23).

¶ 7 Subsequently, Washington promptly filed a petition for a certificate of innocence in the circuit court.

¶ 8 A. Washington's Petition

¶ 9 Washington's verified petition for a certificate of innocence was a two-page document to which he appended a prior section 2-1401 petition setting forth claims nearly identical to co-defendant Hood's. See *People v. Hood*, 2021 IL App (1st) 162964. His petition stated that "he/she will establish by a preponderance of the evidence" that he was convicted of murder, he completed his sentence of imprisonment, that his conviction was vacated, and the indictment was dismissed and that he "did not, by my own conduct, voluntarily cause or bring about my conviction."

¶ 10 Pursuant to statute, the Illinois Attorney General was notified of the petition and did not intervene. The State's Attorney's office was also notified of the petition and appeared only for the purpose of advising the circuit court that it would not oppose Washington's petition. The circuit court initially denied the petition without a hearing. Petitioner moved for reconsideration. The circuit court struck its previous order, and at a joint hearing with Hood, allowed petitioners to present evidence in support of their petitions.

¶ 11 B. Washington's Evidence in Support of Petition

¶ 12 Washington adopted Hood's testimony. See *Hood*, 2021 IL App (1st) 162964. He stated that he served 12 years' imprisonment for Marshall Morgan's murder. Washington stated that he knew Hood from the neighborhood but denied being with Hood on the night of the murder. He had nothing to do with Marshall's murder. He was inside a neighborhood convenience store when detectives came into the store, handcuffed Hood and took him to a police car. A short time later, after viewing his identification, detectives asked Washington to come to the station to answer

questions. Hood was still in the backseat of the car. Washington was “wrestled to the car” and handcuffed.

¶ 13 He was taken a police station for a short time and then transported to 51st and Wentworth. Hood was in the car with him. Hood looked like he had been beaten up. Washington was taken to an interrogation room and was handcuffed to the chair. He sat there for several hours. Detective Boudreau came in and asked him about a murder and told him that he and Hood were in a lot of trouble. Washington told Detective Boudreau that he did not know anything about a murder. Washington was “pushed around, slapped around. The chair was knocked over a few times, picked back up, knocked over again.”

¶ 14 Washington ended up giving a statement to the police implicating himself. The police told him that if he said certain things he could go home. Washington told his lawyer about what happened at the police station. His lawyer filed a motion to suppress but it was denied.

¶ 15 Washington testified that he pleaded guilty because he knew that Hood had been sentenced to 75 years’ imprisonment and that if he took the deal, he would be “32 years old when I came home. I still had a chance at a life.”

¶ 16 After a full hearing, the circuit court denied Washington’s petition for a certificate of innocence. Washington timely filed his appeal.

¶ 17 **II. ANALYSIS**

¶ 18 We consider this matter on appellant’s briefs only. The State did not participate in the proceedings in the circuit court and has not participated in either appeal.

¶ 19 Section 2-702(b) of the Code provides that:

“[a]ny person convicted and subsequently imprisoned for one or more felonies by the State of Illinois which he or she did not commit may, under the conditions

hereinafter provided, file a petition for certificate of innocence in the circuit court of the county in which the person was convicted. The petition shall request a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated.” 735 ILCS 5/2-702(b) (West 2016).

¶ 20 In order to obtain a certificate of innocence under section 2-702(g) of the Code, a petitioner must prove by a preponderance of the evidence that:

“(1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(2)(A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; ***;

(3) the petitioner is innocent of the offenses charged in the indictment or information ***; and

(4) the petitioner did not voluntarily cause or bring about his or her conviction.”

735 ILCS 5/2-702(g) (West 2016).; See also *People v. Fields*, 2011 IL App (1st)

100169, ¶ 13.

¶ 21 “If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated.” 735 ILCS 5/2-702(h) (West 2008). A person who secures a certificate of innocence may file a petition in the state’s Court of Claims seeking compensation. *Rodriguez v. Cook County, Illinois*, 664 F. 3d 627, 630 (7th Cir. 2011) (citing 735 ILCS 5/2-702(a) (West 2008)); see also

Betts v. United States, 10 F.3d 1278, 1283 (7th Cir. 1993) (“[a] certificate of innocence serves no purpose other than to permit its bearer to sue the government for damages”).

