No. 124818

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Illinois Appellate Court,
	)	First District
v.	)	No. 1-17-1773
	)	
KEVIN JACKSON,	)	There Heard on Appeal from the
	)	Circuit Court of Cook County
Defendant-Appellant.	)	No. 01-CR-17492
	)	
	)	Honorable Evelyn B. Clay (Ret.),
	)	Presiding
	)	

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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II. NATURE OF THE CASE

Defendant-Appellant Kevin Jackson brought this action originally in the Circuit Court of Cook County, Criminal Division, seeking leave to file a second petition for relief under the Illinois Post-Conviction Hearing Act. He seeks leave to file a successive petition on the basis of both actual innocence and cause and prejudice claims. The circuit court denied Mr. Jackson's motion for leave (the "Motion"), which Mr. Jackson then appealed to the Illinois Appellate Court, First District. Initially, the appellate court affirmed the circuit court's ruling by unanimous opinion, but upon denial of a petition for rehearing, the presiding judge, Justice Mary L. Mikva, filed a dissent from her own majority opinion. Mr. Jackson now seeks review in this Court of the denial of his Motion.

No issue is raised concerning the charging instrument; however, an issue is raised concerning the sufficiency of Defendant-Appellant's Motion.

III. ISSUES PRESENTED FOR REVIEW

Whether the Illinois Appellate Court, First District committed reversible error when it affirmed the denial of leave on the following bases:

(1) That the evidence proffered of prior misconduct by the detectives responsible for the investigation that led to his arrest and incarceration of the Defendant-Appellant (the "Investigation"), which included admissions in federal litigation to obtaining false witness statements through lengthy detentions during which food, water, and bathroom breaks were withheld, is too dissimilar from the misconduct Defendant-Appellant alleges occurred during the Investigation to be probative of his claims, when those allegations include obtaining false witness statements through lengthy,

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high-pressure interrogations during which witnesses were threatened with criminal charges, labor and childbirth in jail, and loss of custody of their children;

(2) That an exculpatory affidavit that was both material and conclusive was nevertheless insufficient grounds upon which to grant leave solely because it could have been discovered previously, despite the injustice that excluding it ensures and even though on two separate previous occasions Appellant-Defendant was prevented from presenting the affiant's testimony in court proceedings, through no fault of his own;

(3) That a claim of actual innocence must be "freestanding," which it is not if evidence submitted with the Motion supports both claims of actual innocence and of cause and prejudice.

IV. JURISDICTIONAL STATEMENT

This matter comes before this Court upon the granting of Defendant-Appellant's petition for leave to appeal pursuant to Illinois Supreme Court Rule 315. (Pet. for Leave to Appeal, May 2, 2019; App. A611-629.[1]) The Court, therefore, has jurisdiction over this matter by virtue of Article VI, Section 4(c) of the Illinois Constitution.

[1] (R.) and (Suppl. R.) refer to the common law record and the supplemental common law record of this appeal. (RP.) refers to the report of proceedings of this appeal. (App.) refers to the appendix of this brief.

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V. STATEMENT OF FACTS

A. Overview

Following a 2001 shooting in Chicago that left one person dead and another injured, the Chicago Police Department ("CPD") assigned the Investigation of these crimes to two detectives, Brian Forberg and John Foster. (Suppl. R. C12-13, App. A11.) Five others, Robert Bartik and Kevin Howley (both polygraph operators), and Edwin Kaup Jr., David Kowalski, and John Clisham, also participated substantially in the investigation. (Suppl. R. C13, App. A12.) Each of these officers has a record of highly questionable performance throughout their respective careers. (Suppl. R. C13-19, App. A12-A18.) Altogether, these seven detectives have been involved in at least five wrongful convictions or investigations in which the wrong person was charged and held in custody for lengthy terms—up to three years in one instance—before being rightfully exonerated. (Suppl. R. C13-19, App. A12-A18). These officers have been named in at least 150 complaint registers ("CRs") filed with the agencies tasked with oversight of CPD.[2] (Suppl. R. C13, App. A12.) Further, these seven officers have been defendants in civil suits alleging misconduct similar to that which occurred during this Investigation that have cost the City of Chicago at least $5 million dollars in judgments and settlements. (Appellant's Br. 15, App. A274.)

Much of the controversy surrounding these officers relates to their consistent employment of high-pressure interrogation tactics. Their history of oppressively coercive interrogations was unknown—and largely unknowable—to Mr. Jackson at the time of his

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[2] Over the course of their careers, these included the Chicago Police Department Office of Professional Standards ("OPS"), and the Independent Police Review Authority ("IPRA"). The recently established Civilian Office of Police Accountability ("COPA") did not exist at the time Mr. Jackson filed his Motion.

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trial. (Suppl. C46-48, App. A45-A47.) For example, in one long-running civil case, Detective Brian Forberg admitted to obtaining witness statements—that prosecutors later determined were false—by holding witnesses in interrogation rooms for long periods of time; in one instance so long without a bathroom break that the witness resorted to urinating in a corner of her holding cell. (Suppl. R. C16, App. A15); *Bridewell v. City of Chicago*, No. 08-C-4947, 2012 WL 2458548, at *1 (N.D. Ill. June 27, 2012), *aff'd sub nom.*, *Bridewell v. Eberle*, 730 F.3d 672 (7th Cir. 2013).

At Mr. Jackson's trial, each and every eyewitness who testified complained of coercive interrogations—not unlike those complained of by the witnesses in *Bridewell*—that ultimately caused them to relent and sign entirely false statements. (Suppl. R. C34-38; App. A33-A37.) As the court below noted, there was no evidence tying Mr. Jackson to the shooting other than these false, coerced statements. (Op. ¶¶ 9-10, 83, App. A570, 593-594.) In fact, the universal, unequivocal recantation of every prior coerced inculpatory witness statement was the most consistent element of any of the evidence presented at Mr. Jackson's trial—and each and every recantation supports his claim of innocence. (Generally Op. ¶¶ 6-50, App. A519, 59-582.)

Remarkably, the witnesses' recantations of Mr. Jackson's purported involvement were clearly corroborated by the testimony of surviving victim Michael Watson who asserted unequivocally that Mr. Jackson "look[ed] nothing like the guy" who shot him. (App. A861-862; Op ¶ 31, App. A576-577.) However, without independent, direct corroboration of the eyewitness' allegations of coercion, the jury was presented with a "he said/she said" quandary, pitting the eyewitnesses against the coercive officers. The prosecution exploited this apparent credibility gap by arguing in closing that the "truth is

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not the first thing that comes to their [referring to its own eyewitnesses'] lips." (App. A921.) The jury received no evidence on the tactics regularly used by these officers in other cases—information that would have undermined the prosecution's argument, and would have provided critical and corroborating context for the eyewitnesses' claims of coercion in this case. Without the benefit of such information and only after contentious deliberation, including an inquiry as to the law of hung juries and sequestration for a night, did the jury apparently credit the denials by police over the testimony of coercion by the eyewitnesses. (Op ¶¶ 47-48, App. A581-582.)

The details of the Investigation, and of the evidence submitted with Mr. Jackson's Motion are discussed in greater detail below.

B. Police Investigation

1. The Shooting

Michael Watson and Ernest Jenkins were shot at approximately 1:30 a.m. on May 6, 2001, while stopped for gasoline at a CITGO convenience station at the corner of 55th Street and Damen Avenue in Chicago's Back of the Yards neighborhood. (Suppl. R. C12, App. A11.) Michael Watson survived, but Ernest Jenkins died later that morning. (Suppl. R. C12, App. A11.) Police later discovered a third victim who was the presumed target of the shooting, Michael Watson's nephew, Stanley "Meechie" Watson, who was not injured in the shooting and who fled the scene before police arrived. (Suppl. R. C12, App. A11.)

2. Inconsistencies Throughout the Investigation

The Investigation began shortly after the shooting occurred and continued until the arrest of Mr. Jackson nearly six weeks later on June 19, 2001. (Suppl. R. C12, 27, App. A11, 26.) The police record of what happened during those six weeks is rife with internal inconsistencies, as recorded in the General Progress Reports (typically referred to as

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"GPRs"), Case Supplemental Reports, and sworn witness statements that comprise the bulk of the police file. (See Suppl. R. C19-33, App. A18-32.) Since departmental directive mandates that the Case Supplemental Reports should have collected and summarized the evidence that was collected and recorded in GPRs throughout the Investigation, the extent of these inconsistencies is striking.[3]

A few of the most glaring, unexplained inconsistencies between the GPRs and the final Case Supplemental Report include:

(1) According to the GPRs, police interviewed Stanley Watson three separate times, but only documented one of those in the final typed Case Supplemental Report, and omitted the most crucial information gathered from Stanley Watson—a physical description of the shooter, which does *not* match the physical characteristics of Mr. Jackson (Suppl. R. C23, C26, C29, App. A22, A25, A28);

(2) According to the GPRs, police interviewed several eyewitnesses the night of the shooting, who are entirely omitted from the final Case Supplemental Report, including "Dr. Widdell" and his girlfriend who was described as "good/stable" in the GPR and who provided a physical description of the shooter that matched the description later given to police by Stanley Watson (Appellant's Br. at 6, App. A265);

---

[3] See CPD Form 23.122 (Rev. 2/19) ("This form is designed for recording handwritten notes and memoranda which are made during the conduct of investigations …."), http://directives.chicagopolice.org/forms/CPD-23.122.pdf; CPD Form 11.380-A (Rev. 8/96) (providing instructions regarding completion of Supplemental Case Report forms), http://directives.chicagopolice.org/forms/CPD-11.380-A.pdf.

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(3) According to the GPRs, during the first interview of Vernon Clay, he named a number of individuals who he claimed were present at the shooting, including Brad, "Nuke," "Bumpy," "Wink" and Norman—who he alleged was the shooter—but none of these individuals are mentioned in the Case Supplemental Report, except for Norman, and there is no suggestion anywhere in the police record that they followed up on any of these possible leads, except again, for Norman, whose photo was included in photo arrays, but who police never located and thus failed to interview (Suppl. R. C21-27, App. A20-26).

As for the sworn witness statements—the same statements that purportedly led police to Mr. Jackson in the first place and that the prosecution relied on heavily at his trial—they are also strikingly inconsistent. A few of the most glaring inconsistencies include:

(a) Widely varying statements regarding the direction in which the shooter fled after the shooting;

(b) Conflicting statements as to whether the shooter fled on foot or by car;

(c) Contradictory statements as to who was at the scene of the shooting, even though the eyewitnesses were all friends or acquaintances who knew one another on sight;

(d) Conflicting statements as to how each witness was supposed to have arrived at the scene (*i.e.*, whether they walked or came by car, and whether they came alone or with others, and who those others were);

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(e) Contradictory and speculative statements as to the motive for the shooting (*i.e.*, some suggest the shooting was premeditated while others suggest it was a snap jealous reaction to lewd comments made to Mr. Jackson's supposed girlfriend).

(Suppl. R. C30-33, App. A29-32.) Such fundamental inconsistencies cast doubt on the integrity of the police work and the corresponding accuracy of the Investigation's ultimate conclusions.

Moreover, even taken at face value, the Investigation produced scant evidence that Mr. Jackson had anything to do with the shooting. (Op. ¶ 9, 10, 83, App. A570, 593-594.) Specifically, the police record indicates that: (1) police initially suspected Mr. Jackson—or one of his cousins—of the shooting on the basis of nothing more than the recollection of one victim who claimed to have seen the shooter in a car matching the description of the Jackson cousins' car a month before the shooting parked outside a neighborhood liquor store; (2) Mr. Jackson and his cousins remained the only suspects even after both surviving victims viewed photo arrays or lineups and told police that none of them were the shooter; and, (3) police only obtained statements incriminating Mr. Jackson after lengthy, repeated interrogations of eyewitnesses who each said Mr. Jackson was *not* the shooter and, in fact, was not even there. (See Suppl. R. C19-31, App. A18-A30.)

C. The Trial and Allegations of Police Misconduct

At trial, the State presented no physical or forensic evidence linking Mr. Jackson to the crime, or even to the crime scene. (Op. ¶¶ 9-10, 83, App. A570, 593-594; Suppl. R. C9-10, App. 8-9.) Nor did any eyewitness or victim identify him as the shooter. (Op. ¶¶ 9-10, 83, App. A570, 593-594; Suppl. R. C9-10, App. 8-9.) Rather, the prosecution's case consisted almost entirely of eyewitnesses who recanted his or her prior sworn statement to

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police and admitted they signed the statements only to escape the officers' coercive tactics. (Op. ¶ 83, App. A593-594; Suppl. R. C 9-10, App. 8-9.) In each instance, the prosecutors chose to use the eyewitness' prior coerced statement to undermine their in-court truthful testimony, in some instances reading the written statements into the record as a series of purported impeachment questions. (Suppl. R. C54-57, App. A53-A56; see also App. A666-A677, A731-A748, A827-A838.) As the lower court acknowledged, "there was no evidence [linking Mr. Jackson to the crime] other than the recanting witnesses' inconsistent statements." (Op. ¶ 83, App. A593.) As an example of this process, when Brandi Grant testified she was asked:

> Q: [D]id you see Googie [referring to Mr. Jackson by his nickname] at [the CITGO] station on May 6, 2001?
>
> A: No, he was nowhere around.
>
> * * *
>
> Q: In the handwritten statement, Brand[i], you said that you were treated well by the police and by the assistant state's attorney, correct?
>
> A: Yes, because I was scared, but I was really not treated nice by them.

(Suppl. R. C35-36, App. 34-35.)

Later, during cross-examination by Mr. Jackson's counsel, Ms. Grant was given more leeway to explain what happened and she pleaded:

> A: … Detective Foster … made that story up. I'm telling y'all you gotta believe me. They told me to sign that statement. They told me if I didn't do it that I was gonna be doing time for that; me, [Quina Davis]…. We was the only ones there; me, [Manuel Stewart] and [Quina Davis]. Wasn't nobody else there. [Shemika] Mason wasn't there—or the other statements that was signed across them. They kept showing us statements that he said he did it, which he didn't sign that statement. They was trying to make it seem like oh, yeah,

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> well, he say he did it, so you might as well turn him in, he say he did it or you guys gonna be staying here for days and days. You're gonna have your baby in here. I'm like, oh, my God.
>
> Q: So the detectives were telling you that [Mr. Jackson] was involved?
>
> A: Yes, they kept saying it.
>
> Q: And that you were to sign a statement that he was involved or that you would be charged?
>
> A. Charged with it, yes.

(Suppl. R C36, App. A35.)

The testimony of the other eyewitnesses followed a similar appalling pattern. Manuel Stewart admitted his sworn statement consisted of nothing but lies told to police because they had scared him with threats of incarceration himself if he did not name his cousin as the shooter. (Suppl. R. C37-38, App. A36-37.) Mr. Stewart even testified that he knew who the shooter was and named him in open court. (App. A802.) Notably, according to a statement he gave to an investigator with the Cook County Public Defender in 2003, Mr. Stewart gave the same name to police during an interview before he was coerced into naming Mr. Jackson, but the record reflects that police made no effort to follow-up on this alternative suspect. (Suppl. R. C27, App. A26; Suppl. R. C236, App. A235; App. A800-804.) Shemika Mason testified that she had not even witnessed the shooting because she was not there (as Ms. Grant's testimony corroborated), but that she was badgered by police and threatened with an outstanding warrant into signing a statement that police dictated to her—as opposed to a truthful statement containing her own knowledge of the shooting. (Suppl. R. C37, App. A36.) Witness Vernon Clay also disavowed his entire statement. (Suppl. R. C34-35, App. A33-34.)

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Not only did the prosecution use the eyewitnesses' coerced sworn statements to impeach and generally undermine their truthful in-court testimony, but also, paradoxically, they used them to support a concocted theory to explain away both the recantations and their allegations of police coercion. (Op. ¶¶ 43-46, App. A579-581.) In Shemika Mason's and Vernon Clay's repudiated statements, they purportedly said that Mr. Jackson had threatened them if they were to talk to the police. (State's Appellee Br. at 1, App. A319; A909-A910.) But if these witnesses' recantations are credited, these false claims of threats by Mr. Jackson become truly insidious—they suggest that within false statements, police intentionally "baked in" evidence to rebut the anticipated future recantation of the coerced witnesses' statements. Nevertheless, on the basis of these supposed threats, the prosecution claimed that the recantations were nothing but a product of fear of Mr. Jackson. (Op. ¶¶ 43, 46, App. A579-581.)

The State also called one of the surviving victims, Michael Watson, who testified he saw the shooter well enough to be sure that he was *not* Mr. Jackson. (Suppl. R. C38, App. A37; App. A861-862.)

> Q: Was it this guy here [referring to Mr. Jackson] that shot you?
>
> A: I never seen that young man before.
>
> * * *
>
> Q: Was this fellow here (indicating [to Mr. Jackson]) in the lineups that the police showed you?
>
> A: No. If he was, I didn't identify him as the person who shot me 'cause he don't look nothing like the guy … who shot me when I say black, I mean he's a black person, but he was dark, dark black.

(Suppl. R. C38, App. A37; App. A861-862.) As Justice Mikva emphasized in dissent, Michael Watson's testimony is all the more compelling for being "supported by specific

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details about the shooter's appearance," which was elicited in view of and by way of contrast to the appearance of Mr. Jackson. (Op. ¶102, App. A601.)

Contrary to the weight of the evidence presented at trial, at its close, the prosecution praised the Investigation, gratuitously claiming the identification of Mr. Jackson was the result of "good police work." (Suppl. R. C39-41, App. A38-40; App. A919-925.) Further, the prosecution openly questioned the truthfulness of its own witnesses claiming the "truth is not the first thing that comes to their lips." (Suppl. R. C41, App. A40; App. A921.) The prosecution went even further when it juxtaposed the police involved in the Investigation who were described as praise-worthy civil servants doing a difficult but necessary job, with its own eyewitnesses about whom it gratuitously remarked:

> I'm confident that none of you like them. I'm confident that none of you would want them as your friends or your next-door neighbors.

(Suppl. R. C39-40, App. 38-39; App. 877.) Clearly, the prosecution went to great lengths, including personal derogatory remarks about its own witnesses, to explain away the coercive tactics deployed to obtain the recanted statements that the prosecution's otherwise nonexistent case against Mr. Jackson depended upon.

After several hours of heated deliberation, the jury passed a question to the court regarding the law of hung juries; it was charged to continue deliberating. (Suppl. R. C41-42, App. A40-41.) The jury ended up being sequestered for a night before reaching a verdict the following morning and convicting Mr. Jackson. (Op. ¶¶ 47-49, App. A581-582.)

D. Prior Post-Trial Proceedings

Following the verdict, Mr. Jackson unsuccessfully moved for a new trial and for resentencing, filed a direct appeal, and, acting *pro se*, filed a first post-conviction petition,

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all of which were denied. (R. C47, C94, C99, C146, C228.) Mr. Jackson appealed the denial of his post-conviction petition, and the Office of the State Appellate Defender was appointed to represent him. (R. C232.) The Appellate Court, First District affirmed the denial of that petition. (Suppl. R. C42, App. A41; see also *U.S. ex rel. Jackson v. Hardy*, No. 09-C-7774, 2011 WL 1357310, *1 n.1 (N.D. Ill. April 11, 2011).)

Mr. Jackson then filed a federal *habeas corpus* petition, *pro se*, and was again denied relief. (Suppl. R. C42, App. A41; see also *id.*) Next, Mr. Jackson, still acting *pro se*, sought and was denied relief from his conviction under Section 2-1401 of the Illinois Code of Civil Procedure. (R. C274-279.)

E. The Instant Motion Seeking Leave to File a Successive Post-Conviction Petition

In May 2017, Mr. Jackson filed the Motion on the basis of newly discovered evidence corroborating the eyewitnesses' claims of improperly coercive police interrogations, and on exculpatory affidavits from three eyewitnesses, one of whom did not testify before the grand jury or at his trial, and who did not give a sworn statement to police. (Suppl. R. C4-245, App. A3-244.)

The Motion was denied from the bench by Judge Evelyn Clay (Ret.) of the Circuit Court of Cook County, Criminal Division, on June 15, 2017. (R. C521.) Mr. Jackson appealed this ruling and it was upheld by a split decision of the Appellate Court, First District, in which, unusually, both the majority and dissenting opinions were written by Justice Mary L. Mikva. (Op. at 1, App. A567.)

F. Evidence Supporting the Motion Seeking Leave

1. Complaint Registers Involving One or More of the Seven Primary Officers Involved in the Investigation

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A significant part of the new evidence Mr. Jackson submitted with his Motion are records related to 150 known allegations of misconduct involving one, or more, of the seven primary officers involved in the Investigation as reported to CPD or IPRA and documented in a CR—100 of which are attributable to one or both of the two lead detectives, Brian Forberg and John Foster. (Suppl. R. C12-19, 58-75, 151-91, App. A11-18, 57-74, 150-190.) The allegations of misconduct described in Mr. Jackson's Motion range from improper arrest and interrogation procedures, to excessive use of force, to falsification of police records, to verbal abuse of witnesses and suspects, as well as a variety of other serious misconduct. (Suppl. R. C12-19, 58-75, 151-91, App. A11-18, 57-74, 150-190.)

One CR relates to the Investigation itself, and was submitted by the mother of Quina Davis contemporaneous to the Investigation. (Suppl. R. C151-191, App. A150-190.) In it, Ms. Davis' mother detailed her first-hand observations of Detectives Forberg and Foster coercing her daughter—and her allegations corroborate the affidavits of both her daughter, Quina Davis, and of Brandi Grant, both of which were also submitted with the Motion.[4] (Suppl. R. C151-191, App. A150-190.) Specifically, she alleged that the "detectives [we]re constantly harassing her and her daughter … [and] that on several occasions they came to

[4] The CR was filed in August 2001, but the police department did not complete its investigation until February 2003, and the final report was not reviewed and approved until October 2003—after Ms. Davis' mother had died and Mr. Jackson's trial was completed. (Suppl. R. C154-55.) Unsurprisingly, the allegations were "Not Sustained," as has recently been the case for more than 98% of such complaints because of, among other things, "serious investigative flaws" and a "pervasive code of silence" among officers. U.S. DEP'T OF JUSTICE, Investigation of the Chicago Police Department, 7-10 (2017), https://www.justice.gov/opalfile/925846/download.

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her residence and threatened them with arrest … [and] that on 4 Jul[y] 2001 the [detectives] entered and searched her residence without justification." (Suppl. R. C154, App. A153.)

Several other newly discovered CRs document similar misconduct. The following are just two examples. *First*, in 2002, Detectives Kaup and Kowalski (who interrogated Ms. Davis), were among the officers accused of wrongfully arresting and physically assaulting a suspect, denying him an attorney, and coercing him into a video-taped false confession related to the death of his stepdaughter. (Suppl. R. C14, App. A13.) *Second*, in April 2012, Detective Brian Forberg was alleged to have assaulted a *complainant—i.e.*, someone voluntarily seeking his help—who reported he "spat on her, pulled her hair, blew smoke in her face, and grabbed her purse from around her neck while she was being questioned." (Suppl. R. C14-15, App. A13-14.)

2. Civil Lawsuits Involving One or More of the Seven Primary Officers Involved in the Investigation

Mr. Jackson submitted evidence of numerous media reports and a substantial body of judicial decisions acknowledging misconduct within CPD that has led to other wrongful convictions, including explicitly identifying several cases involving one or more of the seven officers primarily responsible for the Investigation. (Suppl. R. C15-19, App. A14-18.) Civil cases examining the conduct of one or more of these officers have resulted in at least $5 million in settlement payments. (Appellant's Br. at 15, App. A274.) A few of the more shocking examples of their misconduct—some of which bear a remarkable resemblance to Mr. Jackson's allegations—warrant the Court's examination here.