¶ 22 In determining whether a petitioner has showed by a preponderance of the evidence that he is innocent of the charged offenses, the trial court must consider the materials attached to the petition in relation to the evidence presented at trial. *Fields*, 2011 IL App (1st) 100169, ¶ 19. In a certificate of innocence hearing, the court may take judicial notice of prior sworn testimony or evidence admitted in the criminal proceedings related to the convictions which resulted in the alleged wrongful incarceration, if the petitioner was either represented by counsel at such prior proceedings or the right to counsel was knowingly waived. 735 ILCS 5/2-702(f) (West 2016). Whether or not a petitioner is entitled to a certificate of innocence is generally a question left to the sound discretion of the court. *Rudy v. People*, 2013 IL App 1st 113449, ¶ 11. An abuse of discretion occurs only where the trial court’s decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it.” *People v. Rivera*, 2013 IL 112467, ¶37. However, “[t]he interpretation of a statute is a question of law that is reviewed *de novo*.” *Fields*, 2011 IL App (1st) 100169, ¶ 18.

¶ 23 The circuit court denied Washington’s petition for a certificate of innocence because it found that Washington had failed to satisfy the fourth prong of section 2-702(g) “because, by his own conduct, he voluntarily brought about his own conviction by giving a statement to police and pleading guilty.” The court dismissed Washington’s claims of police coercion because Washington gave differing accounts of what occurred and therefore the court questioned his credibility. Washington now argues that the court improperly imposed a procedural bar which is not included in section 2-702(g) arguing that the circuit court held that a petitioner who pleaded guilty cannot receive a certificate of innocence. In addition, Washington argues that he presented un rebutted and

uncontradicted evidence demonstrating his innocence and the circuit court relied on evidence that was not part of the record.

¶ 24 The fundamental rule of statutory interpretation is to give effect to the intent of the legislature. *People v. Smith*, 236 Ill. 2d 162, 166-67 (2010). The best indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning. *Id.* at 167. If the language in the statute is clear and unambiguous it must be applied as written without resorting to extrinsic aids of construction. *People v. Dabbs*, 239 Ill. 2d 277, 287 (2010). The interpretation of a statute is a question of law that is reviewed *de novo*. *Smith*, 236 Ill. 2d at 167.

¶ 25 The plain and ordinary meaning of 2-702(g)(4) is clear. A defendant who has pled guilty “cause[d] or [brought] about his or her conviction” (735 ILCS 5/2-702(g)(4) (West 2016)) and is not entitled to a certificate of innocence. See also *People v. Allman*, 2013 IL App (1st) 120300-U, ¶ 19 (“Defendant also cannot obtain a certificate of innocence because he pled guilty.”). We see no other way to interpret this provision. We find petitioner’s contention that the circuit court denied the certificate because a plea of guilty is a procedural bar is simply not supported by the record.

¶ 26 The circuit court correctly stated it was Washington’s burden to prove by a preponderance of the evidence that he did not cause or bring about his conviction. His evidence on this score failed because his testimony that his confession was the result of police coercion was not credible and was otherwise uncorroborated. The circuit court was entitled to give whatever weight it deemed appropriate to the testimony at the hearing and to the affidavits, stipulations and other exhibits offered in support of the petition. Critically, the only testimony the circuit court heard on the issue of police coercion came from the petitioner and a finding that he was not credible was within the circuit court’s discretionary authority. Clearly the circuit court was not required to accept Washington’s hearing testimony on its face and his previous contradictory sworn testimony

when he entered his guilty plea cannot be ignored. See *People ex rel. Brown v. Baker*, 88 Ill. 2d 81, 85 (1981) (explaining that uncontradicted testimony may be disregarded when it is “contradicted, either by positive testimony or by circumstances,” is “inherently improbable,” or where a witness has been impeached). The circuit court’s finding that Washington was not credible was the basis for the court’s conclusion that Washington’s handwritten confession and guilty plea voluntarily caused or brought about his conviction. The circuit court did not have to credit Washington’s explanation for why he pleaded guilty or ignore the fact that he never claimed his plea of guilty was anything but voluntary. We cannot find that the circuit court’s judgment is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it.