First, as the appellate court acknowledged, Detective Brian Forberg was one of two officers who admitted to highly coercive witness interrogations similar to those described by the witnesses at Mr. Jackson's trial and in his Motion in a long-running civil suit in

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federal court. (Suppl. R. C16, App. A15.) Specifically, he stipulated to interrogating a suspect for 63 hours during which, despite his pressure, she maintained her innocence and refused to say she committed the shooting. (Suppl. R. C16, App. A15.)

Detective Forberg further admitted that he held one witness in a windowless room and denied her bathroom breaks for so long that she eventually was forced to urinate in a corner of the interrogation room—thereafter, she relented and made a statement incriminating the police's favored suspect. (Suppl. R. C16, App. A15.) Detective Forberg also admitted to interrogating a second witness for 27 hours until she again gave in and made a statement naming the police's favored suspect. (Suppl. R. C16, App. A15.) Prosecutors later determined the witnesses' statements were entirely false. The court also noted that prosecutors determined the polygraph examination of one witness, "during which she broke and changed her story[] was not so much an objective lie-detector test as it was a 'completely biased' interrogation." *Bridewell*, 2012 WL 2458548, at *1.

Second, lead Detectives Brian Forberg and John Foster were among the officers involved in the investigation that led to the wrongful conviction at issue in *Patterson v. City of Chicago*, No. 1:11-cv-7052 (N.D. Ill.). (Suppl. R. C15-16, App. A14-15; see also Complaint, ECF No. 1.) The plaintiff therein was convicted of a homicide he did not commit and was then incarcerated for more than eight years as a result. (Suppl. R. C15-16, App A14-15.) After establishing his innocence and being exonerated, he brought a civil suit against the police department and the individual officers responsible for his conviction, including Detectives Brian Forberg and John Foster. (Suppl. R. C15-16, App. A14-15.) He alleged these officers procured false witness statements and identifications; coerced a false statement from one witness by interrogating her over three days while

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denying her food, water, or a place to sleep; buried substantial evidence suggesting another person committed the crime; and concealed a laboratory report that would have proven his innocence. (Suppl. R. C15-16, App. A14-15.) The matter eventually settled out of court for $3.4 million dollars. (Suppl. R. C15-16, App A14-15.)

Third, Detective Kevin Howley, who administered the polygraph examination to Manuel Stewart that caused him to ultimately give a statement naming Mr. Jackson as the shooter (Suppl. R. C236-37, App. A235-236), was also the polygraph operator involved in a misconduct lawsuit eventually settled for $1 million dollars. In that case, it was established that Detective Howley had, over the course of a 50-hour interrogation, coerced a young, mentally disabled suspect into falsely confessing that he had killed his mother. (Suppl. R. C16-17, App. A15-16.) The suspect was eventually released when DNA evidence conclusively exonerated him, but not before he spent 17 months in custody. (Suppl. R. C16-17, App. A 15-16.) An expert who evaluated the procedures employed by Detective Howley filed a report with the court concluding that "the primary motivation for conducting this examination was to use a failure on the polygraph as a tool to extract a confession." (Suppl. R. C16-17, App. A15-16.)

Fourth, Detective Robert Bartik, who administered the polygraph examination to Quina Davis, was the polygraph operator whose conduct was at the heart of *McGee v. City of Chicago*, 2012 IL App (1st) 111084, for which Detective Bartik was found personally liable for $110,000 for his role in coercing a false confession, which caused the plaintiff to be incarcerated for three years awaiting trial (the award was later overturned not on substance but due to a juror's outside research). (Suppl. R. C17-18, App. A16-17.) While testifying, Detective Bartik stated he had obtained more than 100 confessions during the

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pre-test interview that precedes a polygraph examination, which the Chicago Tribune reported was considered "extraordinary" by experts given that "the pre-test is not a time to try to get confessions; it's when the examiner explains how the polygraph works, gets consent and reviews the questions." (Suppl. R. C17-18, App. A16-17.)

The preceding are just a few examples of the misconduct the seven officers primarily involved in the Investigation have admitted to or been accused of since Mr. Jackson's trial.

3. Eyewitness Affidavits Alleging Police Misconduct

Mr. Jackson also submitted then-recent affidavits from eyewitnesses Quina Davis, Brandi Grant, and Manuel Stewart, each of whom witnessed the shooting, claims to have been coerced by police, and still maintains that Mr. Jackson was *not* the shooter, and was *not* present when the shooting occurred. (Suppl. R. C220-243, App. A219-242.)

As the lower court noted, the affidavit of Ms. Davis presents particularly compelling evidence because, unlike the other witnesses, she never gave in to the detectives' pressure to sign a statement incriminating Mr. Jackson. As she did not testify before the grand jury or at Mr. Jackson's trial, her affidavit would have added to what was before the jury in a meaningful way. (Op. ¶ 74, App. A590.) Her affidavit is also corroborated by her mother's contemporaneous CR alleging coercive tactics by police (Suppl. R. C 151-191, App. A150-190) and, in turn, corroborates the testimony of Ms. Grant, in that Ms. Davis also claims that officers threatened her with losing custody of her child as an interrogation tactic. (Compare Suppl. R. C36, App. A35 and Suppl. R. C226, App. A225.)

Tragically for Mr. Jackson, as her affidavit and the CR submitted by her mother make clear, Ms. Davis was driven into hiding by the intimidation and harassment of her and her family by the police during the Investigation and the lead up to Mr. Jackson's trial,

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effectively rendering her testimony unavailable to the defense. (Suppl. R. C227, App. A226.)[5]

Ms. Grant's and Mr. Stewart's affidavits are generally consistent with their trial testimony and are remarkable for at least three reasons. First, nearly sixteen years after Mr. Jackson's trial (as of the dates of their affidavits) both continue to proclaim Mr. Jackson's innocence. (Suppl. R. C232, C242, App. A231, A241.) Were their recantations at trial merely the product of fear of Mr. Jackson—as the prosecution claimed—that fear would have subsided over the last two decades, secure in the knowledge that he will remain incarcerated for decades to come. Second, Ms. Grant's affidavit corroborates the allegations of repeated and extended harassment of Ms. Davis contained in both Ms. Davis' affidavit and in the CR her mother filed with CPD contemporaneously with the Investigation. Third, Ms. Grant's physical description of the shooter matches the descriptions given by "Dr. Widdell" on the night of the shooting, by Stanley "Meechie" Watson during one of his interviews by police, and by Michael Watson at trial when he testified that Mr. Jackson was ***not*** the shooter. (Suppl. R. C240, App. A239.) Notably, all these descriptions match that of Rick "Party" McShane, who Mr. Stewart identified as the shooter during an early interview with police at trial. (Suppl. R. C236, App. A235.)

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[5] According to Ms. Davis' affidavit, at some point she was told that her "testimony would not be needed during Kevin's trial," which the majority below inferred to mean that her testimony was available to Mr. Jackson at the time of his trial. (Suppl. R. C 227, App. A226.) However, the record is not clear as to who told her this, and given the exonerating nature of her testimony, it strains credulity to assume the defense would have instructed her so.

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VI. ARGUMENT

A. Introduction

There is no denying that wrongful convictions occur at an alarming rate in Illinois—and in Cook County, in particular. According to the National Registry of Exonerations, since 1989 Illinois has accounted for a disproportionate share of exonerations—more than 12% of all exonerations nationwide; Cook County, with just 1.6% of the nation's population has accounted for a conscience-shocking 9.6% of all exonerations nationwide.[6] It is no wonder Cook County State's Attorney Kim Foxx has described Cook County as the "wrongful conviction capital of the U.S."[7] (Suppl. C R55, App. A54.) Sadly, if not unexpectedly, the overwhelming majority of these involve police misconduct of some form and predominately affect young men of color—like Mr. Jackson.[8]

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[6] NATIONAL REGISTRY OF EXONERATIONS, Browse Cases, http://www.law.umich.edu/special/exoneration/ Pages/browse.aspx (last visited Oct. 29, 2019); U.S. Census Bureau, QuickFacts: Illinois, https://www.census.gov/quickfacts/IL (Illinois population) (last visited Oct. 29, 2019); U.S. Census Bureau, QuickFacts: Cook County Illinois, https://www.census.gov/quickfacts/fact/table/cookcountyillinois,IL/PST045218 (Cook County population) (last visited Oct. 29, 2019); U.S. CENSUS BUREAU, Population and Housing Unit Estimates, https://www.census.gov/programs-surveys/popest.html (US estimated population) (last visited Oct. 29, 2019).

[7] Andy Grimm, *Kim Foxx Planning to Revamp Cook County Wrongful-Conviction Unit, Chicago Sun-Times,* Mar. 15, 2017, https://chicago.suntimes.com/2017/3/15/18333983/kim-foxx-planning-to-revamp-cook-county-wrongful-conviction-unit (last visited October 30, 2019).

[8] Over the past 30 years, 266 of the 302 acknowledged wrongful convictions in Illinois (88%) and 225 of the 239 acknowledged wrongful convictions in Cook County (94%) were of either Black or Hispanic defendants, while the general population of Illinois and Cook County are nearly 77% and 66% white, respectively. NATIONAL REGISTRY OF EXONERATIONS, Browse Cases, http://www.law.umich.edu/special/exoneration/Pages/browse.aspx (last visited Oct. 29, 2019).

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Encouragingly, the large number of recent exonerations suggests that Illinois, and Cook County especially, have begun to grapple with the reality of their wrongful convictions. But Mr. Jackson's case clearly demonstrates that there remain significant and unnecessary hurdles to justice for far too many actually innocent people. Since at least this Court's ruling in *People v. Washington*, 171 Ill. 2d 475, 489 (1996), in which it proclaimed "that no person convicted of a crime should be deprived of life or liberty given compelling evidence of actual innocence," it has been clear that it is unconstitutional, *per se*, under the Illinois constitution to imprison an actually innocent person, yet that is precisely Mr. Jackson's reality—and has been for nearly two decades.

As even the majority below acknowledged, "*no evidence*, other than [] recanting witnesses' inconsistent statements" supports his conviction, (Op. ¶ 83, App. A593-594 (emphasis added)), and the only surviving victim the prosecution called to testify at trial stated unequivocally that Mr. Jackson looked nothing like the man who shot him, (Op. ¶ 9, App. A570). The dissenting opinion went even further, concluding that Mr. Jackson's "case has all the hallmarks of one in which the wrong person was convicted." (Op. ¶ 101, App. A600.) Nevertheless, Mr. Jackson has been denied leave to even file a successive post-conviction petition.

The lower court's decision to deny Mr. Jackson relief despite the foregoing, was premised on three holdings: (1) that prior misconduct of the investigating officers was not "strikingly similar" to the misconduct alleged to have occurred during the Investigation and therefore was not probative of the Motion, (Op. ¶ 85-90, App. A595-598); (2) that the affidavits supporting Mr. Jackson's actual innocence claim were not "newly discovered," (Op. ¶¶ 73-77, App. A589-591); and, (3) that Mr. Jackson's actual innocence claim was

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not "freestanding" and therefore not viable (Op. ¶ 71, App. A588-589). None of these holdings is supported by the facts alleged by Mr. Jackson's Motion. Moreover, each holding is contrary to Illinois law, and individually and collectively provides sufficient grounds for this Court to reverse.

Even to the extent any of these holdings comports with Illinois law, this Court should not permit them to stand in this case. Mr. Jackson's Motion presents compelling reasons to grant him leave to file a second post-conviction petition sounding in both actual innocence and cause and prejudice. The evidence he presents to corroborate the witnesses' allegations of police misconduct challenges the veracity of the *only* evidence supporting his conviction, (Op. ¶ 83, App. A593-594), which supports his claim of actual innocence. Mr. Jackson's evidence also calls into question the propriety of allowing the witnesses' prior inconsistent statements to be introduced at trial in the first instance, which supports his claims of cause and prejudice.

This Court has unwaveringly protected and frequently expanded the procedural and substantive due process rights of the wrongfully convicted since at least *Washington*, when it explicitly and intentionally parted ways with the more restrictive federal jurisprudence established by the fractured decision in *Herrera v. Collins*, 506 U.S. 390 (1993). To deny Mr. Jackson leave to even file a second post-conviction petition in the face of his compelling claims does violence to the bedrock principle embodied in *Washington* that it is unconstitutional *per se* to imprison an innocent person in the State of Illinois. This result should not stand; this Court should reverse the First District's decision for all of the following reasons.

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B. Standard of Review

The standard of review of a denial of a motion for leave to file a successive post-conviction petition is *de novo*. *People v. Bailey*, 2017 IL 121450, ¶ 13.

C. The First District's Decision Creates an Entirely New, Unnecessarily Rigorous, and Unwise Impediment for Post-Conviction Petitioners Whose Claims are Supported by Evidence of Police Misconduct.

Contrary to the holding below, there is no requirement under Illinois law that evidence submitted by Mr. Jackson of prior police misconduct be "strikingly similar" to his allegations of misconduct during the course of the Investigation. (Op. ¶ 90, App.597-598.) Moreover, even if this Court determines that the First District's new "strikingly similar" test was proper or is advisable to adopt, Mr. Jackson's allegations easily satisfy such a heightened standard. Therefore, the decision affirming denial of Mr. Jackson's Motion for failing the "strikingly similar" test is without basis in either the law or in fact and should be reversed.

1. The First District's Analysis Improperly Turned on Whether Mr. Jackson's Allegations of Police Misconduct Are "Strikingly Similar" to the Evidence he Submitted of Other Misconduct by the Same Officers.

In the seminal case of *People v. Patterson* this Court wrote:

> [W]e note that defendant has consistently claimed that he was tortured. In fact, he made this claim during his first court appearance. Moreover, defendant's claims are now and have always been **strikingly similar** to other claims involving the use of a typewriter cover to simulate suffocation. Additionally, defendant describes the use of a gun as a threat and beatings that do not leave physical evidence. Further, the officers that defendant alleges were involved in his case are officers that are identified in other allegations of torture. Finally, defendant's allegations are consistent with the OPS findings that torture, as alleged by defendant, was systemic and methodical at Area 2 under the command of Burge.
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> * * *

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> Thus, we believe that defendant has presented sufficient evidence at the pleading stage to entitle him to a hearing.

192 Ill. 2d 93, 145 (2000) (emphasis added). Notably, this Court used the descriptor "strikingly similar" in relation to only one allegation—that of the police tactic of suffocating suspects with a typewriter cover—without any mention of similarity between the defendant's other allegations, including of being threatened with a gun or of being beaten in such a way as to avoid physical evidence of the beatings, and those allegations of any previous other defendants. Inexplicitly, however, the First District, seemingly alone among Illinois Appellate Courts, has nevertheless interpreted this as announcing a heightened standard by which to evaluate evidence of police misconduct offered in post-conviction proceedings. See, *e.g.*, *People v. Nicholas*, 2013 IL App. (1st) 103202, ¶ 40 (applying standard); *People v. Wrice*, 406 Ill. App. 3d 43, 53 (1st Dist. 2010) (applying standard).

This led the court below to evaluate Mr. Jackson's allegations and corroborating evidence as follows:

> We must therefore consider the alleged actions of each detective separately, finding other instances of misconduct by a particular officer to be relevant to Mr. Jackson's claim of prejudice *only* if those actions are similar to the misconduct the recanting witnesses in this case accused *that* officer of engaging in.

(Op. ¶ 85, App. A595, (first emphasis added, second emphasis in original).) While the court purports to require only that the claims and evidence be "similar," it actually applied a more stringent standard. In relation to Mr. Jackson's evidence of other misconduct by Detective Brian Forberg, the court determined it was irrelevant because "[t]he conduct alleged—coercion by withholding food, water, and bathroom breaks or by 'manipulat[ing]

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witnesses is *similar but not "strikingly similar"* to the alleged coercion in this case.'" (Op. ¶ 90, App. A597 (emphasis added, alterations in original).)

The lower court's heightened standard is all the more indefensible when balanced against its conclusion that *no evidence*, except coerced and subsequently recanted statements, supports Mr. Jackson's conviction, and its recognition that any other misconduct by any of the Investigation's officers could have changed the outcome of Mr. Jackson's trial:

> [W]e agree with Mr. Jackson that evidence of past witness coercion by the same officers involved here may well have made a difference in the outcome of this case, particularly where there was no evidence, other than the recanting witnesses' inconsistent statements, tying Mr. Jackson to the shooting and the surviving victim clearly and consistently testified that Mr. Jackson was not the shooter."

(Op. ¶ 83, App. A593).

It is an absurd result to deny Mr. Jackson leave on the basis of minor differences between his allegations of the misconduct in this case and of evidence of similar misconduct by the same officers in other cases. Nothing in this Court's jurisprudence requires the result reached by the First District—the lower court cited only *Nicholas*, 2013 IL App. (1st) 103202, in support of its holding, and as the dissent concluded, this "wrong standard" was applied based on a misreading of the First District's own jurisprudence. (Op. ¶¶ 112-113, App. A604-605.)

As the dissent further noted, the majority opinion was premised on a mistaken belief that evidence of police misconduct must be sufficiently similar to the allegations raised in Mr. Jackson's petition to overcome the general evidentiary prohibition against propensity evidence. (Op. ¶ 112, App. A604-605.) This mistaken assumption is wrong for both procedural and substantive reasons. Procedurally, the Illinois Rules of Evidence, including

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Rule 404 barring propensity evidence except in rare circumstances, are inapplicable to post-conviction proceedings. Ill. R. Evid. 1101(b)(3) (eff. Sept. 17, 2019). Substantively, even if the Illinois Rules of Evidence were to apply here, as the dissent below concluded, pursuant to this Court's decision in *People v. Cruz*, "in cases where a defendant seeks to introduce other-crimes evidence to exculpate himself, there is usually no need for the trial court to be concerned with balancing probative value against prejudicial effect." 162 Ill. 2d 314, 350 (1994) (citing cases). Since Mr. Jackson seeks to introduce evidence of prior misconduct by the detectives—who were third parties to his conviction—in order to corroborate the witnesses' testimony about their treatment throughout the Investigation, *Cruz* is squarely on-point and counsels in favor of allowing Mr. Jackson to admit the evidence excluded by the First District.

So, rather than focusing on minor differences, as it did, the First District should have focused on the established fact that the lead detectives have been accused of—and in at least the case of *Bridewell*, one has admitted to—using coercive interrogation tactics previously in order to leverage statements incriminating an innocent person that were later recanted and determined to be false. Focusing instead on the degree of similarity of the methods employed misses the crucial point—that these officers are capable of and have repeatedly been accused of a litany of coercive interrogation tactics. This misguided focus on methods assumes that all witnesses are susceptible to the same types of pressures and unjustifiably rewards coercive officers who are creative enough to alter their coercive methods over time and among witnesses. It is self-evident that, for example, the leverage available to pressure a pregnant person may well be different than the coercive tactics most

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effective on someone who is not, or that someone with an outstanding warrant may not be sensitive to the same pressure points as someone with sole custody of a young child.

Simply put, there is no basis in the law or in fact for this Court to uphold the First District's holding. Accordingly, this Court should reverse the lower court's ruling and clarify that its "strikingly similar" standard has no place in Illinois post-conviction proceedings. To do otherwise would be to ratify an unnecessary and ill-conceived hurdle to justice. In the alternative, this Court should at least clarify that any such "strikingly similar" test is premature prior to third-stage proceedings, which is the first time when factual determinations may properly be made. *People v. Domagala*, 2013 IL 113688 ¶¶ 34, 45.

2. The First District Incorrectly Concluded that Mr. Jackson's Supporting Evidence is Not "Strikingly Similar" to his Allegations.

Mr. Jackson, and several witnesses at his trial, allege that the seven primary officers involved in the Investigation obtained false sworn statements from witnesses, or attempted to, by holding them against their will for long periods of detention (up to three days), threatening them with criminal charges and the loss of custody of their children, and instructing them to name Mr. Jackson as the shooter.

By comparison, in *Bridewell*, 2012 WL 2458548, at *1, Detective Forberg was one of two officers who stipulated to holding a suspect for questioning for up to 63 hours and to holding witnesses for such lengthy detentions, including for so long without a bathroom break that a witness was forced to urinate in a corner of the interview room where she was being held. Witnesses also reported being told who to name in their statements, and threatened with incarceration and the loss of custody of their children if they refused to

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name the police's favored suspect.[9] *Id*. Furthermore, the court noted that detectives improperly utilized "completely biased" polygraph examination as an interrogation tactic. *Id.* Prosecutors eventually determined the *Bridewell* witness statements were entirely false. *Id*. at *2. Not, however, before the wrong person was held for *three* years awaiting trial. *Id.* at *1.[10]

Mr. Jackson's allegations are "strikingly similar" to the misconduct in *Bridewell*. In both, Detective Forberg: (1) detained witnesses to a murder for extended periods; (2) procured false statements that were later recanted; (3) instructed detained witnesses as to what to put in their statements; and, (4) used a polygraph examination as leverage to obtain a false statement. (*Compare* Suppl. R. C34-38, C220-43, App. A33-37, A219-242 *with Bridewell*, 2012 WL 2458548, at *1-2). Even if the "strikingly similar" standard is acceptable, viewed side-by-side, Mr. Jackson's allegations are plainly much more "strikingly similar" to the misconduct in *Bridewell* than were the allegations held to be "strikingly similar" in *Patterson*, 192 Ill. 2d at 145 (noting that merely one detail was

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[9] The appellate court stated that Detective Forberg's threats of incarceration in Mr. Jackson's case were a distinguishing detail from his conduct in *Bridewell*; however, the witnesses in *Bridewell* also alleged being threatened with incarceration if they refused to provide the statements that police wanted them to. *Compare* Op. at ¶ 90, *with Bridewell v. Eberle*, 2009 WL 1028229, *3 (N.D. Ill. Apr. 16, 2009), ("Defendants [including Detective Forberg] told [a witness] that if she did not cooperate and identify [the] killer she may be incarcerated, which necessarily would separate her from her children.")

[10] Astoundingly, in the court below, the State argued that the decision in *Bridewell* "absolved Det[ective] Forberg of any wrongdoing." (State's Answer to Petition for Rehearing at 2, App. A436). But see *Bridewell v. Eberle*, 730 F.3d 672, 679 (7th Cir. 2013) (Wood, J., concurring) ("I agree with my colleagues that Officer[] … Brian Forberg had probable cause to arrest each of the plaintiffs … [but t]he fact that the plaintiffs … were subjected to a grueling and humiliating 40-hour interrogation *after* their arrest is *deeply disturbing*." (first emphasis in original, second emphasis added)).

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"strikingly similar"), *Nicholas*, 2013 IL App (1st) 103202, ¶ 37 ("strikingly similar" because same detective was alleged to have used physical abuse in two instances), and *Wrice*, 406 Ill. App. 3d, at 53 ("strikingly similar" because *some* of the methods of torture alleged had also been alleged by other litigants previously), upon which the First District's decision purports to rely.

When considered in light of the lower court's recognition that "no evidence" supports Mr. Jackson's conviction, except for the recanted, coerced statements (Op. ¶ 83, App. A593), Mr. Jackson's claims are nothing short of compelling, and entitle him to leave to file a successive post-conviction petition. To instead hold that Mr. Jackson has failed to meet his burden because of minor variations in Detective Forberg's selection of coercive methods is to take an exceedingly—and unjustifiably—narrow view of what constitutes "strikingly similar." *Cf. People v. Cannon*, 293 Ill. App. 3d 634, 640 (1st Dist. 1997) (Wolfson, J.) ("Minor differences in technique do not alter the nature of the torturer's work.").

Therefore, this Court should reverse and grant Mr. Jackson leave to file a successive post-conviction petition.

D. The First District's Decision Perpetuates Injustice by Applying a Rigid Standard that is Out of Step with this Court's Jurisprudence and that Conflates Whether Evidence Was Known or Knowable Previously with Whether it is "Newly Discovered."

It is a requirement of actual innocence claims that they be supported by "newly discovered" evidence. But it was inappropriate for the First District to rule, and this Court has not held, that this requirement can *only* be met by evidence that was literally unknown and unknowable at the time of an earlier proceeding. As Illinois courts have made clear, a defendant may rely on—and many defendants have succeeded in their petitions by relying

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on—evidence that was not presented in an earlier proceeding through "no fault of [their] own." See, *e.g.*, *People v. Warren*, 2016 IL App (1st) 090884-C, ¶ 130. As such, the court below erred by relying only on the fact that the information in the affidavit was previously knowable by Mr. Jackson and thus failed to meet the literal—but not technically correct—definition of "newly discovered" evidence. (Op. ¶ 77, App. A591.)

1. The First District's Analysis Failed to Credit the Conclusiveness of the Evidence as the Most Important Factor in Determining Whether Mr. Jackson is Entitled to Leave to File a Successive Post-Conviction Petition.

Although this Court has been clear that claims of actual innocence must be supported by "newly discovered" evidence, the concept of "newly discovered" evidence is not inflexibly restricted to evidence that was unknown and unknowable to a defendant previously. As this Court has made clear, "the conclusiveness of evidence is the *most important* element of an actual innocence claim" under the Illinois Post-Conviction Hearing Act. *People v. Sanders*, 2016 IL 118123, ¶ 47 (emphasis added) (citing *Washington*, 171 Ill. 2d at 489); accord *People v. Coleman*, 2013 IL 113307, ¶ 84 (citing cases). Therefore, whether supporting evidence is information actually unknown and unknowable to a defendant previously is not outcome determinative on the issue of leave to file a successive post-conviction petition, nor is it even the most important consideration. See, *e.g.*, *Coleman*, 2013 IL 113307, ¶ 102 (affidavits of five witnesses were treated as newly discovered, despite prior knowledge of the witnesses, because they would have been uncooperative previously); *People v. Ortiz*, 235 Ill. 2d 319, 333-34 (2009) (testimony of eyewitness was treated as newly discovered because defendant, who admitted to being at the scene of the crime, claimed he could not have seen the eyewitness because of where he was standing and the eyewitness did not previously come forward on his own); *People v.*

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Tyler, 2015 IL App (1st) 123470, ¶ 162 (records of police misconduct that predated defendant's trial were nevertheless treated as newly discovered because of difficulty of obtaining them); *cf. Washington*, 171 Ill. 2d at 493 (McMorrow, J., concurring) (due process prohibits formalist considerations from "overrid[ing] the natural demands of justice.")

Here, Ms. Davis' affidavit is material and conclusive, as the lower court acknowledged. (Op. ¶ 74, App. A590.). Specifically, the lower court stated when contemplating Ms. Davis' affidavit:

> This case turned on credibility determinations. The testimony of another eyewitness, who knew Mr. Jackson well, who would have recognized him, and who did not identify him but instead described someone else as the shooter, would have added something new to the evidence before the jury. And, unlike the other witnesses, Ms. Davis never signed a statement implicating Mr. Jackson as the shooter.

(Op. ¶ 74, App. A590.) Her testimony, therefore, could have changed the result of Mr. Jackson's trial. *People v. White*, 2014 IL App (1st) 130007, ¶¶ 5-9, 24-26 (in case with similarly contradictory testimony and no forensic evidence, exculpatory affidavit from occurrence witness who did not testify at trial was sufficiently likely to change result on retrial to warrant further proceedings).

As the First District recognized, Ms. Davis was uniquely situated among the eyewitnesses to testify to Mr. Jackson's innocence, because her story never changed—*i.e.*, she refused to give police any prior inconsistent statement—and, therefore, her exculpatory testimony could not have been impeached at trial. (Op. ¶ 74, App. A590.) In a case that "turned on credibility determinations," (Op. ¶ 74, App. A590), such testimony would certainly "*raise the probability* that it is more likely than not that no reasonable juror would have convicted" Mr. Jackson in light of her testimony, *People v. Edwards*, 2012 IL 111711,

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¶ 31 (emphasis added). See also *Coleman*, 2013 IL 113307, ¶ 97 (the focus of post-conviction proceedings must be on "[p]robability, not certainty").

With respect to Ms. Grant's affidavit, it corroborates Ms. Davis' claims of being harassed by the investigating officers and of being driven from her home by their harassment. (Suppl. R. C 241, App. A240.) This corroborating information was never before the jury, in significant part, because Ms. Davis did not testify. Had Ms. Davis testified, Ms. Grant could have corroborated her testimony, which would have reinforced the veracity of Ms. Davis' claims of coercion and of Mr. Jackson's innocence, and would also have reflected positively on the truthfulness of the remainder of Ms. Grant's testimony. This information goes to the heart of the matter of the trial—"credibility determinations" (Op. ¶ 74, App. A590), and by extension, Mr. Jackson's guilt or innocence. It therefore is conclusive and adds to what was before the jury. Whether or not it was known or knowable previously, it only becomes relevant, and therefore admissible, with the introduction of Ms. Davis' testimony. Therefore, any prior failure to introduce it is due to "no fault of [Mr. Jackson's] own," *Warren*, 2016 IL App (1st) 090884-C, ¶ 130, and as such, Ms. Grant's affidavit should be considered, as should Ms. Davis'—particularly since the two are so closely and supportively intertwined.

As the First District acknowledged and the jury's contentious deliberations confirmed, it was a close decision at trial based solely on the witness statements presented. (Op. ¶¶ 47-49, 83, App. A581-582, 583.) Under such circumstances, Ms. Davis' testimony (and its corroboration by Ms. Grant's affidavit) could very well have tipped the scales toward a different result. Therefore, it would be a manifestly unjust result to ignore these affidavits.

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2. The First District Erred by Classifying Ms. Davis' Affidavit as Not "Newly Discovered" when Mr. Jackson has Twice Before Been Prevented from Offering Her Testimony in Court Proceedings.

The only fault the lower court specifically assigned to Ms. Davis's affidavit was that "Mr. Jackson has not shown that he could not have discovered Ms. Davis's exonerating testimony sooner through due diligence." (Op. ¶ 76, App. A591.) But courts have refused to ignore evidence of actual innocence simply because it was discoverable when it would be "fundamentally unfair" to do otherwise, such as when evidence could not be discovered, or submitted in a prior proceeding, due to "no fault of [the defendant's] own." *Warren*, 2016 IL App (1st) 090884-C, ¶ 130.

In *Warren*, the defendant's successive post-conviction petition relied on affidavits that were undeniably available during earlier post-conviction proceedings, but his attorney had failed to utilize them at that time, despite the affiants' apparent willingness to testify. *Id.* ¶ 115-16. In refusing to turn a blind eye on the evidence, a panel of the First District held that:

> It would be a miscarriage of justice if defendant were denied his day in court where his allegations and supporting documentation, supported by the record and taken as true at this stage, demonstrate that he was unable to put forth exculpatory evidence of his innocence through no fault of his own.

Id. ¶ 130. For the same reason it would have been a miscarriage of justice to deny the *Warren* defendant his day in court, it is a tragic miscarriage of justice to now deny Mr. Jackson his.

Mr. Jackson was previously unable to rely on Ms. Davis' testimony at trial for reasons similar to those in *Warren*. (Suppl. R. C226-27, App. A226-226; R. C522, App. A246; R. C229.) Ms. Davis was known to Mr. Jackson at the time of his trial, but she was

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not called to testify, and she was told, inexplicably, by someone that her testimony would not be needed. Given the exonerating nature of her testimony, it strains credulity to assume the defense would have so instructed her; the more sound assumption is that it was the prosecution who did not need a witness to testify who suffered extremely coercive pressure, had refused to implicate Mr. Jackson, and that corroborated its other witnesses' claims of police coercion. (Suppl. R. C227, App. A226.) However, even if it was the defense who so instructed her, that was no basis for denying relief to the defendant in *Warren*, nor should it be reason here. As was the case in *Warren*, Ms. Davis' affidavit should be admitted and considered by the courts.

Furthermore, Mr. Jackson was prevented from relying on Ms. Davis' testimony a second time when he submitted an affidavit similar to the one in question now, with his first post-conviction petition. (R. C522, App. A246; Suppl. R. C227, App. A226.) However, since he was acting *pro se* while he was incarcerated, he was unable to obtain Ms. Davis' signature on the affidavit submitted at that time. *Id.* As that was prior to this Court's decision in *People v. Allen*, 2015 IL 113135, ¶ 34, that alone was sufficient grounds for dismissing Mr. Jackson's petition as frivolous and patently without merit, and it was dismissed for precisely that reason. (Op ¶ 108, App. A. 602-603) As this Court's decision in *Allen* implies, this was an unjust result. As the dissent notes, to now compound that injustice by denying Mr. Jackson leave on the technicality that this evidence is not newly discovered, even though it has never before been considered by any finder of fact, and despite the change in the law announced by *Allen*, would be a glaring miscarriage of justice. (Op. ¶ 110, App. A604.)

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Therefore, this Court should reverse and grant Mr. Jackson leave to file a successive post-conviction petition.

E. The First District Erred in Basing its Decision on an Abrogated Holding of this Court's Decision in *People v. Hobley*.

The lower court concluded that it "*must* reject," (Op. ¶ 70, App. A588-589 (emphasis added)), Mr. Jackson's actual innocence claim because this Court, in *People v. Hobley*, 182 Ill. 2d 404, 444 (1998), "rejected the argument that newly discovered evidence of 'a pattern and practice of police torture' supported a freestanding claim of actual innocence, finding instead that the defendant in that case sought 'to supplement [his] assertion … that his confessions were coerced and involuntary and that the introduction of th[o]se confessions violated his constitutional rights." (Op. ¶ 71, App. A588-589 (alterations in original).) The First District incorrectly determined *Hobley* was controlling and therefore rejected Mr. Jackson's actual innocence claim "for the same reason." (Op. ¶ 71, App. A588-589.)

But this Court has repudiated *Hobley*'s holding that claims of actual innocence must be "freestanding." Rather, as clarified in *Coleman*, 2013 IL 113307, ¶ 83, whether an actual innocence claim is a "freestanding" or "gateway" claim is immaterial—the evidentiary burden is the same either way.

In *Coleman*, 2013 IL 113307, ¶ 89, this Court explained that under federal law, a "freestanding" claim is one "in which the defendant challenges only his factual innocence," whereas a "gateway" claim is one "in which the defendant challenges both his factual innocence and the fairness of his trial." *Id.* ¶ 89. But while this Court admitted it "may have used the label 'freestanding' to describe" previous claims, it was clear that it has not

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done so as a way of establishing those claims "as an alternative to the label 'gateway.'" *Id.* ¶ 90. Instead, under Illinois law:

> [A] postconviction actual-innocence claim is just that—a postconviction actual-innocence claim…. There is no anomaly in our case law because the evidentiary burden for an actual-innocence claim is always the same whether or not it would be considered a freestanding or gateway claim under federal law.

Id. ¶ 91. *Coleman*'s in-depth analysis leaves no question that Illinois law has intentionally deviated from federal law, and *does not* distinguish between gateway and freestanding claims of actual innocence. *Id.* ¶ 89-92. *Hobley*'s contrary holding that only "freestanding" claims of actual innocence are cognizable under Illinois law, 182 Ill. 2d at 443-44, is clearly of no present precedential value. The law of Illinois cannot be both as stated by *Hobley* and the diametrically opposed holding of *Coleman*; therefore, as the later decision, *Coleman* controlled the First District's decision and mandated a different result. *Chicago Union Traction Co. v. Kallberg*, 107 Ill. App. 90, 91 (1st Dist. 1903) ("Any apparent conflict between these decisions and decisions of this court or previous decisions of the Supreme Court, must be resolved in favor of the later expressions of the Supreme Court."); *see also Cates v. Cates*, 156 Ill. 2d 76, 80 (1993) ("[E]ffect must be given to the implications contained in the decision of a higher court and … the premises implicit in a holding are as authoritative as the holding itself.").

Moreover, *Coleman* is no anomaly. In the nearly 20 years since *Hobley*, this Court has repeatedly declined to apply *Hobley*'s "freestanding" requirement to actual innocence

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claims, even when its holding was squarely on-point.[11] Rather, time and again, this Court has declined to even mention *Hobley* or the term "freestanding" in cases involving actual innocence claims. See, *e.g.*, *Sanders*, 2016 IL 118123; *Allen*, 2015 IL 113135; *Edwards*, 2012 IL 111711; *People v. Shum*, 207 Ill. 2d 47 (2003); *People v. Johnson*, 205 Ill. 2d 381 (2002); *People v. Collins*, 202 Ill. 2d 59 (2002).

This Court has also implicitly rejected *Hobley* by suggesting that the same evidence, in fact, *can* support both claims of cause and prejudice and actual innocence. See *People v. Tate*, 2012 IL 112214, ¶¶ 17, 23-25, 29 (reversing dismissal of petition seeking relief on both theories supported by the same affidavits; although the court reversed only on the basis of cause and prejudice, it made no mention of either a freestanding requirement or of any deficiency stemming from the overlapping evidence); *cf. Collins*, 202 Ill. 2d at 82 (McMorrow, J., dissenting) ("[A]llowing a claim of actual innocence to be lost because of a procedural deficiency would be contrary to principles of justice and fairness." (internal quotation marks omitted) (citing *People v. Boclair*, 202 Ill. 2d 89, 102 (2002)).

Rather, when this Court has cited *Hobley*, it has been for something other than its holding that an actual innocence claim must be freestanding. See, *e.g.*, *People v. Williams*, 209 Ill. 2d 227, 241 (2004) ("The lesson of *Hobley* is that a juror affidavit alleging exposure to '*prejudicial* outside influences' is sufficient to raise a presumption of prejudice and to shift the burden to the State to establish that such contacts were harmless." (emphasis

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[11] Since *Hobley* was decided, this Court has only once invoked it to deny a claim of actual innocence on the basis that it was not freestanding, in *People v. Orange*, 195 Ill. 2d 437, 463 (2001). (A panel of this Court recognized in *People v. Weathers*, 2015 IL App. (1st) 133264, ¶ 35, that *Orange* was partially abrogated by *People v. Wrice*, 2012 IL 111860, in that it is no longer appropriate to analyze allegations of coerced confessions under a harmless error standard.)

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in original) (internal citation omitted)); *People v. Pitsonbarger*, 205 Ill. 2d 444, 455 (2002) ("If the petition does make a substantial showing of a constitutional violation, the matter proceeds to an evidentiary hearing." (citing *Hobley*, 182 Ill. 2d at 428)); *People v. Hickey*, 204 Ill. 2d 585, 595-96 (2001) ("[T]he doctrine of waiver will be relaxed where fundamental fairness so requires. . . ." (citing *Hobley*, 182 Ill. 2d at 428)); *People v. Page*, 193 Ill. 2d 120, 162 (2000) (citing *Hobley*, 182 Ill. 2d at 467-70, for its holding that the Illinois death penalty instructions were not unconstitutional). Quite clearly, over the past two decades this Court has made clear it does not consider *Hobley*'s freestanding holding to be the law of Illinois, and the First District was therefore wrong to consider it controlling.

As it is, Mr. Jackson's evidentiary burden is the same whether or not it would be considered a freestanding or gateway claim under federal law. *Coleman*, 2013 IL 113307, ¶ 91. In short, he must demonstrate that his evidence "is of such a conclusive character that it would probably change the result of retrial." *Ortiz*, 235 Ill. 2d at 336; see also *Edwards*, 2012 IL 111711, ¶ 40 (describing standard as "in the light of the new evidence, it is more likely than not that no reasonable juror would have convicted petitioner."). The evidence supporting his Motion is more than sufficient to meet this burden, as it provides strong corroboration of the allegations at trial that Mr. Jackson was not the shooter and that the witness statements to the contrary were false and coerced. This evidence provides compelling corroboration of all the exculpatory evidence presented at trial and of his actual innocence. See, *e.g.*, *Tyler*, 2015 IL App (1st) 123470, ¶ 186 (evidence of systemic abuse by the officers involved in defendant's case is material in deciding guilt or innocence); *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 80 (Issue is whether the outcome would have differed "if the officer who denied harming the defendant had been subject to impeachment

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based on evidence revealing a pattern of abusive tactics employed by that officer in the interrogation of other suspects.") (citing *Patterson*, 192 Ill. 2d at 145 (Court must determine whether "any of the officers who interrogated defendant may have participated in systemic and methodical interrogation abuse … [and whether] those officers' credibility at the suppression hearing might have been impeached as a result.")).

As such, this Court should reverse the First District's decision and grant Mr. Jackson leave to file a successive post-conviction petition.

VII. CONCLUSION

The First District explicitly emphasized that "police misconduct, including witness coercion, does occur[, and] … courts must play a significant role in ensuring that individuals are not wrongfully imprisoned as a result of such tactics." (Op. ¶ 91, App. A598.) And it bears repeating that the appellate court also underscored that the *only* evidence tying Mr. Jackson to the shooting for which he is serving 45 years in prison—essentially his remaining lifetime—consists of statements forcefully recanted under oath at his trial. These witnesses stated then and have consistently maintained in the years since that they implicated him falsely simply as a response to escape powerful police coercion. It also acknowledged that at least one of the lead detectives has previously admitted to "similar" conduct in another investigation in which prosecutors eventually decided the wrong person had been identified as the culprit due to false witness statements resulting from high-pressure interrogations and biased polygraph examinations. (Op. ¶ 90, App. A597-598.) Finally, and perhaps most powerfully, the Appellate Court was clear in both its majority and dissenting opinions that the only surviving victim to testify at trial "clearly

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and consistently testified that Mr. Jackson was not the shooter." (Op. ¶¶ 9, 83, App. A570, 593.)

Despite this powerfully exonerating record, the First District considered itself required to reject Mr. Jackson's motion for leave due to constraints on what is considered sufficiently "similar" evidence of prior misconduct, what is considered "newly discovered" evidence, and whether a claim of actual innocence must be "freestanding" in Illinois. At bottom, Mr. Jackson has presented substantial evidence that he was wrongfully convicted entirely due to the coercive efforts of several CPD detectives who have been accused of serious misconduct on dozens of occasions. Because of their misconduct in this instance, Mr. Jackson has spent nearly half his life to date in prison and is due to spend more than another quarter of a century behind bars for a crime he did not commit. To affirm this result would be a gross miscarriage of justice, and a complete abandonment of this Court's fundamental holding in *Washington*, 171 Ill. 2d 475, 487-88, that it is unconstitutional to imprison an innocent person when presented with compelling evidence of actual innocence. Such a result would be a shame and a travesty, not to mention a profound embarrassment to the justice system of the State of Illinois. Only this Court can right this wrong.

For all the foregoing reasons, this Court should reverse the First District and grant Mr. Jackson leave to file a successive post-conviction petition.

Furthermore, in recognition of the substantial evidence of actual innocence he has marshaled already and the significant delay that the lower courts' decisions have caused, Mr. Jackson asks that this Court immediately vacate his conviction, remand with instructions that he be granted a new trial, and that he be released from the custody of the Illinois Department of Corrections pending the outcome of that trial. In the alternative, he

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asks that this Court remand his cause with instructions that his petition be advanced immediately to third-stage proceedings for the same reasons. Finally, Mr. Jackson asks the Court to grant such further relief as the ends of justice require.

Date: October 30, 2019

Respectfully submitted,

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No. 124818

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Illinois Appellate Court,
	)	First District
v.	)	No. 1-17-1773
	)	
KEVIN JACKSON,	)	There Heard on Appeal from the
	)	Circuit Court of Cook County
Defendant-Appellant.	)	No. 01-CR-17492
	)	
	)	Honorable Evelyn B. Clay (Ret.),
	)	Presiding
	)	

CERTIFICATE OF COMPLIANCE OF
DEFENDANT-APPELLANT'S BRIEF AND ARGUMENT

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) 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 41 pages.

Date: October 30, 2019

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APPENDIX 1

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

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Respondent, v. KEVIN JACKSON, Defendant-Petitioner.	)	No. 01-CR-17492 The Honorable Evelyn B. Clay, Presiding Judge.

OMNIBUS MOTION FOR LEAVE TO FILE A SUCCESSIVE PETITION FOR RELIEF UNDER THE ILLINOIS POST-CONVICTION HEARING ACT (725 ILCS 5/122-1), PETITION FOR RELIEF UNDER THAT ACT, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF BOTH MOTIONS

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OF COOK COUNTY, IL

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U.S. DEPT. OF JUSTICE, INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT (Jan. 13, 2017) *available at* http://www.justice.gov/opa/file/925846/download 6

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Petitioner Kevin Jackson, through counsel, respectfully requests this Court grant him leave to file this successive petition for relief under the Post-Conviction Hearing Act, 725 ILCS 5/122-1 *et seq*. (West 2010). Mr. Jackson further requests this Court vacate his convictions and order a new trial in relation to the 2001 homicide of Ernest Jenkins, pursuant to the Post-Conviction Hearing Act. In support of these requests, Petitioner states as follows:

INTRODUCTION

1. Petitioner Kevin Jackson was arrested in 2001 under suspicion of involvement in a shooting in Chicago's Back of the Yards neighborhood that left one person dead and another injured. Even after his subsequent conviction in 2003, Mr. Jackson has steadfastly maintained his innocence.

2. The only evidence tying Mr. Jackson to the crimes for which he is currently incarcerated is the frequently contradictory statements given to police by four witnesses, all of whom claim their statements were coerced by police and all of whom recanted their statements at trial.

3. There is no forensic evidence—physical or biological—connecting Mr. Jackson to the shooting, or even placing him at the scene.

4. Two of the State's eye-witnesses[1] testified they were not present at the time of the shooting, and their statements to the contrary were the result of police coercion.

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[1] Although the State claimed to present six eye-witnesses (Vernon Clay, Brandi Grant, Shemika Mason, Manuel Stewart, Ali Samir, and victim Michael Watson), two were not present at the CITGO at the time of the shooting, and a third testified he saw nothing. Namely, Vernon Clay and Shemika Mason have repeatedly stated they were not present, and their absence has been confirmed by *bona fide* eye-witnesses, and station attendant Ali Samir testified that he neither saw the shooting nor the shooter. Therefore, Petitioner disputes that Mr. Clay's, Ms. Mason's, or Mr. Samir's testimony should be considered eye-witness testimony (as further discussed herein), but will nevertheless refer to all six as "eye-witnesses" throughout this petition for simplicity's sake.

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5. Two of the State's other eye-witnesses, who were present at the time of the shooting, testified Mr. Jackson was not present, and further testified their statements to the contrary were the result of police coercion.

6. A fifth eye-witness called by the State testified that he neither witnessed the actual shooting nor saw the shooter.

7. The State also called a surviving victim, who testified that Mr. Jackson *was not* the shooter and that the man who shot him had a much darker complexion than Mr. Jackson.

8. A second surviving victim—who police identified during the course of the investigation, but who did not testify at trial—gave police a description of the shooter that differed from Mr. Jackson in significant ways. He also viewed a photo array including a photo of Mr. Jackson and told police the shooter was not in the array. Further, he viewed a line-up including Mr. Jackson and told police the shooter was not present.

9. Nevertheless, the State called four police officers and two State's Attorneys to testify that the investigation was conducted properly and to allege that the testimony of the State's eye-witnesses was false.

10. Three of the testifying police officers and one of the testifying State's Attorneys were directly involved in the misconduct alleged by the State's eye-witnesses.

11. During its closing argument, on the basis of the police officers' and State's Attorneys' testimony, and in direct contradiction to the testimony of the State's eye-witnesses, the State argued the police identified Mr. Jackson through "good police work." The State then implored the jury to balance the credibility of the police against that of the State's eye-witnesses, who the State argued jurors would not want as "friends or [] next-door neighbors."

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12. At the time of trial, the defense lacked evidence of the now well-established pattern and practice of misconduct by the very police officers who testified for the State. Without this information, the defense was unable to effectively impeach their testimony at trial. As a result, after long, contentious deliberations—during which the jurors asked the court for clarification on the standard for a hung jury—presumably the jury ultimately accepted the testimony of the police, because it convicted Mr. Jackson. The jury's verdict was read to Mr. Jackson on July 25, 2003 and he was sentenced on March 25, 2004.