¶ 27 To be clear, this is not an issue of whether Washington proved by a preponderance of the evidence that he is innocent under the Act. The issue is whether Washington proved by a preponderance of the evidence the fourth statutory requirement for the issuance of a certificate of innocence: petitioner’s conduct did not voluntarily cause or contribute to his conviction.

¶ 28 We have recently found that a petitioner who gave a detailed confession leading to his conviction could not obtain a certificate of innocence even though postconviction expert testimony established the crime could not have been committed in the way petitioner detailed and, as a result, petitioner was found not guilty at a subsequent trial. In *People v. Amor*, 2020 IL App (2d) 190475, the defendant was charged with murder and arson. Defendant made a number of statements confessing to a series of acts that were critical to his conviction. *Id.* ¶ 3. A successive postconviction petition granting a new trial was ordered based on scientific evidence that indicated the fire could not have been started in the way defendant described which “undercut[s] this Court’s confidence in the factual correctness of the guilty verdict.” *Id.* ¶ 6. On retrial, the circuit court found defendant not guilty finding, in part, that defendant “confesses to a scenario that both

defense and state experts agree is scientifically impossible.” *Id.* ¶ 8. We affirmed the dismissal of Amor’s petition for a certificate of innocence based on the trial court finding that “defendant did act in such a manner voluntarily to bring about his or her own conviction.” *Id.* ¶ 14. We held that the element of defendant’s innocence is separate from the element of whether defendant voluntarily brought about his conviction and that “what is abundantly clear is that the only basis upon which the trial court dismissed defendant’s petition was that defendant brought about his conviction by his conduct.” *Id.* ¶¶ 14-15.

¶ 29 Similar to *Amor*, petitioner Washington was denied a certificate of innocence not because petitioner failed to prove his innocence but because his confession and voluntary plea of guilty caused or brought about his conviction. Because Washington failed to meet the fourth prong of section 2-702(g), we find that the trial court did not err in denying his petition for a certificate of innocence. We need not address his remaining claims.

¶ 30 During our consideration of this appeal, petitioner sought leave to file as additional authority *People v. Reed*, 2020 IL 124940. Defendant asserts *Reed* rejects the invited error doctrine used by the circuit court in “suggesting that a guilty plea foreclosed the innocence petition. That view is inconsistent with the tone of the *Reed* decision.” We are not persuaded that *Reed* helps petitioner. In *Reed*, our supreme court held the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 et seq. (West 2016)) does not foreclose a claim of actual innocence where a valid guilty plea was entered. As earlier stated, petitioner sought relief in the circuit court in the form of a certificate of innocence which, if granted, would allow petitioner to seek a monetary award from the State. Petitioner had to prove four elements and the circuit court found the fourth element was not proven by a preponderance of the evidence: “the petitioner did not voluntarily cause or bring about his or her conviction.” This was not a procedural bar imposed by the circuit court due to

petitioner's guilty plea nor did the circuit court invoke the invited error doctrine. Proving he did not voluntarily cause or bring about his conviction was an element of the cause of action and the circuit court found petitioner failed to prove this element by a preponderance of the evidence. We cannot say that the circuit court erred in this finding.

¶ 31

III. CONCLUSION

¶ 32 In light of the foregoing, we affirm the judgment of the trial court denying Washington's petition for a certificate of innocence.

¶ 33 Affirmed.

¶ 34 PRESIDING JUSTICE WALKER, dissenting:

¶ 35 I respectfully dissent.