13. New evidence—not available to the defense at the time of Mr. Jackson's trial or first petition for relief under the Illinois Post-Conviction Hearing Act ("the PC Act"), 725 ILCS 5/art. 122 (West 2016)—establishes a pattern and practice of misconduct by the Chicago Police officers who investigated the shooting for which Mr. Jackson is incarcerated and who testified against him at trial. This new evidence fundamentally alters the balance of credibility between the testifying police officers and the witnesses who accused those same police officers of coercive interrogation tactics that led them to make false statements implicating Mr. Jackson in the shooting.

14. This new evidence would have changed the outcome of the proceedings had it been available to Mr. Jackson at the time of trial. Therefore, Mr. Jackson has suffered a fundamental miscarriage of justice and should be granted leave to file this successive petition under the PC Act.

15. Furthermore, Mr. Jackson's wrongful conviction and incarceration constitutes a substantial violation of his Constitutional rights, so once he is granted leave to file this successive petition, Mr. Jackson is entitled to further proceedings and relief under the PC Act.

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16. Accordingly, as further described herein, Mr. Jackson respectfully requests this Court grant him leave to file this successive petition and docket it for second-stage proceedings under the PC Act. Mr. Jackson further requests that this Court order an evidentiary hearing, vacate Mr. Jackson's conviction, order a new trial, release Mr. Jackson from Illinois Department of Corrections custody pending the outcome of the new trial, and grant him any further relief the Court deems appropriate.

FACTUAL BACKGROUND

The Shooting

17. Ernest Jenkins and Michael Watson were shot at approximately 1:30 a.m. on the morning of May 6, 2001, while at a CITGO gasoline station and convenience store on the northwest corner of Garfield Boulevard (55th Street) and Damen Avenue in Chicago's Back of the Yards neighborhood. Michael Watson survived, but Ernest Jenkins died later that morning at Cook County Hospital as a result of multiple gunshot wounds. Police later discovered a third "victim," Michael Watson's nephew Stanley Watson, who was not injured in the shooting, but was identified in police records as a third victim. He fled the scene before police arrived.

18. It is unclear how the responding Chicago Police Officers were first alerted to the shooting.[2] In any event, police arrived on the scene shortly after the shooting and began their investigation.

Investigating Officers

19. At least 40 Chicago Police Officers were involved in some way in the investigation that followed. At least 626 citizen complaints (called Complaint Registers or

[2] There seem to be three possibilities: Michael Watson, who encountered officers on patrol as he was fleeing the scene despite his injuries; by witnesses Quina Davis and Brandi Grant, who called police from a payphone across the street; or by the CITGO station attendant, who also called police shortly after the shooting occurred.

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"CRs") have been filed with the Chicago Police Department ("CPD") and the Independent Police Review Authority ("IPRA") against those officers. (*See* Appendix A, attached hereto.)

20. Of the 40 or more officers who had some involvement in the investigation, seven were deeply involved. Those officers were Detectives John Foster, Brian Forberg, John Clisham, Edwin Kaup Jr., David Kowalski, Robert Bartik, and Kevin Howley. Collectively, they will be referred to herein as "The Seven."

21. Detectives Foster and Forberg were partners and lead detectives and conducted the majority of the witness interviews. As lead detectives they were responsible for, among other things, evaluating evidence, deciding who to interrogate, and choosing who to pursue as suspects. Detectives Foster and Forberg also conducted the interrogations of most of the key witnesses, several of whom later testified their statements were coerced by police.

22. Detectives Clisham, Kaup, and Kowalski located some of the witnesses for questioning, transported witnesses to polygraph examinations, and also conducted some of the witness interviews that witnesses later testified were coercive.

23. Detectives Bartik and Howley were polygraph operators who conducted polygraph examinations of two witnesses. The witnesses who submitted to polygraph examinations testified they told the truth, but were nonetheless accused by the detectives of lying.

24. Three of The Seven, Detectives Forberg, Clisham, and Howley, testified on behalf of the State at trial.

25. The record of misconduct among The Seven is long and scandalous. The Seven account for 150 of the 626 CRs filed against the 40 officers involved in this investigation. The misconduct alleged in these CRs includes improper arrest and interrogation procedures,

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excessive force, verbal abuse of witnesses and suspects, off-duty altercations, and a variety of other serious misconduct. Moreover, one of these CRs was filed by the mother of eye-witness Quina Davis in relation to alleged officer misconduct related to the investigation of the CITGO shooting itself.[3]

26. While Mr. Jackson's counsel has sought details of the CRs involving The Seven, to date CPD and IPRA have released only very limited information. Following are two examples, both of which relate to conduct that occurred after Mr. Jackson's arrest, of the egregious conduct alleged against The Seven in the handful of CRs that have been obtained to date[4]:

- In 2002, Detectives Kaup and Kowalski (both of The Seven), along with CPD Detectives John Halloran (also tangentially involved in the CITGO investigation) and James O'Brien, improperly arrested and physically assaulted a suspect, denied him an attorney, and eventually coerced him into a video-taped confession related to the death of his stepdaughter. (CR No. 1022647, Appendix A at 3, 4.)
- In April 2012, Detective Brian Forberg (also of The Seven) was accused of using unnecessary physical contact by a complainant who alleged he "spat on her, pulled

[3] The CR was filed in August 2001, but CPD did not complete its investigation until February 2003, by which time the complainant, Ms. Davis' mother had passed away. The allegations in the CR are strikingly similar to those in Ms. Davis' affidavit, executed more than 15 years later, in April 2017. The CPD investigation found insufficient evidence to sustain the allegations raised by the CR; however, in light of the recent findings of the U.S. Department of Justice regarding the systemic defects in investigations of police misconduct by the Chicago Police, this is hardly surprising. *See* Attach. 1; U.S. DEPT. OF JUSTICE, INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT 7-10 (Jan. 13, 2017) (*available at* https://www.justice.gov/opa/file/925846/download) (noting fewer than 2% of police misconduct investigations are sustained due to variety of factors, including "serious investigative flaws" and a pervasive "code of silence" among officers).

[4] Counsel for Mr. Jackson has submitted multiple Freedom of Information Act ("FOIA") requests to both the CPD and IPRA seeking documents related to allegations of misconduct by the officers involved in investigating Mr. Jackson. Both CPD and IPRA have provided some of the requested documents, but have continued to withhold significant portions of the documents responsive to counsel's requests. Counsel continues to seek the release of additional documents, including through a separate action filed against CPD under the FOIA. *See* Complaint, *Pillsbury Winthrop Shaw Pittman LLP v. Chicago Police Department*, No. 2017-CH-01114 (Ill. Cir. Ct. Jan. 25, 2017) (Attach. 2).

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her hair, blew smoke in her face, and grabbed her purse from around her neck while she was being questioned." (CR No. 1053015, Appendix A at 3.)

27. Moreover, The Seven have been named in civil suits brought against the City of Chicago and the Chicago Police Department, their misconduct has been noted in other legal proceedings resulting in exonerations, and they have been singled out by the Chicago Tribune and other media sources for their misconduct. To date, the City of Chicago and the Chicago Police Department have paid at least $4 million to settle claims involving The Seven.[5] A few of the recently filed cases against The Seven are described below.

- Detectives Brian Forberg and John Foster were among a number of Chicago police officers accused of misconduct in *Patterson v. Chicago*.[6] The plaintiff therein was convicted of a homicide he did not commit and was incarcerated for more than eight years as a result. After establishing his innocence and being exonerated, he brought a civil suit against the police department and the individual officers responsible for his conviction. He accused police of procuring false witness statements and identifications; coercing a false statement from one witness by interrogating her over three days during which she was denied food, water, or a place to sleep; burying substantial evidence suggesting another person had committed the crime; and concealing a laboratory report that would have proven his innocence. The matter was

[5] The settlement amount quoted is based on a review of publicly available resolutions of the Chicago City Council and media stories related to settlements. Because many such records and stories do not identify all the officers involved in the dispute being settled by name, the quoted amount is very likely under-representative of the actual amount paid to settle claims involving The Seven.

[6] Complaint, *Patterson v. City of Chicago*, No. 1:11-cv-07052 (N.D. Ill. Oct. 6, 2011), ECF No. 1.

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eventually settled out of court and the plaintiff was paid $3.4 million dollars, although the police department admitted no wrongdoing.[7]

- Detective Brian Forberg was one of two officers whose actions led to a lengthy lawsuit brought by three plaintiffs.[8] In relation to the City of Chicago's motion for summary judgment, the parties agreed as to certain facts demonstrating serious misconduct by police. They agreed that Ms. Bridewell, who the police suspected had shot and killed a man, was interrogated for 63 hours but never admitted to shooting the victim. Order Ruling on Motion for Summary Judgment at *1, *Bridewell v. City of Chicago*, No. 08-C-4947, 2012 WL 2458548 (N.D. Ill. June 27, 2012). They further agreed that Ms. Rhodes was held in a windowless room, denied bathroom breaks, and eventually resorted to urinating in a corner of the interrogation room before she finally claimed that Ms. Bridewell was the shooter. *Id.* They also agreed that a third non-party witness was interrogated for 27 hours before claiming that Ms. Bridewell was the shooter. *Id.* The court's opinion also references polygraph examination improprieties, but does not give specifics. *Id.*
- Detective Kevin Howley was the polygraph operator involved in a lawsuit that the City of Chicago eventually settled for $1 million dollars after it was established that over the course of a 50-hour interrogation, he coerced a young, mentally disabled

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[7] Hal Dardick, *$3.4 Million Settlement Recommended for Wrongful Murder Conviction*, Chicago Tribune, October 2, 2012, *available at* http://articles.chicagotribune.com/2012-10-02/news/chi-34-million-settlement-recommended-for-wrongful-murder-conviction-20121002_1_wrongful-murder-conviction-murder-case-million-settlement.

[8] *See* Order Ruling on First Motion to Dismiss, *Bridewell v. Eberle*, No. 08-C-4947, 2009 WL 1028229 (N.D. Ill. April 16, 2009); Order Ruling on Second Motion to Dismiss, *Bridewell v. Eberle*, No. 08-C-4947, 2010 WL 2921635 (N.D. Ill. July 22, 2010); Order Ruling on Motion for Summary Judgment, *Bridewell v. City of Chicago*, No. 08-C-4947, 2012 WL 2458548 (N.D. Ill. June 27, 2012); *Bridewell v. Eberle*, 730 F.3d 672 (7th Cir. 2013). *See also* Jack Bouboushian, *3 Years in Prison on a Cop Frame, Woman Says*, Courthouse News Service, June 28, 2013, *available at* https://www.courthousenews.com/3-years-in-prison-on-a-cop-frame-woman-says.

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suspect into falsely confessing that he had killed his mother.[9] The suspect was eventually released when DNA evidence exonerated him, but not before he spent 17 months in jail.[10] An expert who evaluated the procedures employed by Detective Howley filed a report with the court concluding that "the primary motivation for conducting this examination was to use a failure on the polygraph as a tool to extract a confession."[11]

- Detective Robert Bartik was the polygraph operator whose conduct was at the heart of *McGee v. City of Chicago*, 2012 IL App (1st) 111084, in which the plaintiff was awarded $1.3 million for malicious prosecution and intentional infliction of emotional distress. Detective Bartik was also found personally liable for $110,000 for his role in coercing a false confession, which caused the plaintiff to be incarcerated for three years awaiting trial. *McGee*, 2012 IL App (1st) 111084 at ¶ 6. Although the award was later overturned due to a juror's outside research, the City of Chicago did eventually settle the case for nearly $900,000.[12] While testifying, Detective Bartik stated he had obtained more than 100 confessions during the "pre-test interview" that precedes a polygraph examination.[13] The Chicago Tribune reported that experts considered this "extraordinary" given that "the pre-test is not a time to try to get

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[9] Duaa Eldeib, *Polygraphs and False Confessions in Chicago*, Chicago Tribune, March 10, 2013, *available at* http://www.chicagotribune.com/news/watchdog/ct-met-polygraph-confessions-20130310-story.html.

[10] *Id.*

[11] *Id.*

[12] Hal Dardick & Duaa Eldeib, *Chicago Aldermen OK $6.6 Million to Settle Lawsuits*, Chicago Tribune, March 31, 2014, *available at* http://articles.chicagotribune.com/2014-03-31/news/chi-chicago-aldermen-ok-66-million-to-settle-lawsuits-20140331_1_leslie-darling-new-trial-city-attorney (discussing settlement).

[13] Duaa Eldeib, *Polygraphs and False Confessions in Chicago*, Chicago Tribune, March 10, 2013, *available at* http://www.chicagotribune.com/news/watchdog/ct-met-polygraph-confessions-20130310-story.html.

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confessions; it's when the examiner explains how the polygraph works, gets consent and reviews the questions."[14]

28. The Seven's pattern of misconduct did not become widely known until well after Mr. Jackson's trial. Moreover, the extent of their misconduct is still not fully known as many of the CRs filed against them have not been made publicly available. Without this information, the defense was unable to attack the credibility of Detectives Forberg, Clisham, and Howley when they testified, and their misconduct went unchecked.

29. The following table summarizes the responsibilities of The Seven in the CITGO investigation and their individual histories of misconduct, to the extent known, as described more fully in paragraphs 19 – 28 above and in Appendix A.

Roles of Key Chicago Police Officers & Partial Summary Histories of Misconduct			
Detective Name / Star No.	Role in Investigation	Witness at Trial	Summary History of Misconduct
Brian Forberg	Shared lead responsibility	Yes	• 35 CRs spanning 1996-2015, including, *inter alia*, allegations of use of racial/ethnic slurs, unlawful searches, and excessive force • Named as one of two officers who city attorneys stipulated had engaged in interrogation misconduct in *Bridewell v. City of Chicago* that resulted in false statements
John Foster	Shared lead responsibility	No	66 CRs spanning 1993-2015, including, *inter alia*, allegations of submitting false reports, unlawful searches, and excessive force
John Clisham	Interrogated Manuel Stewart	Yes	10 CRs spanning 1993-1999, including, *inter alia*, allegations of improper arrest, unlawful searches, and excessive force
Edwin Kaup, Jr.	Interrogated Quina Davis	No	11 CRs spanning 1996-2014, including, *inter alia*, allegations of submitting false reports, soliciting/accepting bribes, unlawful searches, and excessive force

[14] *Id.*; *see also People v. Harris*, 389 Ill. App. 3d 107, 116 (Ill. App. Ct. 2009) (Detective Bartik coerced a false confession from a grieving mother by accusing her of lying and threatening that she would "spend the rest of [her] life behind bars because [she didn't] cooperate"); Jack Bouboushian, *Exonerated Mother Sues Chicago Police*, Courthouse News Service, June 16, 2014, *available at* https://www.courthousenews.com/exonerated-mother-sues-chicago-police/ (reporting on *People v. Harris* case).

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Roles of Key Chicago Police Officers & Partial Summary Histories of Misconduct			
Detective Name / Star No.	Role in Investigation	Witness at Trial	Summary History of Misconduct
David Kowalski	Interrogated Quina Davis	No	9 CRs spanning 2000-2015, including, *inter alia*, allegations of verbal abuse, improper arrest, and excessive force
Robert Bartik	Polygraph examination of Quina Davis	No	• 17 CRs spanning 1991-2015, including, *inter alia*, neglect of duty, improper arrest, and excessive force • Found personally liable for investigation that led to false conviction in *McGee v. City of Chicago* (later overturned because of a juror's independent research) • Accused of extracting false confession from grieving mother through interview misconduct in *People v. Harris*
Kevin Howley	Polygraph examination of Manuel Stewart	Yes	• 2 CRs in 1987 and 1992 for neglect of duty and use of excessive force • Identified by expert, as reported by Chicago Tribune, as using polygraph examinations "as a tool to extract" confessions

30. To the extent possible, given the difficulty counsel has had securing records of the CRs filed against the officers involved in the CITGO investigation,[15] including The Seven, the complaint histories of all the officers involved in the investigation of the shooting at the CITGO Station are contained in Appendix A.

Police Investigation Preceding Coercive Interrogations

31. Police records indicate that after taking statements from those on or near the scene, police did not have any information regarding the identity of the shooter and seemingly had no leads on which to base their investigation.

32. Then, on an unknown date prior to May 9, 2001, police received anonymous information that a third person had been with the two previously identified victims, Ernest Jenkins and Michael Watson, at the CITGO station. The anonymous tipster stated that at the

[15] *See supra* note 4.

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time of the shooting, Mr. Jenkins and Mr. Watson were going to the CITGO to pick up Michael Watson's nephew, Stanley "Meechie" Watson, who was not welcome in the area due to gang rivalries.

33. It does not appear that police attempted to locate or interview Stanley Watson at that time, as there is no record of any statement from him in police records until more than three weeks later.

34. Instead of locating the newly identified victim and witness, police re-interviewed Michael Watson. During this interview, Michael Watson told police he had seen the individual who shot him about a month before the incident in front of a liquor store sitting in a "box-style Chevy" that had tan doors and primer on the front and rear. Police understood this to mean a Chevrolet car between model years 1983 and 1990.

35. On May 18, 2001, police located a car matching the description provided by Michael Watson, though the record is unclear as to how the police located the vehicle, and detained the individuals found in the car at the time—Mr. Jackson and his cousin, Mario Brown. Later, Michael Watson would view a photo array and a line-up including Mr. Jackson and would state that the shooter was not among them; later yet, he would testify under oath at trial that Mr. Jackson was not the shooter.

36. After police detained Mr. Jackson and Mr. Brown, they showed Michael Watson a photo array that included their photos. Michael Watson stated the individual who shot him was not pictured, but identified Mr. Jackson and Mr. Brown's car as the one he saw his shooter sitting in a month prior to the shooting. It is unclear from police records whether police told Michael Watson who owned the car he identified. Although he identified the car police found, Michael

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Watson repeatedly stated that Mr. Jackson was not the man who shot him; including while under oath at trial.

First Interrogation of Vernon Clay

37. As the investigation again languished without progress or leads, police claim to have serendipitously "learned" that Vernon Clay had also been at the CITGO station at the time of the shooting, but had fled prior to the police's arrival.[16] Police records do not explain how they "learned" of Mr. Clay's presence at the CITGO. For his part, Mr. Clay would later claim repeatedly that he was not at the CITGO that night.

38. Police detained and interrogated Vernon Clay on June 2, 2001. According to the contemporaneous handwritten notes of Detectives Brian Forberg and John Foster (known as General Progress Reports or GPRs), Mr. Clay told police about several individuals with street names like "Nuke," "Bumpy," and "Wink," who he stated were "friends with Brad …[who] was in [the] car that fired the shot[s]." The later, typed synthesis of the GPRs (known as Case Supplementary Reports), omit any mention of "Nuke," "Bumpy," "Wink," or Brad—police simply omitted any mention of these individuals who would seem likely to have information relevant to their investigation, according to Mr. Clay's initial statement. Moreover, Brad—according to Mr. Clay—may have been a suspect in the shooting, but police fail to mention him

[16] The officers' luck in learning of Vernon Clay's presence at the scene bears some resemblance to another crime police were investigating not long before the CITGO investigation, in which police showed photos of Vernon Clay to witnesses of a shooting, for no clear reason, and then were lucky when one identified him as a shooter. Their luck was short-lived however, as police soon discovered that Vernon Clay had been in Cook County Jail at the time of that shooting. (Attach. 3.) Both investigations (the CITGO shooting and the shooting described in Attachment 3) also have Norman McIntosh in common, who the police briefly suspected of both shootings. Police seem to have considered Mr. Clay and Mr. McIntosh "usual suspects." Eventually, CPD would make a case against Mr. McIntosh and the State's Attorney would convict him of murder—he was recently exonerated of that charge. *See* Jason Meisner, *Inmate For 15 Years Freed After Conviction Tossed in Chicago Killing*, Chicago Tribune, Oct. 4, 2016, *available at* http://www.chicagotribune.com/news/local/breaking/ct-murder-charges-dropped-mcintosh-met-20161004-story.html.

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at all in their Case Supplementary Reports. Furthermore, there is no indication in the police record that police ever attempted to locate or interrogate *any* of these individuals.

39. Detectives Forberg and Foster's handwritten notes are also noteworthy because they contain no mention of anyone named Norman, yet their Case Supplementary Report summarizing the June 2nd interrogation claims Mr. Clay told them "he had heard in the neighborhood that 'Norman,' a vice lord from the area," was the shooter.[17]

40. The GPR containing the handwritten notes of this interrogation is also the first record of anyone claiming Stanley "Meechie" Watson had come on to Quina Davis at the CITGO, which the State would later present as the motive for the shooting. This would become an important part of the State's theory of the motive for the shooting. Mr. Clay is recorded as telling the police that when "Meechie" supposedly came on to Ms. Davis, "Wink" was right behind him—but again, police seem to have made no attempt to locate "Wink" for questioning.

41. Mr. Clay's June 2nd interrogation is also the first time (according to the available police records) that anyone alleged Mr. Jackson or Shemika Mason were at the CITGO station at the time of the shooting. Despite Ms. Mason's repeated denial that she was at the CITGO at the time of the shooting—confirmed by eye-witnesses interviewed by police at the CITGO on the night of the shooting—she would she eventually testify as an eye-witness at Mr. Jackson's trial on the basis of Vernon Clay's initial statement to police.

42. In addition to supplying police with a new eye-witness, other questionable information police gathered in their first interrogation of Mr. Clay also clearly influenced the remainder of the investigation. Specifically, Mr. Clay's account of "Meechie" flirting with

[17] This again seems to show some fixation by the police on Vernon Clay and Norman McIntosh. *See supra* note 16.

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Quina Davis supplied the motive for the shooting, and his recollection of who else was present provided police with the purported shooter, Kevin Jackson.

43. However, police failed to investigate significant elements of Mr. Clay's supposed statements (e.g., the other individuals present—"Nuke," "Bumpy," "Wink," and Brad). Moreover, other information attributed to Mr. Clay was not noted anywhere else and seems to have appeared out of thin air (e.g., the identification of Norman McIntosh).

44. During his testimony at trial, Mr. Clay repudiated every statement police claim he made during this interrogation.

Michael and Stanley "Meechie" Watson

45. Apparently following up on the information gathered from Mr. Clay, on June 3, 2001, police showed Stanley "Meechie" Watson a photo array that included Mr. Jackson. Mr. Watson stated that the shooter was not pictured in the array.

46. That same day, Detectives Forberg and Foster also "learned" Michael Watson had been shown a photo array including a photo of a known Vice Lord named Norman McIntosh, and he stated that his shooter was not among the photos. It is not clear when Mr. Watson was shown this photo array, by whom, or why.

47. At this point, after interrogating Vernon Clay and showing both Michael and Stanley Watson photo arrays to no avail, the investigation once again came to a standstill. But, undeterred, The Seven pressed on.

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Coercive Second Interrogation of Vernon Clay

48. Beginning with a second detention of Vernon Clay on June 11, 2001, The Seven embarked on a campaign of coercive interrogations over a three-day period that resulted in two signed statements incriminating Kevin Jackson.[18]

49. Detectives Forberg and Foster detained Vernon Clay in the evening on June 11, 2001. (Trial Tr. Z-153:24-154:6, July 22, 2003 [hereinafter "Day 1"].)[19] Mr. Clay was not charged with any crime when he was detained. (Trial Tr. Z-155:7-156:17, Day 1.) Nevertheless, Mr. Clay was not released from police custody until the early morning hours on June 13, 2001. (Trial Tr. Z-159:18-160:11, Day 1.) During more than 33 hours of detention, Mr. Clay was locked in a room from which he was not permitted to leave, taunted by police for being locked up on his birthday (June 12th), and denied access to a phone and legal counsel. (Trial Tr. Z-156:21-158:14, Day 1.) Upon his release, he was told to sign a piece of paper for the return of his property, which he did unquestioningly. (Trial Tr. Z-158:15-159:12, Day 1.) Mr. Clay claims this was the only piece of paper he signed while in custody; however, police claim he signed a written statement naming Mr. Jackson as the shooter. At trial, the State's Attorney entered much of Mr. Clay's disputed statement into evidence by reading it back to him, even though Mr. Clay denied making it. (*See generally* Trial Tr. Z-105:22-107:20, Day 1.) Police claim Mr. Clay gave this statement to Assistant State's Attorney Lisa Hennelly[20] and Detective Forberg at 2:30 am on June 13th during his 32nd hour in custody.