¶ 36 The majority makes a flagrant misstatement of fact when they say, "Critically, the only testimony [the court] heard on the issue of police coercion came from the petitioner." ¶ 26. Several other witnesses testified about police coercion in this case. Washington's co-defendant, Tyrone Hood testified that police officers trying to induce a false confession beat him and threatened him repeatedly. Jody Rogers swore in an affidavit that he testified falsely against Washington because police threatened to harm him physically and to charge him with murder if he "didn't tell the police what they wanted [him] to say about the murder." He lied to the grand jury because he "was afraid of what the police would do to [him] if [he] told the truth, which was that [he] didn't know anything about the murder." Michael Rogers swore in a notarized statement that after he honestly told police he knew nothing about the murder of Morgan, police then told him they had evidence implicating him and Jody in the murder. Police paid Michael for making the false statements used against Hood and Washington. Richard Brzeczek, former Superintendent of Police for the Chicago Police Department, stated in a report in support of Hood's petition:

¶ 37 “With regard to the statements that were taken from the two brothers, Jody and Michael Rogers, as well as Joe West and Tyrone Hood’s co-defendant, Wayne Washington, each of these inculpatory statements was disavowed as untrue prior to trial. The aforementioned people from whom these statements were obtained, all alleged that the statements were the product of police coercion. Those allegations of coercion are directed at Detectives *** Kenneth Boudreau, John Halloran and/or James O’Brien who have been previously identified as engaging in patterns of similar coercive conduct and two of whom have asserted their Fifth Amendment rights against self-incrimination when questioned under oath, in civil proceedings, about coercing witnesses into giving statements.”

¶ 38 In a civil suit concerning the liability of the City of Chicago and numerous police officers for their conduct in this case, Halloran invoked his Fifth Amendment right against self-incrimination in response to the following questions:

Did you twist Tyrone Hood’s arm during the course of your interrogation of him at Area 1?

*** Did you strike Tyrone Hood during your interrogation of him in May of 1993?

*** Did you point a gun at Tyrone Hood’s head during his interrogation at Area 1?

You fabricated Tyrone Hood’s statement that, if I don’t say anything to explain, I’ll go to jail for a long time ***?

*** Did you strike Jody Rogers during the time that you questioned him in May of 1993 at Area 1?

*** Did you threaten to cause physical harm to Jody Rogers if he did not implicate Tyrone Hood in a murder?

*** Did you tell Jody Rogers that if he didn't implicate Tyrone Hood that Mr. Rogers would be charged with murder?

*** Did you tell Jody Rogers that he could not go home unless he said that he saw Tyrone Hood commit a murder?

*** Did you twist Jody Rogers' arm during this interrogation at Area 1?

*** Did you threaten Michael Rogers with physical abuse if he didn't implicate Tyrone Hood in a murder?

*** Did you threaten Michael Rogers that, if he didn't implicate Tyrone Hood in the murder, then his brother Jody Rogers would go to jail?

*** You struck Michael Rogers during your interrogation of him in May of 1993?

*** Did you tell Joe West that he could not leave until he agreed to either implicate himself of Tyrone Hood?

*** Did you threaten Joe West with physical abuse unless he implicated himself or Tyrone Hood in the murder of *** Morgan?

*** Did you strike *** Washington during his interrogation about the Marshall Morgan murder?

*** Did you threaten Wayne Washington with physical abuse if he did not implicate Tyrone Hood in the murder of Marshall Morgan?

*** Did you strike Wayne Washington with the intent of getting him to give a statement implicating Tyrone Hood in the murder of Marshall Morgan?"

¶ 39 In prior cases, this court has considered the invocation of the Fifth Amendment by police officers closely connected with former Commander Jon Burge. In *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 107, the court found, “although a court may draw a negative inference from a party's refusal to testify, it is not required to do so. Yet given that the State produced no evidence to rebut the evidence of torture and abuse by [Officer] Pienta, we believe Pienta's invocation of his fifth amendment rights is significant and a negative inference should have been drawn.”

¶ 40 Here, too, the circuit court should have drawn a negative inference from Halloran's invocation of the fifth amendment, and that inference strongly corroborates the testimony of Washington and other witnesses to police coercion. The record contains overwhelming evidence that police coercion led to the wrongful conviction of Washington.

¶ 41 The majority holds that the circuit court appropriately found Washington's testimony about police coercion not credible, but the circuit court explicitly based its credibility finding on evidentiary material not presented. The circuit court stated, “Most significant, on August 24, 1995, [Washington] testified under oath in front of Judge Bolan that he was slapped once in the face and the chair that he was sitting in was pushed. He never testified that the police provided the information to put in his statement.” The majority now fails to recognize that no party made the August 1995 hearing transcript a part of the circuit court's record, and the transcript is not included in the record on appeal.

¶ 42 Washington argues the circuit court's investigation into matters not presented by the parties, and its reliance on that material without allowing Washington any opportunity to respond, requires reversal of the judgment and remand for a new hearing on the petition for a certificate of innocence. The majority does not respond to the argument despite its reliance on the circuit court's credibility determination. Washington deserves an answer as to why the circuit court may find

him not credible based on evidence no party presented, where the circuit court does not even permit Washington to respond to the evidence the circuit court found. The holding of *People v. Simon*, 2017 IL App (1st) 152173, ¶ 26, applies directly to this case. As the *Simon* court found, “petitioner should not be deprived of his right to respond to the evidence used as the basis for finding that he caused his own conviction. The court, on its own, pointed to certain evidence and used it to deny petitioner's request without giving him a meaningful opportunity to object to it. Just as in any other adversarial proceedings, petitioner must have an opportunity to object to the admissibility and the probative value of the evidence used to deny his claim.” *Simon*, 2017 IL App (1st) 152173, ¶ 26. The circuit court must afford the petitioner an opportunity to object, especially when the circuit court engages in its own investigation.

¶ 43 We review the circuit court’s findings of fact to determine whether they are against the manifest weight of the evidence. *Bauske v. City of Des Plaines*, 13 Ill. 2d 169 (1957); *People v. Pollock*, 2014 IL App (3d) 120773, ¶ 27. The purported statement from August 1995, and the other trivial inconsistencies the circuit court mentions, do not justify the circuit court’s complete rejection of all the evidence of coercion. The circuit court’s findings here completely ignore the manifest weight of the evidence. Washington proved by a preponderance of the evidence from multiple witnesses, including Halloran, that police used physical coercion and threats to obtain the wrongful conviction of Washington.

¶ 44 The majority asserts: “A defendant who has pled guilty ‘cause[d] or [brought] about his or her conviction’ (735 ILCS 5/2-702(g)(4) (West 2016)) [and] is not entitled to a certificate of innocence. [Citation.] We see no other way to interpret this provision.” ¶ 25. The legislative history of the statute makes no mention of subsection (g)(4). The primary sponsor of the legislation, Representative Fowler, intended the act to provide relief for “people who were unjustly

imprisoned” by helping with “job training and education and the amount of monies that they should receive because of their false incarceration.” 95th Ill. Gen. Assem., House Proceedings May 16, 2007, at 13.

¶ 45 Section 2-702(g)(4) is similar to the related federal statute and a number of state statutes. 28 U.S.C.A. § 2513 (West); see Justin Brooks and Alexander Simpson, *Find the Cost of Freedom: The State of Wrongful Conviction Compensation Statutes Across the Country and the Strange Legal Odyssey of Timothy Atkins*, 49 San Diego L. Rev. 627, 649 (2012). A federal judge summarized his extensive research into the federal statute in *United States v. Keegan*, 71 F. Supp. 623, 636 (S.D.N.Y.1947). For the provision barring relief for persons who brought about their convictions, the judge stated: “This carries out simply the equitable maxim that no one shall profit by his own wrong or come into court with unclean hands. It follows the provisions generally found in the European statutes, although these provide, for example in the German act, that gross negligence must exist to bar the right ***.

¶ 46 Examples of the misconduct referred to, as stated in some of the statutes, are: [w]here there has been an attempt to flee, a false confession, the removal of evidence, or an attempt to induce a witness or an expert to give false testimony or opinion, or an analogous attempt to suppress such testimony or opinion." (Internal quotation marks omitted.) *Keegan*, 71 F. Supp. At 633, 638.

¶ 47 Following *Keegan*, the United States Court of Appeals for the Seventh Circuit held: “before the petitioner can be said to have caused or brought about his prosecution within the meaning of section 2513(a)(2), he must have acted or failed to act in such a way as to mislead the authorities into thinking he had committed an offense. *** [T]here must be either an affirmative act or an omission by the petitioner that misleads the authorities as to his culpability.” *Betts v. United States*, 10 F.3d 1278, 1285 (7th Cir. 1993). A commentator contended that courts should not construe the

act to bar relief to victims who give coerced confessions or enter guilty pleas where the victim does not mislead authorities. Adele Bernhard, *When Justice Fails: Indemnification for Unjust Conviction*, The University of Chicago Law School Roundtable: Vol. 6: Iss. 1, Article 7 (1999).