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[18] Police claim a third witness, Quina Davis, also named Mr. Jackson as the shooter, but she has always steadfastly denied ever naming Mr. Jackson as the shooter, and continues to deny his involvement to this day. *See* Davis Aff. ¶¶ 14-15, 24, 27, 45 (Attach. 4).

[19] Excerpts of the trial record comprising all cited portions of the transcript are provided in Appendix B.

[20] Although to a lesser extent than The Seven, in a previously issued Rule 23 decision, Ms. Hennelly too has been accused of coercive interrogation tactics.

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Coercive Interrogation of Quina Davis

50. Concurrently, beginning on June 12th and continuing until June 14th, police interrogated Quina Davis. Their handwritten notes from these interviews contradict one another, and contradict Ms. Davis' present recollection of her statements. (*See* Davis Aff. ¶¶ 22-37.)

51. During her interrogation on June 12th, Detective Foster accused Ms. Davis of lying and in response Ms. Davis offered to take a polygraph examination. (*Id.* at ¶ 25.) The next day she was driven to another facility to take the test. (*Id.* at ¶ 26.) Detective Robert Bartik administered the examination on the evening of June 13th and accused her of lying.[21] (*Id.* at ¶ 27.) After questioning concluded, Ms. Davis was verbally abused by Detective Foster while she was transported back to the 51st Street and Wentworth Avenue police station for further interrogation. (*Id.* at ¶ 28.) A few hours after returning to the station, she again was interrogated by Detective Foster. It is at this time that police claim she made a statement for the first time that incriminated Mr. Jackson. However, Ms. Davis denies ever making such a statement. (*See, e.g.*, *id.* at ¶ 45.) Police continued to hold Ms. Davis until June 14th—three days after she was initially detained. (*Id.* at ¶ 33.) Unlike the others, who gave statements incriminating Mr. Jackson, Ms. Davis had no outstanding warrants or other possible charges against her, so police were not able to coerce her into making a false statement. (*Id.*)

52. It is undisputed that Ms. Davis consistently refused to give a written statement naming Mr. Jackson in any way. Presumably, this is why she was not called to testify before the grand jury or at Mr. Jackson's trial.

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[21] As other courts have noted, it is "odd" for someone to volunteer for a polygraph examination, only to then lie. *People v. Jones*, 2016 IL App (1st) 123371, ¶ 106 (in which the court reversed the dismissal of a successive post-conviction petition in a case in which Detective Bartik was accused of coercing a false confession).

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Coercive Interrogation of Shemika Mason

53. Also during this same timeframe, on June 12, 2001, late in the evening, Detectives Forberg and Foster picked up Shemika Mason while she was sitting outside of her home. (Trial Tr. Z-195:16-23, Day 1.) She was transported to CPD's Area One headquarters where police questioned her about the CITGO shooting until the early afternoon of the following day. (Trial Tr. Z-196:2-11; Z-176:5-8, Day 1.) Ms. Mason initially stated that she was not present at the time of the shooting and therefore had no knowledge of it. (Trial Tr. Z-176:11-12, Day 1.) Unhappy with Ms. Mason's initial response, police persisted, pressuring her to give a statement incriminating Mr. Jackson by threatening her with an outstanding warrant. (Trial Tr. Z-176:12-18, Day 1.) Eventually, Ms. Mason agreed to sign a statement adopting the officers' version of events in exchange for police help with her warrant. (Trial Tr. Z-176:14-18; 184:2-4, Day 1.) She made this statement to Assistant State's Attorney Colleen Daly and Detective Foster at 2:17 am on June 13, 2001.

Re-Interview of Stanley "Meechie" Watson

54. According to police records, on June 13th, Detectives Kaup and Kowalski also re-interviewed Stanley "Meechie" Watson. He gave a description of the shooter stating that he was between 6 feet and 6 feet 2 inches tall, with skinny braids and a dark complexion, whereas Mr. Jackson is 5 feet 7 inches tall, had short unbraided hair at the time, and has a light complexion. Moreover, Stanley Watson's statement was consistent with his prior statements to police, none of which implicated Mr. Jackson, and each of which conflicted with the coerced statements from

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Vernon Clay and Shemika Mason, and those police later coerced from Brandi Grant[22] and Manuel Stewart.

Arrest of Kevin Jackson and Manuel Stewart and Further Coercive Interrogations

55. Approximately a week after this first round of coercive interrogations, on June 19, 2001, police arrested Mr. Jackson and Mr. Stewart.[23] Upon questioning, Mr. Jackson invoked his constitutional right to counsel, but Mr. Stewart did not.

56. Police then interrogated Mr. Stewart. Detectives Forberg and Foster told him he had been identified by several other witnesses as having been at the scene of the shooting and that these witnesses were cooperating with police. At some point thereafter, Mr. Stewart agreed to take a polygraph examination.

57. Detective Clisham escorted Mr. Stewart to the examination, which Detective Howley administered on June 20, 2001. During the examination, Mr. Stewart admitted he was present at the scene when the shooting occurred, but maintained he was not involved. Instead he stated that he saw the shooter, who he said was a Vice Lord he knew as Rick Party.[24] But Detective Howley accused Mr. Stewart of lying, and reported this to Detective Clisham. More than six hours later, after further interrogations during which police showed Mr. Stewart a forged statement they claimed Mr. Jackson had made naming Mr. Stewart as the shooter, (Stewart Aff. ¶ 15), Mr. Stewart signed a statement in the presence of State's Attorney Lisa Hennelly[25] and Detective John Clisham identifying Mr. Jackson as the shooter.

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[22] Ms. Brandi Grant is also sometimes identified in the record as Ms. Brandi Butler. Her legal surname is Grant and she will be referred to as such herein.

[23] Although records indicate police were also looking for Mr. Brown, they were unsuccessful in locating him.

[24] Mr. Stewart repeated this accusation at trial, (Trial Tr. Z-228:15-18, Day 1), and maintains it is true today, (Stewart Aff. ¶¶ 14, 20 (Attach. 5)).

[25] *See supra* note 20.

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58. Mr. Stewart's statement is noteworthy in that it deviates from the statements of Vernon Clay, Shemika Mason, and Brandi Grant in at least two very specific and significant ways:

- Mr. Stewart suggests a vastly different motive for the shooting. He claims Mr. Jackson reacted immediately to seeing Stanley "Meechie" Watson, exclaiming "There goes dude!" as soon as he saw him, suggesting a pre-existing motive for the shooting. All others' statements suggest the motive was offense over Stanley "Meechie" Watson's lewd and suggestive comments to Quina Davis.
- Mr. Stewart is the only witness to claim Mr. Jackson ran across Damen Avenue to another gas station, immediately prior to the shooting, to meet up with someone identified only as "Ernie", presumably to get a gun. No other witness described this very visible detour, nor did the police document any effort to locate "Ernie."

59. Mr. Stewart would later testify that his statement was given out of fear that the police would charge him with the murder—which they threatened to do—if he did not implicate Mr. Jackson. (Trial Tr. Z-209:18-210:7, Day 1; Stewart Aff. ¶ 16.) He stated the police, who had learned his then-girlfriend was pregnant with twins, told him if he did not sign a statement incriminating Mr. Jackson, he would be charged with the shooting and he would only meet his then-unborn children from behind bars. (Statement to Public Defender Investigator Mary Clement (Attach. 6); Stewart Aff. ¶ 13.) He also later stated that the police showed him a fake statement that they claimed Mr. Jackson had made naming him as the shooter. (Stewart Aff. ¶

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15.) Only under the force of these threats and lies did Mr. Stewart sign the statement incriminating Mr. Jackson.

60. On June 20, 2001, the same day police interrogated Mr. Stewart, they also arranged for Michael Watson and Stanley "Meechie" Watson to view lineups including both Mr. Stewart and Mr. Jackson. For the second time, neither Michael Watson nor "Meechie" identified Mr. Jackson or Mr. Stewart as the shooter.

61. Detectives Forberg and Foster then re-interrogated "Meechie" while he was at the police station viewing the line-ups. They specifically asked him about any past relationship he had with Quina Davis and about whether he had any contact with either Ms. Davis or Brandi Grant on the night of the shooting. These questions went to the heart of the police and State's theory of the motive for the shooting—a lovers' quarrel between Mr. Jackson, Quina Davis, and "Meechie" that was incited by "Meechie" making suggestive comments to Ms. Davis. He stated that he knew Ms. Davis from the neighborhood, but that the two were never intimately involved, and he did not have any contact with either Ms. Davis or Ms. Grant on the night of the shooting.

62. This was the last time the police took a statement from Stanley Watson and he was not called to testify at trial.

63. Finally, also on June 20, 2001, police detained and interrogated Brandi Grant, who was three months pregnant at the time. (Trial Tr. Z-49:5-50:2; Z-59:15-60:19, Day 1; Grant Aff. ¶¶ 15-16 (Attach. 7).) Like Mr. Stewart, she was compelled to sign a statement incriminating Mr. Jackson after police threatened to charge her with the shooting—which would ensure she had her baby while behind bars—and after police showed her others' statements naming Mr. Jackson as the shooter. (Grant Aff. ¶¶ 18-19.) Under this pressure, in the early morning hours of June 21, 2001 and in the presence of Assistant State's Attorney Colleen Daly

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and Detectives Foster and Forberg, Ms. Grant signed a statement naming Mr. Jackson as the shooter. (Trial Tr. Z-49:14-23, Day 1.) She was held overnight until she could be escorted to the grand jury the following morning by police. (Trial Tr. Z-61:23-62:8, Day 1.) Ms. Grant would later testify that her statements, both written and to the grand jury, were given out of fear of the officers. (Trial Tr. Z-58:18-22; Z-77:14-19; Z-81:3-84:5; Z-90:6-91:5, Day 1; Grant Aff. ¶¶ 27-28.)

Pervasive Inconsistencies Between State's Witnesses' Statements

64. All of the State's witness statements changed significantly throughout the course of the investigation. Tellingly, no witness named Mr. Jackson as the shooter in his or her first statement to police. It was only after repeated interrogations, which the witnesses allege were coercive, that several witnesses eventually identified Mr. Jackson as the shooter. Moreover, each witness who gave a statement incriminating Mr. Jackson, and who was later called to testify at trial, was either a suspect him or herself at some point, or was in some unrelated legal trouble that the police used as leverage to coerce a false statement.

65. Most notably, each witness called to testify at trial recanted his or her prior statements, and testified clearly and unequivocally that Mr. Jackson was *not* the shooter.

66. Each of the witnesses' statements changed drastically from interrogation to interrogation, strongly suggesting police were not genuinely questioning witnesses to obtain their truthful recollections, but were instead manufacturing evidence by feeding witnesses stories consistent with the Detectives' theory of the crime. They would later record those stories as the witnesses' own statements.

67. Moreover, the statements that incriminate Mr. Jackson are inconsistent in a myriad of ways. For example, the written statements of the four witnesses who testified at Mr.

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Jackson's trial disagree on the direction in which the shooter fled, whether he fled on foot or by car, who was at the CITGO station when the shooting occurred, how each of the four witnesses arrived at the CITGO, and what the motive was for the shooting. Such glaring inconsistencies are indicative of false statements. *See People v. Jones*, 2016 IL App (1st) 123371, ¶¶ 109-10 (lack of consistency between allegedly coerced confession and physical evidence lends credibility to claims of coercion).

68. Amazingly, although police records describe 30 or more individuals who were reportedly at the CITGO when the shooting occurred, police only recorded the statements of a handful of people. Police records reflect no attempt to locate or take statements from any of the other individuals. Moreover, by the time the matter went to trial, the State relied on just six supposed eye-witnesses: CITGO station attendant, Ali Samir; victim Michael Watson; and witnesses, Vernon Clay, Brandi Grant, Shemika Mason, and Manuel Stewart.

69. The State also called Ali Samir, the CITGO station attendant, who testified solely that he saw nothing—in fact he only dialed 9-1-1 because a customer told him someone had been shot.

70. Even less helpful for the State was the testimony of Michael Watson, a surviving victim, who testified unequivocally that Kevin Jackson was not the man who shot him. (*See infra* ¶¶ 96-97.)

71. The other four purported eye-witnesses—Vernon Clay, Brandi Grant, Shemika Mason, and Manuel Stewart—each repudiated his or her prior statements at trial. They all testified that their prior statements to police, upon which the State rested its entire case, were the result of coercion by their police interrogators.

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72. Beyond the recantations of Mr. Clay, Ms. Grant, Ms. Mason, and Mr. Stewart, there are also a number of inconsistencies in their statements that strongly suggest they were not true recollections, but were instead products of police coercion.

73. **Inconsistent Recollection of Evening Before Shooting:** One such inconsistency is that Mr. Clay, Ms. Grant, Ms. Mason, and Mr. Stewart (on whose recollections the State based its theory of the crime), disagreed about (1) who was at the CITGO, (2) how everyone arrived at the CITGO, and (3) who everyone arrived with—even though they were long-time friends out for the evening, according to the State. For example, Mr. Clay supposedly told police he walked to the CITGO with Ms. Grant and Ms. Mason; however, none of the State's other witnesses place Mr. Clay at the CITGO, and both Ms. Grant and Ms. Mason claimed they arrived by car. Further, Ms. Grant and Mr. Stewart supposedly recalled that Mario Brown, Mr. Jackson's cousin, was among their party that evening, but Ms. Mason claimed he was not.

74. **Inconsistent Motive for the Shooting:** Another inconsistency relates to the motive for the shooting. The State claimed the shooting was the result of a lovers' quarrel; that is, Mr. Jackson supposedly became jealous when Stanley Watson made lewd and suggestive comments to Ms. Davis, who the State claimed was in a romantic relationship with Mr. Jackson. Per the State's narrative, Mr. Jackson was indifferent to Stanley Watson until he made these comments to Ms. Davis. The seed of this theory seems to have been planted by Vernon Clay (who very likely was not at the CITGO station) during his first interrogation, in which he claimed that Stanley Watson came on to Ms. Davis.[26] Mr. Clay's statement makes no mention of Stanley "Meechie" Watson's advances upsetting Mr. Jackson, and no other witness' initial statement so much as mentions "Meechie's" supposed advances. Moreover, "Meechie," Ms.

[26] Recall, as described in ¶¶ 38-43, *supra*, that Mr. Clay also named a number of supposed witnesses to their interaction, including "Wink," none of whom the police appear to have ever sought out or spoken with.

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Davis, and Mr. Jackson all maintained there was no romantic link between them. These inconsistencies alone seriously undermine the State's alleged motive.

75. Mr. Stewart's statement further undermines the State's proffered motive. Not only does Mr. Stewart make no mention of any romantic relationship between Mr. Jackson and Ms. Davis, or any mention of the lewd comments Stanley Watson supposedly made to Ms. Davis, which the other statements suspiciously repeat verbatim, but Mr. Stewart's statement alleged that Mr. Jackson immediately sprang into action when he saw Stanley Watson at the CITGO exclaiming, "There goes dude!" before running off to get a gun.

76. **Inconsistent Recollection of How Shooter Fled the Scene:** The statements also vary in how they recall the shooter fled the scene. Mr. Clay's statement relates that Mr. Jackson ran across Damen Avenue where he got into his car, driven by Mr. Stewart, who drove away south on Damen Avenue. But according to Ms. Grant's statement, while she laid hiding on the floor of the convenience store she saw the shooter's black sneakers run past the glass door at the front of the store as he fled—presumably heading either north or south based on the orientation of the CITGO convenience store. However, Ms. Mason's statement claims Mr. Jackson fled on foot west along Garfield Avenue. And, finally, Mr. Stewart's statement relates that Mr. Jackson fled across Damen Avenue and continued running east down an alley and away from his home. Therefore, according to these four witness statements, Mr. Jackson either fled to the north, south, east, or west, and he either fled on foot or in a car.

77. Despite their numerous inconsistencies, the statements have one thing in common: each was the product of police coercion—hardly the "good police work" claimed by the State. (*See infra* ¶ 106.)

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Testimony at Trial

78. Vernon Clay, Brandi Grant, Shemika Mason, and Manuel Stewart consistently alleged police misconduct at trial.

79. Each recanted his or her prior statements to police.

80. Each then explained why they made such statements. Namely, each was threatened by police; threatened with being charged with the shooting themselves, with not being allowed to see their children again, with being imprisoned while pregnant and giving birth in prison, and so forth.

81. Each was also incentivized with offers of help, such as promising to make a warrant go away, or to abstain from filing charges of some kind or other.

82. Next, each witness' statement was read into the record by the State's Attorney.

83. Following this string of testimony, the State called Detectives Forberg, Clisham, and Howley, and State's Attorney Colleen Daly, to testify to the untrustworthiness of the State's prior witnesses.

84. In the end, the jury had to decide whether the testimony of the State's eye-witnesses should be credited over the police officers and State's Attorney who also testified. The prosecuting State's Attorney made this credibility determination a focal point of the State's closing argument.

Testimony of Vernon Clay

85. When the State called Vernon Clay to testify at trial, he repeatedly stated that none of his supposed statement was based on his own knowledge:

> Q: Did you ever tell [Detective Forberg] that you met [Quina] Davis, Shemika Mason, and [Brandi] Grant there?
>
> A: No.

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Q: Did you ever tell the detective that you were inside the store at the Citgo station when Meechie came in and asked you for some pot?

A: No.

Q: Did you ever tell the detective that because Meechie was a Gangster Disciple he was unable to cross to the east side of Damen Avenue to buy cannabis from the Vicelord operation? Did you ever tell the detective that?

A: No.

(Trial Tr. Z-99:16-100:4, Day 1.)

86. Their exchange continues like this for pages of the trial transcript. (*See generally* Trial Tr. Z-99:8-107:13; Z-108:4-109:20, Day 1.) After each denial, the State's Attorney read Mr. Clay's prior coerced statements into record, effectively testifying for Mr. Clay.

87. Mr. Clay testified that he was unaware that he had signed anything while in custody other than what he understood to be a receipt for his property. (Trial Tr. Z-110:21-111:10; Z-113:3-114:7, Day 1). He further testified that he was escorted to the grand jury by police and threatened in order to ensure he would testify as police wanted. (Trial Tr. Z-162:9-163:2, Day 1).

Testimony of Brandi Grant

88. When Brandi Grant was called to testify at trial, she and the State's Attorney shared the following dialogue:

Q: [D]id you see Googie [referring to Mr. Jackson by his nickname] at [the Citgo] station on May 6, 2001?

A: No, he was nowhere around.

(Trial Tr. Z-43:11-13, Day 1.)

89. Later the State's attorney tried to remediate Ms. Grant's testimony:

Q: In the handwritten statement, Brand[i], you said that you were treated well by the police and by the assistant state's

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attorney, correct? [Referring to the written record of her coerced statement to police.]

A: Yes, because I was scared, but I was really not treated nice by them.

(Trial Tr. Z-58:18-22, Day 1.)

90. On cross-examination, Ms. Grant elaborated on her recantation:

A: The Detective Foster them [sic] made that story up. I'm telling y'all, you gotta believe me. They told me to sign that statement. They told me if I didn't do it that I was gonna be doing time for that; me, [Quina Davis]. You can ask [Quina Davis]. I don't need to ask her. We was the only ones there; me, [Mr. Stewart], and [Ms. Davis]. Wasn't nobody else there. [Shemika] Mason wasn't there—or the other statements that was signed across them. They kept showing us statements that he said he did it, which he didn't sign that statement. They was trying to make it seem like oh, yeah, well, he say he did it, so you might as well turn him in, he say he did it or you guys gonna be staying here for days and days. You're gonna have your baby in here. I'm like, oh, my God.

Q: So the detectives were telling you that [Mr. Jackson] was involved?

A: Yes, they kept saying it.

Q: And that you were to sign a statement that he was involved or that you would be charged?

A: Charged with it, yes.

(Trial Tr. Z-81:6-82:2, Day 1.)

91. Under this pressure, Ms. Grant signed the statement invented by Detective Foster. (Trial Tr. Z-82:3-6, Day 1.) After she signed the statement, police continued to hold Ms. Grant though she was not charged with any crime. (Trial Tr. Z-83:9-24, Day 1.) The next morning, while she was still in custody, the police transported Ms. Grant to the grand jury, where she testified while police waited outside. (Trial Tr. Z-83:1-84:5, Day 1.)

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Testimony of Shemika Mason

92. When the State called Shemika Mason, she testified that she was threatened by the police and then offered preferential treatment to provide a statement consistent with the police's theory of the shooting:

> Q: [T]hey were asking you questions about the murder of Ernest Jenkins that had happened on May 6, 2001, right?
>
> A: Yes, they was.
>
> Q: They were asking you questions, you were giving them answers, right?
>
> A: Well, basically I tried telling them that I was not there. They kept arguing with me, call me B's, telling me I was there because I was with a girl named [Quina Davis] and [Brandi Grant]. And then I had a warrant at the time, I was running from the police, and I had had a warrant and they told me if I go along with what they want me to say or whatever, they was gonna take care of my warrant.

(Trial Tr. Z-176:5-18, Day 1.)

93. In the end, Ms. Mason relented:

> A: I signed anything to get up out [of] that police station. I had a warrant and I did not want to go to jail.

(Trial Tr. Z-184:2-4, Day 1.)

Testimony of Manuel Stewart

94. After Ms. Mason testified, the State called Mr. Stewart who testified that he lied to his interrogators out of fear:

> Q: Did you tell [the police] that you were with Mario Brown, [Mr. Jackson], [Quina] Davis, and [Brandi] Grant and they were all in the car with you?
>
> A: Yeah. I lied, though.
>
> Q: You lied?
>
> A: Yeah.

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Q: How come you lied?

A: 'Cause they scared me. They said they was gonna lock me up for it or whatever.

Q: They said they were going to lock you up for the murder?

A: Yes, sir.

(Trial Tr. Z-209:18-210:5, Day 1.)

95. Mr. Stewart further recalled that after signing his false statement implicating Mr. Jackson on the evening of June 20, 2001, police continued to hold him, without charging him with a crime, until he could be transported to the grand jury on the morning of June 21st. (Trial Tr. Z-247:19-249:17, Day 1.)

Testimony of Michael Watson

96. The State then called surviving victim Michael Watson who was asked:

Q: Was it this guy here [referring to Mr. Jackson] that shot you?

97. And he answered:

A: **I never seen that young man before.**

(Trial Tr. Z-262:24-263:2, Day 1 (emphasis added).)

98. Michael Watson further testified that he did see the person who shot him and that his shooter was not included in any of the photo arrays or lineups shown to him by the police. (Trial Tr. Z-261:3-263:17, Day 1.)

Testimony of Three of The Seven

99. At this point the State had presented no in court testimony suggesting that Mr. Jackson was the shooter. The only evidence the State had presented that could possibly have supported a conviction was the prior unsworn statements of witnesses, which they had uniformly recanted under oath. Therefore, the State began to attack its own witnesses.

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100. The State did so with testimony from three of The Seven: Detectives Forberg, Clisham, and Howley, who were called largely to give testimony contradictory to the State's eye-witnesses. (*See generally* Trial Tr. 24:8-13; 100:10-101:19; 138:21-139:17, July 23, 2003 [hereinafter "Day 2"].)

101. During his testimony, Detective Forberg even went so far as to offer a dubious explanation for why Vernon Clay was held for three days by police; he claimed Mr. Clay asked to remain in custody out of fear of Mr. Jackson and others who might find out he was cooperating with the police. (Trial Tr. 93:10-20, Day 2.) On its face such a request is far-fetched, but it is made all the more so by Detective Clisham's slip of the tongue on the stand when he stated that Manuel Stewart had been *told* he would be staying at the station before correcting himself and saying that the witness had asked to stay. (Trial Tr. 152:19-23, Day 2.)

State's Closing Arguments

102. Armed with the police officers' testimony, the State's closing and rebuttal argument focused on attacking the credibility and integrity of its eye-witnesses. The State was also indignant that the defense would accuse the police of misconduct. In contrast, the State praised the police officers' efforts and resilience. To be clear, these were not passing comments, but rather were the heart of the State's closing and rebuttal arguments. For example:

103. The State first called into question its own eye-witnesses' integrity and credibility:

> State: [A]t the beginning of this trial, my partner got up here in his opening statement and said you might meet some witnesses that you guys might not like. Well, you know what? After seeing Brandi [Grant] and Shemika [Mason] and Vernon Clay and [Manuel] Stewart all testify here in court, I'm confident that none of you like them. I'm confident that none of you would want them as your friends or your next-door neighbors.

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(Trial Tr. 53:11-20, July 24, 2003 [hereinafter "Day 3"].)

104. The State then reminded the jurors of the great discretionary power they possess to make credibility determinations:

> State: One of the best things and greatest things about being jurors is that you determine who is telling the truth, what witness is telling the truth, and what witness is lying. You determine the credibility of each witness that comes into this courtroom and gives testimony.

(Trial Tr. 57:19-24, Day 3.)

105. Then, during its rebuttal closing argument, the State responded to the defense's argument that Detective Clisham (misidentified as Detective Forberg by the defense) lied on the stand. The defense argued the detective's slip of the tongue that Manuel Stewart was "told" as opposed to "asked" whether he would stay at the police station until he could testify before the grand jury was important evidence that the detective was lying, and that his lie was further evidence of the "sloppy" and "unprofessional" way the investigation was conducted. (Trial Tr. 72:2-74:5, Day 3 (referring to Trial Tr. 152:19-23, Day 2).) The State reacted with sarcasm and indignation:

> State: Let's talk about unsupported accusations. The detective they talked about was actually a fellow by the name of John Clisham. You remember. Short guy, blond hair. Thank God the Chicago Police Department has better memories than the defense.
>
> Unsupported accusations. We're going to get up here, and we're going to make accusations and allegations against people who didn't do anything, that are completely innocent, but we're going to blame the wrong guy right in front of all of you. And we're supposed to believe anything that comes out of their mouths on that side of the table. Unbelievable.
>
> This is a police frame. This is Brian Forberg doing the Chicago Police Department number on Kevin Jackson. Can you believe that? Ladies and gentlemen, all right. If

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> the Chicago Police Department, if Brian Forberg was going to put a case on this guy, would he have followed up on Norman?

(Trial Tr. 78:23-79:19, Day 3.)[27]

> ***
>
> State: I'll tell you what, ladies and gentlemen. I wouldn't want [Detective] Brian Forberg's job. I wouldn't want his partner, [Detective] John Foster's, job either. Not only do you have to deal with the people you saw on the witness stand and guys like this, but you've got to come to court and get smashed by people who aren't even paying any attention to what you're doing or trying to do, which is investigate a crime. Your reputation has to get sullied by people that aren't even paying any attention.

(Trial Tr. 80:20-81:5, Day 3.)

106. Finally, to drive its point home, the State ended by expressing admiration for the police's investigation, followed quickly by reiterating its contempt for its own eye-witnesses.

> State: This was good police work, folks.
>
> ***
>
> State: [U]nlike normal folks, *some of these folks that you have seen and heard from, ladies and gentlemen, the truth is not the first thing that comes to their lips.*

(Trial Tr. 97:10-13, Day 3 (emphasis added).)

PROCEDURAL BACKGROUND

107. Over the course of three days in July 2003, Kevin Jackson was tried before a jury presided over by Cook County Circuit Court Judge Evelyn Clay. Docket, *People v. Jackson*, No. 01-CR-17492-01 (Cir. Ct. Cook Cnty.). During the contentious deliberations that followed, the

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[27] In fact, as described previously, Norman McIntosh was somewhat of a "usual suspect" for Area 2 detectives, and in fact he was wrongfully convicted of an unrelated crime a short time later. He was recently exonerated after serving 15 years of a 45 year sentence. *See supra* notes 16 & 17. Moreover, Detective Forberg has subsequently been accused of doing precisely what the State's Attorney is sarcastically dismissing—namely, framing a suspect. *See supra* ¶ 27 & note 8.

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jury inquired about the law for declaring a jury hung, (Trial Tr. 126:9-12, Day 3), but the jury did eventually return a guilty verdict. The verdict was read to Mr. Jackson on July 25, 2003.

108. On March 25, 2004, Mr. Jackson was sentenced to 45 years and 6 years, to run concurrently, for the murder of Mr. Jenkins and for aggravated discharge of a firearm.

109. Mr. Jackson has steadfastly maintained his innocence from the moment he was arrested. He has made numerous attempts to obtain relief from his conviction.[28]

110. This petition is Mr. Jackson's second under the Illinois Post-Conviction Hearing Act (the "PC Act").

STATEMENT OF LAW

The PC Act "provides a statutory remedy for criminal defendants who claim their constitutional rights were violated at trial." *People v. Edwards*, 2012 IL 111711, ¶ 21; 725 ILCS 5/122-1(a)(1) (West 2016). The incarceration of an innocent person is a violation of his or her Constitutional rights under the Illinois Constitution. *People v. Washington*, 171 Ill. 2d 475, 487-88 (1996) (noting that incarceration of an innocent person violates both procedural and substantive due process).

Leave to File a Successive Petition Under the Illinois Post-Conviction Hearing Act

Generally, only a single petition may be filed under the Act. *See* 725 ILCS 5/122-3 (West 2016). However, Illinois courts have routinely allowed successive petitions to be filed when rigid adherence to the single-petition limit would be fundamentally unfair. *See, e.g.*, *People v. Coleman*, 2013 IL 113307, ¶¶ 81, 91; *People v. Ortiz*, 235 Ill. 2d 319, 329-30 (Ill. 2009); *People v. Almodovar*, 2013 IL App (1st) 101476, ¶ 58.

[28] These include: filing a motion for a new trial following his conviction, *habeus corpus* petitions, motions to reconsider sentencing, motion to reduce sentence, a direct appeal, a post-conviction petition under the Post-Conviction Hearing Act, and an appeal of the denial of his Post-Conviction Hearing Act petition.

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There are two independent situations when fundamental fairness requires that leave be granted to file a successive petition: (1) when the successive petition presents a claim of actual innocence, or (2) when the failure to raise the claim previously is excused under the cause-and-prejudice test. *People v. Smith*, 2014 IL 115946, ¶ 30 (citing *Edwards*, 2012 IL 111711 at ¶¶ 22-23).

Leave to file a successive petition should be granted if it satisfies either test—it need not satisfy both—although an actual innocence claim likely will. *Ortiz*, 235 Ill. 2d at 336 (acknowledging that leave of the court to file a successive petition may be based on actual innocence alone); *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 75 (when a "petitioner sets forth a claim of actual innocence in a successive postconviction petition, the petitioner is excused from showing cause and prejudice"). Furthermore, "leave of court should be denied *only* where it is clear, from a review of the successive petition and the documentation provided by the petitioner that, as a matter of law, the petitioner cannot set forth a colorable claim of actual innocence." *Edwards*, 2012 IL 111711 at ¶ 24 (emphasis added); *see also Smith,* 2014 IL 115946 at ¶ 35 (noting denial is appropriate "when it is *clear* … the successive petition with supporting documentation is insufficient to justify further proceedings") (emphasis added). To be clear, it is a *purely* legal inquiry whether a successive petition is entitled to leave to file. *Jones*, 2016 IL App (1st) 123371 at ¶¶ 70-71.

Standard of Review of a Petition Under the Illinois Post-Conviction Hearing Act

The PC Act establishes a three-stage process for review. *People v. Domagala*, 2013 IL 113688, ¶ 32. At the first stage, a petitioner must establish that his or her claim is not "frivolous or … patently without merit." *Id.* (quoting 725 ILCS 5/122–2.1(a)(2) (West 2016)).

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If advanced to the second stage, counsel may be appointed to assist *pro se* petitioners and the State may file a motion to dismiss or an answer to the petition. *Id.* at ¶ 33. At the second stage the court will accept as true all well-pled facts that are not positively rebutted by the trial record. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006); *People v. Coleman*, 183 Ill. 2d 366, 387 (1998). The court will consider along with the petition any accompanying documentation to determine whether together they "'make a substantial showing of a constitutional violation.'" *Domagala*, 2013 IL 113688 at ¶ 33 (quoting *People v. Edwards*, 197 Ill. 2d 239, 246 (2001).

At the second state, the petitioner bears the burden of "making a substantial showing of a constitutional violation," but "evidentiary questions are not to be resolved at this stage." *Id.* at ¶ 34. Rather, the second stage is purely a test of the legal sufficiency of the petition. *Id.* at ¶ 35; *see also Jones*, 2016 IL App (1st) 123371 at ¶ 71 (citing *Edwards*, 2012 IL 111711 at ¶30). Therefore, the court shall not engage in fact-finding or make credibility determinations, both of which are explicitly reserved for a third-stage evidentiary hearing. *Whirl*, 2015 IL App (1st) 111483 at ¶ 74; *see also People v. Montanez*, 2016 IL App (1st) 133726, ¶ 27 (recantation evidence "should not simply be dismissed without further analysis ... [especially in post-conviction proceedings] where the trial court is obligated to assess the evidence in a light most favorable to petitioner").

If the court finds that a petitioner's allegations, accepted as true, would establish that the petitioner has been subjected to a constitutional violation, the petitioner is entitled to a third stage evidentiary hearing. *Domagala*, 2013 IL 113688 at ¶ 34. Only at the third stage is the court to serve as a fact-finder, at which time it may make credibility determinations, weigh testimony and evidence, and resolve evidentiary conflicts. *Id.* (citing *People v. English*, 2013 IL 112890, ¶ 23).

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When a successive petition is filed, and leave is granted, the normal stages are altered in that first stage proceedings are bypassed. *See, e.g.*, *Edwards*, 2012 IL 111711, at ¶ 27 ("[T]here is simply no basis in the statute for applying a first-stage analysis to a *successive* petition.") (emphasis in original). Instead, if leave is granted, a successive petition is immediately docketed for second-stage proceedings. *See People v. Sanders*, 2016 IL 118123 ¶¶ 25-28 (with successive petition, the question is whether to docket it for second-stage proceedings); *Jones*, 2016 IL App (1st) 123371 at ¶ 57 (noting higher standard to which successive petitions are subject renders first-stage proceedings unnecessary) ; *Almodovar*, 2013 IL App (1st) 101476, ¶ 81 (upon overturning denial of leave to file successive petition, the court remanded the case for second-stage proceedings); *see also Smith*, 2014 IL 115946 at ¶ 35 (noting that in order to obtain leave to file a successive petition, petitioner must necessarily meet a higher standard than the first-stage's "frivolous or patently without merit" standard).

ARGUMENT

Petitioner Kevin Jackson is innocent of the crimes for which he is currently incarcerated. His incarceration, therefore, is a violation of both his procedural and substantive due process rights under the Illinois Constitution. *Washington*, 171 Ill. 2d at 487-88. As such, the PC Act affords him a means of relief from his wrongful conviction. *People v. Jones*, 2016 IL App (1st) 123371, ¶ 54 (June 30, 2016) (The PC Act "provides a statutory remedy for criminal defendants who claim their constitutional rights were violated at trial."). Because Mr. Jackson has already filed one petition for relief under the Act, he must obtain leave of the Court to file this successive petition. *Smith*, 2014 IL 115946 at ¶ 30 (citing *Edwards*, 2012 IL 111711 at ¶¶ 22-23). To obtain leave of the Court, his petition must either (1) present a colorable claim of actual

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innocence, or (2) satisfy the cause-and-prejudice test. *Id.* Mr. Jackson's successive petition satisfies both tests.

Colorable Claim of Actual Innocence

A successive petition seeking leave to file based on a claim of actual innocence must present (1) newly discovered evidence that could not have been discovered previously, that is (2) material and not merely cumulative, and (3) is of such conclusive nature that it would probably change the result on retrial. *Smith*, 2014 IL 115946 at ¶¶ 32, 34; *People v. Adams*, 2013 IL App (1st) 111081, ¶¶ 30-31. A court presented with a successive petition claiming actual innocence may deny leave to file it *only if*, as a matter of law, the petition cannot satisfy one or more of these three elements. *Edwards*, 2012 IL 111711 at ¶ 24 ("leave of court should be denied *only* where it is clear … that, as a matter of law, the petitioner cannot set forth a colorable claim of actual innocence") (emphasis added).

With this petition, Mr. Jackson submits voluminous evidence of a pattern and practice of misconduct by the detectives responsible for the investigation that led to his incarceration. (*See supra* ¶¶ 19-30; Appendix A.) The Court may also take judicial notice of the substantial body of evidence of police misconduct that has been introduced in the numerous other PC Act proceedings that have led to exonerations in the years since Mr. Jackson's conviction. *Jones*, 2016 IL App (1st) 123371 at ¶ 84 (in a case involving one of The Seven, Detective Bartik, the court noted it may take judicial notice of publicly available records and of other matters in the same court). Altogether, this evidence supports Mr. Jackson's petition, and is new, material, non-cumulative, and conclusive of Mr. Jackson's actual innocence, as described below.

The evidence Mr. Jackson submits is new because he did not discover it until after his trial and he could not have discovered it before his trial through due diligence. *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 162. Much of the known misconduct of The Seven (nearly 40 of

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the known CRs filed against them and all of the known civil lawsuits filed against them) did not occur until after Mr. Jackson's first post-conviction petition. This is clearly new evidence for the purposes of the PC Act. *See Tyler*, 2015 IL App (1st) 123470 at ¶ 162 ("The evidence of misconduct occurring after [year of trial] did not exist at the time of trial, so those cases are new evidence.")

While some of the misconduct predates Mr. Jackson's first post-conviction petition, it could not have been discovered through the exercise of due diligence due, in part, to the reluctance of CPD and IPRA to release CRs. As courts have repeatedly recognized, it is extremely difficult for defense attorneys to discover evidence of police misconduct due to the sensitive nature of police records, the scale of the criminal justice system, and the efforts taken by police to conceal such evidence. *See People v. Patterson*, 192 Ill. 2d 93, 109 (2000); *People v. Reyes*, 369 Ill. App. 3d 1, 20 (2006); *Tyler*, 2015 IL App (1st) 123470 at ¶ 162 (citing *Patterson* and *Reyes*). This difficulty is not merely theoretical either; in this very matter Mr. Jackson's counsel has encountered numerous hurdles to obtaining records of misconduct of The Seven. (*See supra* note 4; Attachment 1.) The misconduct alleged by CRs that predate Mr. Jackson's first post-conviction petition, and in particular, those CRs that CPD and IPRA are still withholding, therefore, also constitute new evidence for the purposes of Mr. Jackson's petition.

Furthermore, courts have recognized that subsequent events may transform previously discoverable information into new evidence by casting it in a different light. For example, incidents of misconduct by a police officer that predate a conviction may take on new meaning upon further accumulation of such incidents, or when viewed in light of other new information, and may become evidence of a pattern and practice of misconduct rather than of simply isolated incidents. *See Patterson*, 192 Ill. 2d at 115 ("Even incidents that are remote in time can become

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relevant … if the party presenting the evidence can present evidence of other incidents that occurred in the interim."); *see also Whirl*, 2015 IL App (1st) 111483 at ¶ 100. The sheer volume of misconduct alleged against The Seven since Mr. Jackson's first PC Act petition transforms any previously discoverable information in that it clearly establishes a pattern and practice of misconduct of precisely the type alleged by Mr. Jackson.

The evidence Mr. Jackson submits is "newly discovered" for the purposes of his claim of actual innocence, because—for several reasons, including the following examples—Mr. Jackson could not have discovered the evidence he now submits prior to his first PC Act petition through the exercise of due diligence. First, much of it did not exist at the time. Second, petitioners regularly face difficulties when seeking police misconduct records (as demonstrated, in part, by the actual challenges Mr. Jackson's counsel has faced in obtaining records related to The Seven). And, third, those records of misconduct that did exist at the time of Mr. Jackson's first PC Act petition have taken on new meaning in light of more recent CRs and civil lawsuits related to The Seven, as well as other revelations in general about misconduct within the Chicago Police Department that has led to numerous wrongful convictions.

Moreover, to the extent that the Court finds that any evidence submitted by Mr. Jackson is not new for the purposes of the PC Act, fundamental fairness requires that the "newness" element of the actual innocence standard be relaxed. *People v. Williams*, 392 Ill. App. 3d 359, 369, 371 (2009) (noting that courts should relax the emphasis on newness when presented with compelling evidence of actual innocence).

Evidence of misconduct by an individual police officer has consistently been held to bear on that officer's integrity and credibility, which is <u>*always*</u> material to a petitioner's innocence. *See, e.g.*, *People v. Serrano*, 2016 IL App (1st) 133493, ¶ 42 ("any allegation that [specific

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police officer] coerced a person to provide evidence is relevant..."); *Tyler*, 2015 IL App (1st) 123470 at ¶ 186 ("Even one incident of similar misconduct by the same detectives can be sufficient to show intent, plan, motive, and could impeach the officers' credibility.").

The evidence Mr. Jackson submits calls into question the credibility of the officers who investigated Mr. Jackson and who testified against him. For example:

- Detectives Forberg and Foster have been accused of strikingly similar misconduct in an investigation that later led to an exoneration, including using long, coercive interrogations to extract false witness statements. (*See supra* ¶ 27; notes 6-7.)
- Detective Forberg has previously been accused of framing an innocent suspect. (*See supra* ¶ 27; note 8.)
- Detectives Bartik and Howley have both been implicated in false confessions resulting from coercive interrogation tactics, and have been accused of blatantly disregarding established standards for conducting polygraph examinations. (*See supra* ¶ 27.)
- Detectives Foster, Clisham, Kaup, and Kowalski have at least a combined 96 CRs filed against them alleging misconduct ranging from submitting false reports, to improper arrest, to unlawful searches, to soliciting and accepting bribes, to the use of excessive force. (*See supra* ¶ 27.)

Even these few examples establish a pattern and practice of misconduct by The Seven. This evidence is, therefore, highly relevant to the integrity of The Seven, and by extension, the integrity of the investigation that led to Mr. Jackson's incarceration. The prosecution relied heavily on the jury's belief in the integrity of both the investigation and the officers conducting it in convicting Mr. Jackson. For example, the State claimed that the investigation was "good

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police work," (*see supra* ¶¶ 106), and bemoaned the defense's questioning of the officers' credibility, (*see supra* ¶¶ 105). Therefore, this evidence is all material.

Evidence that tends to contradict evidence presented at trial adds to what the jury heard and therefore is non-cumulative. *See Ortiz*, 235 Ill. 2d at 335-36. This may include evidence that raises or supports new questions regarding the credibility of those who testified at trial. *See Coleman*, 2013 IL 113307, ¶ 103 (testimony of five individuals was non-cumulative even though it simply corroborated trial testimony regarding petitioner's whereabouts at the time of the crime, because it was relevant and probative of petitioner's innocence). The evidence submitted by Mr. Jackson contradicts testimony given by the police at trial, specifically their contention that the eye-witnesses were treated well during interrogation. (*See, e.g.*, *supra* ¶¶ 85-95.) The evidence also contradicts arguments advanced by the State in its closing argument, including the argument that the changes in witnesses' statements were the result of fear of Mr. Jackson, and that the charges brought against Mr. Jackson were the result of "good police work." (*See supra* ¶ 106.) Perhaps most importantly, the evidence, as described above, raises questions about the credibility and integrity of the State's testifying witnesses, which is never cumulative. *See People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 62 (prior similar misconduct "significantly shifts the balance of credibility" against the police officer). Therefore, the evidence of police misconduct is non-cumulative.

The evidence Mr. Jackson submits would likely have changed the result of his trial, and therefore is "conclusive" for the purposes of a PC Act petition. *Coleman*, 2013 IL 113307 ("Probability, not certainty, is the key as the trial court in effect predicts what another jury would likely do, considering all the evidence, both new and old, together.")

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The State presented no forensic evidence linking Mr. Jackson to the crime for which he is incarcerated and none of the State's eye-witnesses identified Mr. Jackson as the shooter at trial. In fact, when asked whether Mr. Jackson was the man who shot him, one of the surviving victims stated, "I never seen that young man before." (*See supra* ¶ 97.) However, the State argued that all of this was due to witnesses' fear of Mr. Jackson, not police coercion. The State explicitly relied on the perceived integrity and credibility of the police and juxtaposed this with the character of the State's eye-witnesses. (*See supra* ¶¶ 102-106.) Mr. Jackson was convicted solely on the basis of the jury's belief in the integrity and credibility of the investigation and the investigating police over the integrity and credibility of the State's eye-witnesses. If Mr. Jackson had been able to introduce at trial the evidence of the pattern and practice of gross misconduct that he now submits, he would have been able to effectively and convincingly impeach the officers' testimony, calling into question the integrity of the investigation. This new evidence undoubtedly would have introduced reasonable doubt in jurors' minds. *See, e.g.*, *Coleman*, 2013 IL 113307 (evidence supporting conviction was witness testimony only and was "far from overwhelming" therefore petitioner was granted a new trial on the basis of new contrary testimony); *Jones*, 2016 IL App (1st) 123371 (petitioner's successive petition docketed for second stage proceedings on basis of evidence presented regarding history of misconduct by officers, including Robert Bartik, who were alleged to have coerced petitioner's confession); *Almodovar*, 2013 Ill App (1st) 101476 (2013) (successive petition advanced to second stage proceedings when no physical evidence supported conviction and petitioner presented evidence of a pattern and practice of misconduct by lead detective).

For the foregoing reasons, the evidence Mr. Jackson submits is (1) newly discovered evidence that could not have been discovered previously, that is (2) material and not merely

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cumulative, and (3) is of such conclusive nature that it would probably change the result on retrial. Therefore, the Court must grant leave to file this successive petition and docket it for second-stage proceedings under the Post-Conviction Hearing Act.

Cause-and-Prejudice Test

Leave to file a successive petition must also be granted if the petition satisfies the cause-and-prejudice test, which requires that the petition establish (1) cause for failing to submit the claim in the prior post-conviction petition, and (2) that the "claim not raised in [the] initial post-conviction petition 'so infected the entire trial that the resulting conviction or sentence violates due process.'" *Smith*, 2014 IL 115946 at ¶ 37 (quoting *People v. Pitsonbarger*, 205 Ill. 2d 444, 464 (2002)).

Mr. Jackson's petition also satisfies the cause-and-prejudice test. While it is only necessary for Mr. Jackson's petition to satisfy one of the grounds for leave to file this successive petition, this petition satisfies both. *Ortiz*, 235 Ill. 3d at 330 (where a petitioner "sets forth a claim of actual innocence in a successive postconviction petition, the [petitioner] is excused from showing cause and prejudice"). The preceding argument regarding Mr. Jackson's colorable claim of actual innocence, including how the newly submitted evidence supports that claim, is fully adopted herein.