¶ 48 I would follow the guidance of the federal cases interpreting similar statutes. Section 702(g)(4) bars recovery “only if the accused can be blamed for his conduct -- if he has through his own reprehensible behavior invited the attentions of the police or made necessary his detention.” Note, *Compensation of Persons Wrongfully Accused or Convicted in Norway*, 109 U. Pa. L. Rev. 833, 837–38 (1961). A false confession or a guilty plea should foreclose relief only when the person falsely accused culpably misled police or other officials.

¶ 49 Here, when police questioned Washington, he answered them honestly. He knew nothing about the murder of Morgan. Police beat him and threatened him, just as they beat and threatened their other victims, including Jody and Michael Rogers, West, and Hood, to obtain the wrongful convictions of Hood and Washington. Eventually Washington signed a statement an officer wrote (no one contends that police allowed Washington to draft the written statement himself). Washington signed because police threatened him, beat him, and promised he could go home if he signed the statement. When the case came to trial Washington pled not guilty. A full trial ended with a hung jury. The State subsequently obtained a wrongful conviction against Hood, based largely on the testimony of witnesses the State promised to use against Washington. Unlike Hood, Washington would also need to explain to a jury the false confession he signed. The trial court sentenced Hood to 75 years in prison. As our supreme court noted in *People v. Reed*, 2020 IL 124940, ¶ 33, “The plea system encourages defendants to engage in a cost-benefit assessment where, after evaluating the State’s evidence of guilt compared to the evidence available for his defense, a defendant may choose to plead guilty in hopes of a more lenient punishment than that

imposed upon a defendant who disputes the overwhelming evidence of guilt at trial. [Citation.] As such, it is well accepted that the decision to plead guilty may be based on factors that have nothing to do with defendant's guilt.” The Assistant State’s Attorney had no illusions as to whether Washington claimed innocence when the Assistant State’s Attorney offered to recommend a sentence of 25 years in exchange for a guilty plea. Because the record shows that Washington committed no culpable conduct and never misled police nor the Assistant State’s Attorney, he has shown by a preponderance of the evidence that he did not cause or bring about his arrest or conviction.

¶ 50 Washington deserves the State’s assistance in his recovery from the consequences of the offenses police committed against him. The majority’s denial of that assistance continues the difficulty associated with the too many wrongful accusations against black and brown people. Wrongful convictions and accusations like these can devastate families, foreclose career opportunities, and undermine the integrity of our justice system.

¶ 51 Because Washington met all the requirements for a certificate of innocence, I would reverse the circuit court’s judgment and remand with directions to grant Washington’s petition. Accordingly, I respectfully dissent.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County
)	
v.	)	No. 93 CR 14676
)	
WAYNE WASHINGTON,	)	The Honorable
	)	Domenica Stephenson,
Petitioner-Appellant.	)	Judge, presiding.

ORDER

This cause coming on to be heard on petitioner-appellant's petition for rehearing;

IT IS HEREBY ORDERED that the petition for rehearing is denied.

Daniel J. Pierce
PRESIDING JUSTICE

Mary Coghlan
JUSTICE

JUSTICE WALKER would grant the petition.

Carl A. Walker
JUSTICE

ORDER ENTERED

NOV 12 2021

APPELLATE COURT FIRST DISTRICT

Case No. 127952

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) On Appeal
	) from the Appellate Court of Illinois,
	) First Judicial District, No. 1-16-3024
Respondent-Appellee,)
	) There heard on Appeal from the
v.	) Circuit Court of Cook County,
	) Illinois, No. 93 CR 14676
WAYNE WASHINGTON,)
	) The Honorable Domenica Stephenson,
Petitioner-Appellant.	) Judge, presiding.

CERTIFICATE OF SERVICE

I, David M. Shapiro, an attorney, certify that on June 8, 2022, the foregoing APPENDIX VOLUME was filed by electronic means with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701. I further certify that the same were served by electronic transmission on:

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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.

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