As described above, Mr. Jackson was convicted on the basis of a credibility determination favoring the police officers who testified for the State over the State's eye-witnesses. Their testimony constituted the vast majority of the evidence introduced against Mr. Jackson. As further described above, the evidence that Mr. Jackson submits with this petition, which impugns the credibility of the police who testified against him, was unavailable to him at his trial and at the time he filed his first post-conviction petition. Therefore, for all the reasons that this evidence is newly discovered, as described above, Mr. Jackson has cause for not having

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raised it previously. *Almodovar*, 2013 IL App (1st) 101476, ¶¶ 63-64 (inability to impeach police officer previously because of lack of evidence at the time satisfies cause and prejudice test).

Because no forensic evidence was introduced to establish Mr. Jackson's guilt—no physical or biological evidence of any kind—the credibility of the officers who testified was central to the State's case against Mr. Jackson. Therefore, Mr. Jackson was prejudiced and his due process rights were violated as a result of his inability to impeach their testimony—i.e., this inability "so infected the entire trial that the resulting conviction … violates due process." *Pitsonbarger*, 205 Ill. 2d at 464.

For the foregoing reasons, Mr. Jackson has established (1) that he has adequate cause for failing to submit this claim in his prior post-conviction petition, and (2) that his inability to impeach the police who testified at this trial prejudiced him to such an extent that it "infected the entire trial" and violated norms of due process. Therefore, the Court must grant leave to file this successive petition and docket it for second-stage proceedings under the PC Act.

The Court Should Grant Mr. Jackson an Evidentiary Hearing Under the Act

Mr. Jackson makes a substantial showing that his rights under the Illinois Constitution have been violated, and he is therefore entitled to an evidentiary hearing under the Post-Conviction Hearing Act. *Edwards*, 2012 IL 111711 at ¶ 21. Mr. Jackson has alleged, and has submitted evidence to substantiate, that the police officers who were responsible for the investigation that led to his incarceration and who testified against him at trial were engaged in a pattern and practice of misconduct that made them highly susceptible to credibility attacks. However, Mr. Jackson was unable to impeach them at trial because he lacked evidence of their misconduct for excusable reasons.

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At this stage of proceedings the Court must not engage in fact-finding or make credibility determinations about the evidence provided by Mr. Jackson. *Whirl*, 2015 IL App (1st) 111483, ¶¶ 74, 84 (stating that the court does not engage in fact finding or make credibility determinations at the second stage and that the petitioner does not need to be credible to carry its burden at the second stage). Rather, the Court must accept as true all well-pled facts alleged by Mr. Jackson, unless they are positively rebutted by the trial record, and then determine whether these allegations, if proven at a subsequent evidentiary hearing, would be sufficient to warrant a new trial. *Domagala*, 2013 IL 113688 at ¶ 34. A new trial would be appropriate if the evidence proven at the evidentiary hearing suggests that "it is more likely than not that no reasonable juror would have convicted [Mr. Jackson] in light of the new evidence." *See Jones*, 2016 IL App (1st) 123371 at ¶¶ 100-01.

Mr. Jackson makes, in essence, a single factual allegation: the police who investigated him and who testified against him were engaged in a pattern and practice of misconduct. Mr. Jackson supports this assertion with voluminous documentation of misconduct by the specific officers involved in the investigation that led to his incarceration.

Accepting these allegations as true, the Court must consider whether presenting evidence of this pattern and practice of misconduct on the part of the police officers involved in investigating Mr. Jackson could have changed the result of his trial. Cases considering precisely this question are, sadly, legion in Illinois, and overwhelmingly, courts have held that such evidence warrants further proceedings, and frequently relief, under the Act. *See, e.g.*, *Jones*, 2016 IL App (1st) 123371, ¶¶ 99-110 (collecting cases, including several involving Robert Bartik, and granting relief); *Montanez*, 2016 IL App (1st) 133726 (granting relief under similar circumstances); *Serrano*, 2016 IL App (1st) 133493 (evidence of pattern of misconduct by lead

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detective warranted new trial); *Tyler*, 2015 IL App (1st) 123470 at ¶ 89 ("Illinois courts have consistently held that a 'pervasive pattern of criminal conduct by police officers' is enough for courts to reconsider the voluntariness of a defendant's confession.") (quoting *Mitchell*, 2012 IL App (1st) 100907 at ¶ 63); *Whirl*, 2015 IL App (1st) 111483 (recognizing that outcome of suppression hearing would likely have been different had detective been subject to impeachment by allegations raised in PC Act petition); *Almodovar*, 2013 IL App (1st) 101476 (granting relief under similar circumstances); *Mitchell*, 2012 IL App (1st) 100907 (claim that officer offered perjured testimony to refute witnesses' claims of coercion warranted further proceedings under PC Act); *Reyes*, 369 Ill. App. 3d 1 (evidence of pattern of misconduct by lead detective warranted new trial); *see also* Andy Grimm, *Kim Foxx Planning to Revamp Cook County Wrongful-Conviction Unit*, Chicago Sun-Times, Mar. 14, 2017, *available at* http://chicago.suntimes.com/politics/kim-foxx-planning-cook-county-wrongful-conviction-unit-revamp ("Nearly 80 of 136 exonerations in Cook County since 1989 involved allegations of official misconduct" including "false testimony by police" making Cook County, according to State's Attorney Kim Foxx, the "wrongful conviction capital of the U.S.").

Moreover, the circumstances of Mr. Jackson's specific trial—i.e., the loud "arguing" heard coming from the jury room and noted by the Court and counsel for both sides, and the fact that the jury inquired about the law of declaring a hung jury—suggest that the outcome could have been different had the evidence now presented been available at trial. (Trial Tr. 126:9-128:24, Day 3.)

When viewed in light of the overall weakness of the State's case, the new evidence Mr. Jackson submits related to the misconduct of the police officers responsible for his incarceration is highly compelling. Had this evidence been available to Mr. Jackson at trial, the jury would

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have been presented with substantial evidence contradicting the State's argument that the police officers' testimony should be credited over the eye-witnesses, and that the investigation was "good police work." Because the relative credibility was all the evidence the jury had to weigh, and because Mr. Jackson was unable to submit evidence supporting the witnesses' testimony regarding the officers' misconduct, it is understandable how a jury may have found him guilty. But, the evidence Mr. Jackson submits here fundamentally alters that balance of credibility. Therefore, it cannot but change the result on retrial.

Mr. Jackson has made a substantial showing of a violation of his constitutional rights and is entitled to an evidentiary hearing at which point the Court will perform its fact-finding role to determine whether Mr. Jackson can establish the allegations he has made herein—namely, the pattern and practice of misconduct by The Seven—sufficiently to be admissible at trial to impeach their credibility.

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CONCLUSION

For all the foregoing reasons, Mr. Jackson requests leave to file this successive petition for relief pursuant to the Illinois Post-Conviction Hearing Act and asks that it be docketed for further proceedings consistent with that Act. Furthermore, Mr. Jackson requests the Court allow leave to amend this petition upon Petitioner's request. Finally, Mr. Jackson asks the Court to order an evidentiary hearing, vacate Mr. Jackson's conviction, order a new trial, release Mr. Jackson from Illinois Department of Corrections custody pending the outcome of the new trial, and grant him any further relief the Court deems appropriate.

Date: May 11, 2017

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APPENDIX A

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APPENDIX A

Complaint Histories of Officers Involved in the Investigation

Officer's Name & Star Number	CR / Log Number	Source Chicago Police Department (CPD)/ Independent Police Review Authority (IPRA)	Category/Description	Incident Date	Date of Complaint	Closing Date	Final Finding	Penalty
Officers With Substantial Influence Over the Investigation								
John Foster #20288	198751	CPD	Arrest/lockup procedures while in station - Miscellaneous	2/19/1993	2/19/1993	4/24/1993	Not Sustained	*
	202172	IPRA	Excessive force on duty- Injury	7/7/1993	7/20/1993	11/1/1993	Not Sustained	*
	203112	CPD	Traffic (Not bribery/Excessive force) - miscellaneous	8/26/1993	8/26/1993	12/4/1993	Not Sustained	*
	214795	IPRA	Excessive force on duty - Injury	4/3/1994	1/9/1995	4/26/1995	Not Sustained	*
	209320	IPRA	Excessive force on duty - Injury	6/1/1994	6/1/1994	10/18/1994	Not Sustained	*
	211901	CPD	Neglect of duty	9/7/1994	9/8/1994	11/21/1994	Not Sustained	*
	211941	CPD	Search of premise/ vehicle without a warrant	9/9/1994	9/9/1994	11/1/1994	Not Sustained	*
	212181	CPD	Damage/ trespassing to property	9/17/1994	9/17/1994	11/10/1994	Not Sustained	*
	212754	IPRA	Use of profanity	10/9/1994	10/9/1994	11/28/1994	Not Sustained	*
	217197	IPRA	Excessive force - use of firearm off duty - Injury	4/21/1995	4/21/1995	9/29/1995	Not Sustained	*
	217838	IPRA	Excessive force on duty - No injury	5/19/1995	5/19/1995	9/9/1995	Not Sustained	*
	218033	IPRA	Excessive fore - use of firearm off duty - Injury	5/27/1995	5/27/1995	8/8/1995	Exonerated	*
	218224	IPRA	Racial/ Ethnic	6/1/1995	6/2/1995	9/1/1995	Not Sustained	*
	220172	IPRA	Excessive force on duty - Injury	8/9/1995	8/14/1995	1/15/1996	Not Sustained	*
	222612	CPD	Search of premise/ vehicle without a warrant	11/2/1995	11/16/1995	1/19/1996	Not Sustained	*
	222403	IPRA	Excessive force off duty - No injury	11/6/1995	11/7/1995	3/26/1996	Not Sustained	*
	222741	CPD	Reports - Failure to submit/Improper/False	11/22/1995	11/22/1995	2/1/1996	Exonerated	8
	223358	IPRA	Excessive force on duty - Injury	12/16/1995	12/19/1995	6/15/1996	Unfounded	*
	227277	IPRA	Excessive force on duty - Injury	5/19/1996	5/20/1996	12/7/1996	Not Sustained	*
	227628	CPD	Inventory procedure - Non-arrestee	6/2/1996	6/3/1996	9/2/1996	Unfounded	*
	227876	IPRA	Excessive force on duty - Injury	6/11/1996	6/12/1996	12/21/1996	Not Sustained	*
	232149	CPD	Reports - Failure to submit/Improper/False	6/20/1996	11/13/1996	3/11/1998	Not Sustained	*
	230524	IPRA	Use of profanity	9/13/1996	9/13/1996	1/11/1997	Not Sustained	*
	232732	IPRA	Excessive force on duty - Injury	12/8/1996	12/10/1996	4/22/1997	Not Sustained	*
	234381	CPD	Reports - Failure to submit/Improper/False	1/7/1997	2/7/1997	6/24/1997	Unfounded	*
	235299	CPD	Search of premise/ vehicle without a warrant	3/13/1997	3/13/1997	2/24/1998	Exonerated	*
	236912	IPRA	Excessive force off duty - No injury	5/17/1997	5/17/1997	9/22/1997	Not Sustained	*
	238164	IPRA	Excessive force on duty - Injury	7/4/1997	7/5/1997	11/4/1997	Not Sustained	*
	238406.	IPRA	Excessive force on duty - Injury	7/14/1997	7/14/1997	2/18/1998	Not Sustained	*
	238465	CPD	Search of premise/ vehicle without a warrant	7/16/1997	7/17/1997	2/4/1998	Not Sustained	*
	239275	IPRA	Excessive force on duty - Injury	8/17/1997	8/18/1997	2/4/1998	Not Sustained	*
	240746	CPD	Miscellaneous	10/10/1997	10/10/1997	1/21/1998	Not Sustained	*
	240759	CPD	Miscellaneous	10/11/1997	10/11/1997	10/16/1997	Unfounded	*
	240881	CPD	Search of premise/ vehicle without a warrant	10/14/1997	10/16/1997	3/3/1998	Not Sustained	*
	241464	CPD	State Civil Suit	11/8/1997	11/12/1997	3/23/2001	Not Sustained	*
	241611	IPRA	Excessive force off duty - No injury	11/19/1997	11/20/1997	5/14/1998	Not Sustained	*
	232918	CPD	Search of person without a warrant	12/16/1997	12/17/1996	4/4/1997	Not Sustained	*
	242712	CPD	Search of person without a warrant	1/12/1998	1/13/1998	7/14/1998	Not Sustained	*
	243288	CPD	Neglect of duty	1/28/1998	2/9/1998	5/7/1998	Unfounded	*
	243164	CPD	Sexual Harassment	2/3/1998	2/3/1998	4/15/2000	Sustained	*

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John Foster #20288	245899	CPD	Neglect of duty	6/1/1998	8/1/1998	*	*	*
	247687	IPRA	Excessive force off duty - No injury	8/15/1998	8/16/1998	2/24/1999	Not Sustained	*
	247723	CPD	Neglect of duty	8/15/1998	8/17/1998	11/10/1998	Not Sustained	*
	251126	CPD	Search of premise/ vehicle without a warrant	1/21/1999	1/21/1999	6/8/1999	Not Sustained	*
	251448	CPD	Search of premise/ vehicle without a warrant	2/3/1999	2/4/1999	12/8/1999	Not Sustained	*
	251460	CPD	Miscellaneous	2/3/1999	2/4/1999	12/8/1999	Not Sustained	*
	252174	IPRA	Excessive force off duty - No injury	3/11/1999	3/12/1999	7/22/1999	Unfounded	*
	252240	CPD	Search of premise/ vehicle without a warrant	3/15/1999	3/15/1999	2/5/2000	Unfounded	*
	252265	IPRA	Excessive force on duty - Injury	3/16/1999	3/17/1999	7/22/1999	Unfounded	*
	260070	CPD	Unnecessary physical contact on duty	3/29/1999	2/16/2000	10/27/2000	Unfounded	*
	254093	CPD	Reports - Failure to submit/Improper/False	6/3/1999	6/4/1999	9/24/1999	Exonerated	*
	254750	CPD	Misuse of department/ equipment supplies	6/29/1999	6/30/1999	9/10/1999	Unfounded	*
	272791	CPD	Search of premise/ vehicle without a warrant	7/4/2001	7/5/2001	12/17/2003	Not Sustained	*
	274711	CPD	Search of premise/ vehicle without a warrant	9/12/2001	9/13/2001	3/28/2002	Not Sustained	*
	301052	IPRA	Excessive force on duty - No injury to Miscellaneous	9/21/2004	10/1/2004	3/23/2007	Unfounded	*
	301249	CPD	Search of person without a warrant	10/12/2004	10/12/2004	1/26/2007	Unfounded	*
	1006581	CPD	Association with Felon	8/23/2006	6/14/2007	3/18/2008	SU	100
	1019978	CPD	Court attendance irregularities	1/1/2008	9/15/2008	3/22/2011	Unfounded	*
	1019850	CPD	Improper arrest (without probable cause)	7/20/2008	9/10/2008	10/23/2008	No Affidavit	*
	1023683	IPRA	Excessive force on duty - Injury	1/2/2009	2/6/2009	11/21/2011	Not Sustained	*
	1030173	CPD	Insubordination	9/15/2009	9/16/2009	3/2/2010	Unfounded	*
	1051033	CPD	Miscellaneous	12/29/2010	3/1/2012	2/21/2012	No Affidavit	*
	1075563	*	*	7/6/2011	8/6/2015	Pending	*	*
	1057891	IPRA	Excessive force on duty - No injury	10/20/2012	10/20/2012	7/9/2014	Not Sustained	*
	1060226	IPRA	Excessive force - Use of firearm off duty - No injury to Miscellaneous	2/18/2013	2/18/2013	6/11/2015	SU	0
	1064245	IPRA	Racial/ Ethnic	8/13/2013	8/14/2012	11/25/2013	Not Sustained	*
Brian Forberg #21249	227249	CPD	Miscellaneous	5/19/1996	5/19/1996	10/12/1996	Not Sustained	*
	235115	CPD	Search of a person without a warrant	3/6/1997	3/6/1997	6/20/1997	Exonerated	*
	236723	CPD	Racial/ Ethnic	5/10/1997	5/10/1997	7/30/1997	Not Sustained	*
	241263	IPRA	Excessive force on duty - Injury	11/2/1997	11/3/1997	4/30/1998	Not Sustained	*
	245730	IPRA	Excessive force on duty - Injury	5/12/1998	6/1/1998	9/24/1998	Not Sustained	*
	249761	CPD	Search of person without a warrant	11/6/1998	11/8/1998	3/25/1999	Not Sustained	*
	251575	IPRA	Excessive force on duty - Injury	2/3/1999	2/9/1999	8/13/1999	Not Sustained	*
	251608	IPRA	Excessive force off duty - No injury	2/10/1999	2/10/1999	6/21/1999	Not Sustained	*
	251717	CPD	Search of premise/ vehicle without a warrant	2/16/1999	2/16/1999	7/14/1999	Unfounded	*
	252076	CPD	Search of premise/ vehicle without a warrant	3/7/1999	3/7/1999	5/19/1999	Not Sustained	*
	253481	IPRA	Excessive force on duty - Injury	5/5/1999	5/9/1999	10/10/1999	Unfounded	*
	254314	CPD	Search of premise/ vehicle without a warrant	6/11/1999	6/14/1999	10/29/1999	Not Sustained	*
	254979	IPRA	Use of profanity	7/10/1999	7/10/1999	9/2/1999	Not Sustained	*
	255196	CPD	Improper process/ reporting/ procedure	7/19/1999	7/19/1999	10/8/1999	Not Sustained	*
	258174	CPD	Search of premise/ vehicle without a warrant	11/23/1999	11/23/1999	6/6/2000	Unfounded	*
	259095	CPD	Use of profanity	1/4/2000	1/6/2000	9/16/2000	Not Sustained	*
	270513	CPD	Excessive force off duty - No injury	4/8/2001	4/10/2001	9/24/2001	Not Sustained	*
	272791	CPD	Search of premise/ vehicle without a warrant	7/4/2001	7/5/2001	12/17/2003	Not Sustained	*
	274711	CPD	Search of premise/ vehicle without a warrant	9/12/2001	9/13/2001	3/28/2002	Not Sustained	*

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Brian Forberg #21249	1075574	CPD	Improper arrest (without probable cause)	1/28/2004	6/9/2015	*	*	*
	301052	CPD	Excessive force on duty - No injury	9/21/2004	10/1/2004	3/23/2007	Unfounded	*
	301249	CPD	Search of person without a warrant	10/12/2004	10/12/2004	1/26/2007	Unfounded	*
	1022746	CPD	Improper arrest (without probable cause)	11/14/2005	12/30/2008	3/24/2009	No Affidavit	*
	312698	CPD	Inventory procedure - Non-arrestee	4/2/2006	5/2/2006	4/9/2007	Unfounded	*
	1020263	CPD	Gang Affiliation	9/3/2006	9/24/2008	12/5/2008	No Affidavit	*
	1003647	CPD	Improper search of person without a warrant	2/23/2007	2/24/2007	3/26/2008	No Affidavit	*
	1014713	CPD	Inadequate/ failure to provide service	2/17/2008	3/6/2008	11/28/2008	Not Sustained	*
	1033675	IPRA	Improper conduct while processing body of deceased victim - allegation that Det. Forberg observed and had knowledge of misconduct and failed to report it and disturbed crime scene evidence/body of the deceased.	6/22/2008	2/5/2010	12/11/2013	Unfounded	*
	1022896	CPD	Search of person without a warrant	12/22/2008	1/5/2009	4/20/2009	No Affidavit	*
	1053015	IPRA	Unnecessary physical contact: Reporting party alleges the accused officers spat on her, pulled her hair, blew smoke in her face, and grabbed her purses from around her neck while she was being questioned.	3/29/2012	4/2/2012	1/29/2013	Not Sustained	*
	1075022	CPD	Improper arrest (without probable cause)	7/14/2012	5/5/2015	6/10/2015	No Affidavit	*
	1056741	CPD	Search of person/ property	8/31/2012	8/31/2012	6/30/2014	Unfounded	*
	1061745	CPD	Indebtedness to city	4/25/2013	4/25/2013	4/30/2014	Unfounded	*
	1068895	CPD	Gang Affiliation	5/1/2014	5/1/2014	8/12/2016	SU	*
	1069865	CPD	Inadequate/ failure to provide service	5/3/2014	6/18/2014	3/10/2015	No Affidavit	10
John Clisham Jr. #20600	197493	IPRA	Excessive force on duty - Injury	12/23/1992	12/24/1992	5/12/1993	Not Sustained	*
	205967	CPD	Inadequate/ failure to provide service	1/1/1994	1/2/1994	3/16/1994	Not Sustained	*
	218244	IPRA	Excessive force on duty - Injury	6/2/1995	6/2/1995	9/11/1995	Not Sustained	*
	218489	CPD	Inadequate/ failure to provide service	6/11/1995	6/12/1995	8/26/1995	Not Sustained	*
	235071	CPD	Search of premise/ vehicle without a warrant	3/4/1997	3/5/1997	7/9/1997	Unfounded	*
	239522	CPD	Search of premise/ vehicle without a warrant	8/26/1997	8/26/1997	1/27/1998	Not Sustained	*
	240404	IPRA	Excessive force - Use of firearm off duty - No injury	9/27/1997	9/29/1997	3/17/1998	Not Sustained	*
	240518	IPRA	Excessive force on duty - Injury	10/1/1997	10/3/1997	2/27/1998	Unfounded	*
	249806	CPD	Improper arrest (without probable cause)	10/8/1998	11/11/1998	6/22/1999	Not Sustained	*
	249623	CPD	Search of premise/ vehicle without a warrant	10/29/1998	11/1/1998	5/12/1999	Not Sustained	*
Edwin Kaup Jr. #20504	225690	CPD	Inventory procedure - Non-arrestee	2/22/1996	3/18/1996	6/8/1996	Exonerated	*
	226283	CPD	Excessive Force/On Duty-Injury	4/11/1996	4/11/1996	11/11/1996	Not Sustained	*
	226334	CPD	Solicit/Accept Bribe (Traffic)	4/13/1996	4/13/1996	6/11/1996	Unfounded	*
	229022	CPD	Miscellaneous	7/21/1996	7/23/1996	11/2/1996	Unfounded	*
	230442	CPD	Solicit/Accept Bribe (Non-Traffic)	9/9/1996	9/10/1996	1/23/1997	Not Sustained	*
	231803	CPD	Excessive Force/On Duty-Injury	10/30/1996	10/30/1996	2/4/1997	Not Sustained	*
	232226	CPD	Search of person without a warrant	11/13/1996	11/16/1996	4/9/1997	Not Sustained	*
	234610	CPD	Reports - Failure to submit/Improper/False	7/20/1997	2/16/1997	1/13/1998	Sustained	*
	1022647	IPRA	Excessive force during processing: Complainant alleged he was falsely arrested, and that while being questioned about death of his daughter/stepdaughter, the accused detectives punched him, did not allow him to use a washroom, denied him his right to an attorney, left him in a cold interview room and coerced him into a video confession regarding the death.	8/5/2002	12/23/2008	2/7/2012	Not Sustained	*

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Edwin Kaup Jr. #20504	1068308	Invisible Institute	*	3/25/2014	3/31/2014	*	*	*
	1049209	Invisible Institute	Excessive Force/On Duty- Injury	10/9/2011	10/11/2011	3/28/2014	Unfounded	*
David Kowalski #21004*	260593	CPD	Excessive force- use of firearm/off duty- injury	2/9/2000	3/8/2000	12/14/2000	Not Sustained	*
	260351	CPD	Verbal Abuse- sexual orientation	2/26/2000	2/26/2000	11/20/2000	Not Sustained	*
	263476	CPD	Theft	6/27/2000	6/28/2000	3/16/2001	Not Sustained	*
	1022647	IPRA (FS)	Excessive force during processing: Complainant alleged he was falsely arrested, and that while being questioned about death of his daughter/stepdaughter, the accused detectives punched him, did not allow him to use a washroom, denied him his right to an attorney, left him in a cold interview room and **coerced him into a video confession regarding the death.**	8/5/2002	12/23/2008	2/7/2012	Not Sustained	*
	1022647	CPD	Excessive Force/On Duty- Injury	8/5/2002	12/23/2008	4/5/2012	Not Sustained	*
	1000442	CPD	Bonding/Booking/Processing *Fail to follow G.O.'s	10/13/2006	10/13/2006	3/12/2008	Sustained	1
	1026600	CPD	07F	5/22/2009	5/22/2009	11/23/2009	Not Sustained	*
	1061483	CPD	Improper arrest (without probable cause)	12/1/2011	4/15/2013	5/24/2013	No Affidavit	*
	1075401	CPD	Miscellaneous	5/28/2015	5/28/2015	7/31/2015	No Affidavit	*
Kevin Howley #20716	158651	CPD	Excessive force/ On Duty- Injury: Complainant alleged that during the course of his arrest, he was beaten on his head with a gun or a baton, the arresting officer shot at him without justification, and he was told to shut "the fuck up" and then beaten over the head with a gun or a baton which left his head, eyes and mouth gushing with blood.	9/9/1987	11/6/1987	6/14/1988	Not Sustained	*
	191988	CPD	Neglect of duty- failure to assist, take report: Complainant alleged a poor police service when he requested the police to file a report of battery against a bouncer at a bar. When the police arrived, they did not take the complainant's complaint allegedly informing him there was nothing they could do.	5/2/1992	5/2/1992	8/26/1992	Not Sustained	*
Robert Bartik #4985/3078/907	184802	CPD	Inventory procedure - Non-arrestee	6/8/1991	6/8/1991	8/30/1991	Not Sustained	*
	187144	IPRA	Excessive force on duty - Injury	9/2/1991	9/6/1991	11/19/1991	Exonerated	*
	188026	CPD	Neglect of duty	10/9/1991	10/10/1991	2/24/1992	Not Sustained	*
	193097	CPD	Neglect of duty	6/23/1992	6/23/1992	8/24/1992	Exonerated	*
	198657	CPD	Miscellaneous	2/13/1993	2/14/1993	5/18/1993	Not Sustained	*
	201935	IPRA	Excessive force off duty - No injury	7/12/1993	7/12/1993	10/20/1993	Not Sustained	*
	209967	CPD	Search of premise/ vehicle without a warrant	6/19/1994	6/27/1994	9/27/1994	Unfounded	*
	218771	IPRA	Excessive force on duty - Injury	6/21/1995	6/21/1995	10/2/1995	Not Sustained	*
	221950	CPD	Miscellaneous	10/20/1995	10/20/1995	1/22/1996	Not Sustained	*
	243216	IPRA	Excessive force on duty - Injury	11/9/1997	2/5/1998	9/11/1998	Exonerated	*
	259902	CPD	Miscellaneous	11/30/1999	2/9/2000	2/22/2001	Not Sustained	*
	264659	CPD	Excessive force off duty - Injury	8/9/2000	8/9/2000	1/31/2001	Exonerated	*
	1022118	CPD	Gang Affiliation	11/1/2001	12/1/2008	2/2/2009	No Affidavit	*
	1075022	CPD	Improper arrest (without probable cause)	7/14/2002	5/5/2015	*	*	*
	301531	CPD	State Civil Suit	4/20/2004	10/25/2004	5/5/2005	Unfounded	*
	311374	CPD	State Civil Suit	2/24/2006	2/24/2006	11/2/2006	Unfounded	*
	1072195	CPD	*	5/15/2015	10/23/2014	*	*	*

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Other Officers Involved in the Investigation								
Judy Rolston Castellanos #21195	172573	CPD	Arrestee - during arrest	12/2/1989	12/3/1989	7/9/1990	Not Sustained	*
	195704	CPD	Reports - Failure to submit/Improper	7/23/1991	10/7/1992	10/14/1994	Sustained	*
	205961	CPD	Medical roll	1/1/1994	2/1/1994	3/23/1995	Sustained	*
	231334	CPD	Arrestee - after arrest prior to lockup	10/4/1996	10/12/1996	3/5/1997	Not Sustained	*
	243166	CPD	Arrestee - during arrest	2/2/1998	2/3/1998	*	Unfounded	*
	243506	CPD	Misuse of department/ equipment supplies	2/18/1998	2/20/1998	3/31/1999	Sustained	*
	254170	CPD	Use of weapon	6/7/1999	6/7/1999	1/26/2000	Not Sustained	*
	255773	CPD	Use of profanity	8/11/1999	8/12/1999	4/15/2000	Not Sustained	*
	268507	CPD	Absent without permission	1/15/2001	1/15/2001	3/6/2002	Sustained	100
	303566	CPD	Neglect of duty/conduct unbecoming	2/4/2005	2/6/2005	1/26/2007	Exonerated	600
James Davoren #19446	227277	CPD	Arrestee - during arrest	5/19/1996	5/20/1996	12/7/1996	Not Sustained	*
	228749	CPD	Miscellaneous	7/10/1996	7/12/1996	11/16/1996	Not Sustained	*
	237151	CPD	Use of weapon	5/27/1997	5/27/1997	9/23/1997	Not Sustained	*
	243282	CPD	Search of person without a warrant	2/9/1998	2/9/1998	7/16/1998	Not Sustained	*
	245169	CPD	Prisoner's property - inventory/receipt	5/7/1998	5/8/1998	7/14/1998	Not Sustained	*
	247342	CPD	Arrestee - during arrest	7/31/1998	7/31/1998	12/16/1998	Not Sustained	*
	253496	CPD	Search of premise/ vehicle without a warrant	5/6/1999	5/10/1999	7/26/1999	Not Sustained	*
	253819	CPD	Search of premise/ vehicle without a warrant	5/23/1999	5/24/1999	9/30/1999	Not Sustained	*
	253997	CPD	Search of premise/ vehicle without a warrant	5/29/1999	5/31/1999	10/29/1999	Exonerated	*
	258438	CPD	Search of person without a warrant	12/4/1999	12/4/1999	9/16/2000	Not Sustained	*
	260994	CPD	No Arrest	3/21/2000	3/21/2000	12/14/2000	Not Sustained	600
	261582	CPD	Use of profanity	4/14/2000	4/14/2000	1/23/2001	Not Sustained	600
	269615	CPD	Search of person without a warrant	3/5/2001	3/5/2001	9/20/2001	Not Sustained	600
	270002	CPD	Search of premise/ vehicle without a warrant	3/21/2001	3/21/2001	9/17/2001	Not Sustained	600
	292465	CPD	Other felony	9/19/2003	9/19/2003	8/12/2004	Exonerated	600
	1025116	CPD	Illegal Arrest	5/17/2007	3/30/2009	4/29/2009	No Affidavit	600
	1020201	CPD	Search of premise/ vehicle without a warrant	9/19/2008	9/22/2008	1/5/2009	No Affidavit	600
	1021843	CPD	Illegal Arrest	9/26/2008	11/19/2008	4/14/2009	No Affidavit	600
	1025809	CPD	Arrestee - during arrest	4/24/2009	4/25/2009	10/2/2013	Not Sustained	600
	1031836	IPRA	Excessive force: entered home without warrant, open hand strike during arrest	11/14/2009	11/14/2009	10/9/2012	Not Sustained	*
	1031836	CPD	Arrestee - after arrest prior to lockup	11/14/2009	11/14/2009	10/26/2012	Not Sustained	600
	1043964	CPD	Miscellaneous	3/15/2011	3/15/2011	2/9/2012	Not Sustained	600
	1068869	IPRA	Domestic violence (Harassment)	4/8/2014	4/29/2014	5/6/2015	Sustained (Mediation - no contest)	Violation Noted
	1068869	CPD	Domestic altercation/incident - off duty	4/8/2014	4/29/2014	6/23/2015	Sustained	0
	1070130	IPRA	Excessive force: entered home without warrant and beat suspect while handcuffed	7/2/2014	7/3/2014	Pending	Pending	Pending
	1070130	CPD	*	7/2/2014	7/3/2014	*	*	*
	1072408	CPD	Miscellaneous	11/3/2014	11/5/2014	1/6/2015	No Affidavit	600
	1025809	IPRA	Excessive force: kicking/kneeing/punching	4/24/2009-4/25/2009	4/25/2009	9/24/2013	Not Sustained	*

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William Dunn #416	190422	CPD	Use of weapon	2/14/1982	2/14/1992	6/4/1992	Unfounded	*
	161576	CPD	Improper Arrest	8/18/1987	6/1/1988	2/1/1989	Not Sustained	*
	171634	CPD	Arrestee - during arrest	10/14/1989	10/16/1989	4/20/1990	Not Sustained	*
	171695	CPD	Use of weapon	10/18/1989	10/18/1989	5/25/1990	Not Sustained	*
	180808	CPD	Search of premise/ vehicle without a warrant	12/1/1990	12/1/1990	2/4/1991	Not Sustained	*
	180901	CPD	Search of premise/ vehicle without a warrant	12/6/1990	12/6/1990	2/8/1991	Unfounded	*
	181500	CPD	Arrestee - during arrest	12/24/1990	1/4/1991	4/30/1991	Unfounded	*
	181967	CPD	Prisoner's property - inventory/receipt	1/27/1991	1/27/1991	4/25/1991	Not Sustained	*
	182413	CPD	Search of premise/ vehicle without a warrant	2/18/1991	2/18/1991	4/26/1991	Not Sustained	*
	186640	CPD	Use of weapon	8/18/1991	8/18/1991	10/10/1991	Not Sustained	*
	187347	CPD	Search of premise/ vehicle without a warrant	9/13/1991	9/13/1991	1/8/1992	Not Sustained	*
	188828	CPD	Search of premise/ vehicle without a warrant	11/18/1991	11/18/1991	3/31/1992	Not Sustained	*
	190103	CPD	Arrestee - during arrest	1/29/1992	1/30/1992	5/7/1992	Unfounded	*
	190680	CPD	Arrestee - during arrest	2/27/1992	2/27/1992	8/26/1992	Not Sustained	*
	191222	CPD	Prisoner's property - inventory/receipt	3/25/1992	3/26/1992	7/16/1992	Not Sustained	*
	194981	CPD	Inventory procedures	9/6/1992	9/7/1992	11/23/1992	Not Sustained	*
	195656	CPD	Arrestee - during arrest	10/2/1992	10/6/1992	5/20/1993	Unfounded	*
	196144	CPD	Miscellaneous	10/27/1992	10/27/1992	3/12/1993	Unfounded	*
	198502	CPD	Search of premise/ vehicle without a warrant	2/1/1993	2/8/1993	5/12/1993	Not Sustained	*
	201120	CPD	Inventory procedures	6/9/1993	7/1/1993	2/22/1994	Not Sustained	*
	201697	CPD	Inventory procedures	7/1/1993	7/1/1993	10/19/1993	Not Sustained	*
	205914	CPD	Inventory procedures	12/29/1993	12/30/1993	4/4/1994	Exonerated	*
	207053	CPD	Inventory procedures	2/17/1994	2/23/1994	5/25/1994	Not Sustained	*
	221841	CPD	Miscellaneous	10/17/1995	10/17/1995	2/9/1996	Not Sustained	*
	222850	CPD	Search of premise/ vehicle without a warrant	11/25/1995	11/27/1995	2/26/1996	Not Sustained	*
	227830	CPD	Use of weapon	6/9/1996	6/10/1996	12/9/1996	Not Sustained	*
	229672	CPD	Weapon/ammunition/uniform deviation	8/15/1996	8/15/1996	5/21/1997	Not Sustained	*
	231558	CPD	Search of premise/ vehicle without a warrant	10/20/1996	10/20/1996	2/13/1997	Not Sustained	*
	237985	CPD	Search of premise/ vehicle without a warrant	6/26/1997	6/27/1997	10/3/1997	Not Sustained	*
	239003	CPD	Use of profanity	8/6/1997	8/6/1997	10/2/1997	Not Sustained	*
	239010	CPD	Use of profanity	8/6/1997	8/7/1997	10/3/1997	Not Sustained	*
	260638	CPD	Use of profanity	3/7/2000	3/7/2000	11/17/2000	Not Sustained	600
	282013	CPD	Inadequate/ failure to provide service	7/2/2002	7/2/2002	12/5/2002	Unfounded	600
	288066	CPD	Miscellaneous	3/8/2003	3/8/2003	2/21/2004	Sustained	100
	1025350	CPD	Damage/ trespassing to property	4/7/2009	4/8/2009	6/9/2009	No Affidavit	600
	1025376	CPD	Search of premise/ vehicle without a warrant	4/9/2009	4/9/2009	8/5/2009	No Affidavit	600
	1074281	CPD	Neglect of duty/conduct unbecoming	3/19/2015	3/19/2015	9/21/2015	Not Sustained	600
	1036672	CPD	Search of premise/ vehicle without a warrant	5.25.2010	5/27/2010	2/16/2011	No Affidavit	600
Patrick Foley #20143	182756	CPD	Arrestee - during arrest	3/5/1991	3/5/1991	7/17/1991	Unfounded	*
	209938	CPD	Bonding/Booking/Processing	6/26/1994	6/26/1994	9/21/1994	Exonerated	*
	215798	CPD	Miscellaneous	2/23/1995	2/23/1995	7/7/1995	Not Sustained	*
	225773	CPD	Inadequate/ failure to provide service	3/18/1996	3/21/1996	6/10/1996	Unfounded	*
	237196	CPD	Arrestee - after arrest prior to lockup	5/23/1997	5/29/1997	12/2/1997	Not Sustained	*
	243074	CPD	Illegal Arrest	8/24/1996	1/30/1998	10/24/2000	Not Sustained	*
	252102	CPD	Search of premise/ vehicle without a warrant	3/8/1999	3/8/1999	6/24/1999	Not Sustained	*

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Officer's Name & Star Number	CR / Log Number	Source Chicago Police Department (CPD)/ Independent Police Review Authority (IPRA)	Category/Description	Incident Date	Date of Complaint	Closing Date	Final Finding	Penalty
Robert Girardi #20479	1062804	IPRA	Excessive force, suspect coercion: **Complainant alleged that officers choked/beat him until he confessed to murder.** (confession later retracted)	6/8/1999	6/3/2013	3/20/2014	Not Sustained	*
	1020639	IPRA	Domestic altercation - reported to be under investigation for child abuse	Unknown	10/8/2008	10/21/2010	Unfounded	*
	271361	CPD	Arrestee - lockup/detention	5/13/2001	5/14/2001	6/5/2002	Not Sustained	600
	304678	CPD	State Civil Suit	3/18/2003	4/7/2005	9/20/2005	Unfounded	600
	1020639	CPD	Domestic altercation/incident - off duty	10/8/2008	10/8/2008	9/23/2013	Unfounded	600
	1027635	CPD	Civil suit - third party	6/4/2007	6/25/2009	5/1/2012	No Affidavit	600
	10661166	CPD	Illegal Arrest	6/7/2001	1/3/2014	7/23/2014	Exonerated	600
	151893	CPD	Arrestee - during arrest	7/14/1986	7/16/1986	7/14/1987	Not Sustained	*
	172396	CPD	Arrestee - during arrest	11/21/1989	11/22/1989	6/4/1990	Not Sustained	*
	180492	CPD	Reports - fail to submit/improper	11/15/1990	11/16/1990	4/24/1991	Not Sustained	*
	180502	CPD	Inventory procedures	11/17/1990	11/17/1990	3/13/1991	Unfounded	*
	197644	CPD	Altercation/disturbance - domestic	12/31/1992	1/1/1993	1/24/1994	Sustained	*
	204444	CPD	Neglect of duty/conduct unbecoming	10/21/1993	10/21/1993	2/22/1994	Exonerated	*
	229308	CPD	Miscellaneous	7/28/1996	8/1/1996	1/13/1997	Unfounded	*
	229441	CPD	Altercation/disturbance - domestic	8/7/1996	8/7/1996	3/26/1999	Sustained	*
	231334	CPD	Arrestee - after arrest prior to lockup	10/4/1996	10/12/1996	3/5/1997	Not Sustained	*
	235028	CPD	Misuse of department/ equipment supplies	3/3/1997	3/4/1997	7/22/1998	Sustained	*
	254170	CPD	Use of weapon	6/7/1999	6/7/1999	1/26/2000	Unfounded	*
Daniel Gorman #5672	255436	CPD	Arrestee - during arrest	7/24/1999	7/29/1999	1/11/2000	Not Sustained	
	260384	CPD	Prisoner's property - inventory/receipt	2/26/2000	2/28/2000	11/28/2000	Exonerated	600
	260459	CPD	Search of premise/ vehicle without a warrant	2/29/2000	3/2/2000	11/21/2000	Not Sustained	600
	269256	CPD	Miscellaneous	4/10/2000	2/16/2001	12/2/2002	Not Sustained	600
	261498	CPD	Arrestee - during arrest	4/11/2000	4/12/2000	3/23/2001	Unfounded	600
	262977	CPD	Arrestee - during arrest	6/11/2000	6/16/2000	5/7/2001	Not Sustained	600
	265892	CPD	Neglect of duty/conduct unbecoming	9/21/2000	9/21/2000	3/7/2001	Exonerated	600
	271998	CPD	Rape/sex offenses	10/20/2000	6/8/2001	2/28/2002	Not Sustained	600
	268256	CPD	Arrestee - during arrest	11/22/2000	1/4/2001	11/8/2001	Not Sustained	600
	271029	CPD	Arrestee - during arrest	4/18/2001	5/1/2001	2/25/2003	Not Sustained	600
	271954	CPD	Search of premise/ vehicle without a warrant	6/5/2001	6/6/2001	10/9/2001	Unfounded	600
	272536	CPD	Arrestee - during arrest	6/26/2001	6/26/2001	4/8/2002	Not Sustained	600
	272748	CPD	Arrestee - after arrest prior to lockup	7/4/2001	7/4/2001	6/5/2002	Not Sustained	600
	276895	CPD	Arrestee - during arrest	12/8/2001	12/8/2001	2/24/2003	Unfounded	600
	277399	CPD	Arrestee - during arrest	1/1/2002	1/3/2002	4/29/2003	Unfounded	600
	277717	CPD	Arrestee - during arrest	1/11/2002	1/17/2002	2/3/2004	Not Sustained	600
	278543	CPD	Arrestee - during arrest	2/21/2002	2/22/2002	2/26/2003	Unfounded	600
	279796	CPD	Illegal Arrest	3/13/2002	4/15/2002	8/20/2002	Not Sustained	600
	281297	CPD	Arrestee - during arrest	6/6/2002	6/7/2002	2/24/2003	Not Sustained	600
	283152	CPD	Arrestee - during arrest	8/10/2002	8/10/2002	4/21/2003	Not Sustained	600
	285226	CPD	Miscellaneous	10/22/2002	10/23/2002	3/27/2003	Not Sustained	600
	285399	CPD	No Arrest	10/30/2002	10/30/2002	2/21/2004	Not Sustained	600
	285816	CPD	Arrestee - during arrest	11/6/2002	11/18/2002	5/2/2003	Not Sustained	600
	286029	CPD	Illegal Arrest	11/26/2002	11/27/2002	5/22/2003	Unfounded	600
	288122	CPD	Arrestee - after arrest prior to lockup	3/11/2003	3/11/2003	8/21/2003	Not Sustained	600

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Daniel Gorman #5672	288979	CPD	Unnecessary physical contact - on duty	4/23/2003	4/23/2003	8/27/2003	Not Sustained	600
	292978	CPD	Proper care, injury/death	10/10/2003	10/11/2003	2/14/2004	Unfounded	600
	299340	CPD	Inadequate/ failure to provide service	7/11/2004	7/15/2004	2/12/2005	Unfounded	600
John Halloran #20453	181499	CPD	Arrestee - during arrest	11/8/1990	1/4/1991	4/17/1991	Not Sustained	*
	185207	CPD	Search of premise/ vehicle without a warrant	6/25/1991	6/26/1991	11/12/1991	Not Sustained	*
	1046501	IPRA	Excessive force during processing: Complainant alleged that Det. Halloranslapped his face and punched him in the chest, and observed another detective threaten to "beat the hell out of him" if he did not sign a paper.	8/21/1991	6/27/2011	3/29/2013	Unfounded	None
	191318	CPD	Altercation/disturbance - domestic	3/30/1992	3/31/1992	6/4/1992	Not Sustained	*
	1009053	IPRA	In a letter to the Office of Professional Standards, complainant alleged that he was physically abused by Dets. Halloran and O'Brien to provide a false confession to the murders of his aunt and grandfather. He further alleged that officers threatened him and denied his request for counsel and that they threatened to have his girlfriend locked up for murder.	10/20/1992	9/6/2007	12/17/2012	Not Sustained	*
	208498	CPD	No Arrest	10/20/1992	4/26/1994	10/13/1994	Not Sustained	*
	200398	CPD	Arrestee - after arrest prior to lockup	1/8/1993	5/6/1993	9/13/1993	Not Sustained	*
	201627	CPD	Search of premise/ vehicle without a warrant	6/28/1993	6/29/1993	12/4/1993	Unfounded	*
	203754	CPD	Arrestee - after arrest prior to lockup	9/16/1993	9/21/1993	2/22/1994	Not Sustained	*
	210040	CPD	Insubordination	6/29/1994	6/29/1994	12/8/1994	Unfounded	*
	237314	CPD	Search of premise/ vehicle without a warrant	6/1/1997	6/3/1997	11/17/1997	Exonerated	*
	251435	CPD	Search of premise/ vehicle without a warrant	3/2/1998	2/3/1999	8/23/1999	Exonerated	*
	251436	CPD	Arrestee - after arrest prior to lockup	3/4/1998	2/3/1999	6/11/1999	Unfounded	*
	252093	CPD	Miscellaneous	4/1/1998	3/8/1999	6/22/1999	Not Sustained	*
	249052	CPD	State Civil Suit	10/8/1998	10/8/1998	10/23/1999	Not Sustained	*
	257678	CPD	Weapon/ammunition/uniform deviation	10/30/1999	10/31/1999	*	*	*
	1022647	IPRA	Excessive force during processing: Complainant alleged he was falsely arrested, and that while being questioned about death of his daughter/stepdaughter, the accused detectives punched him, did not allow him to use a washroom, denied him his right to an attorney, left him in a cold interview room and **coerced him into a video confession regarding the death.**	8/5/2002	12/23/2008	2/7/2012	Not Sustained	*
	1022647	CPD	Arrestee - after arrest prior to lockup	8/5/2002	12/23/2008	4/5/2012	Not Sustained	600
	287115	CPD	Inventory procedures	1/1/2003	1/19/2003	6/30/2003	Unfounded	600
	291855	CPD	Search of premise/ vehicle without a warrant	8/25/2003	8/25/2003	4/8/2004	Not Sustained	600
	1009053	CPD	Miscellaneous	9/6/2007	9/6/2007	3/9/2015	Not Sustained	600
	1061097	IPRA	Witness alleged she was handcuffed and detained for hours without justification	12/22/2012	4/1/2013	10/28/2013	Unfounded	*
	1061097	CPD	Unnecessary display of weapon	12/22/2012	4/1/2013	4/1/2014	Unfounded	600
	1066332	CPD	Illegal arrest	11/12/2013	12/12/2013	4/20/2015	Not Sustained	600
	1079345	CPD	Illegal arrest	2/22/2016	2/22/2016	3/8/2016	No Affidavit	600

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William Harnedy #12611	256113	CPD	Reports - failed to submit/improper	8/20/1999	8/25/1999	12/8/1999	Exonerated	*
	256076	CPD	Reports - failed to submit/improper	8/23/1999	8/23/1999	11/11/1999	Not Sustained	*
	260880	CPD	Unnecessary physical contact - on duty	3/16/2000	3/16/2000	12/14/2000	Not Sustained	600
	262488	CPD	Reports - failed to submit/improper	5/21/2000	5/22/2000	1/23/2001	Not Sustained	600
	265878	CPD	Search of premise/ vehicle without a warrant	9/21/2000	9/21/2000	3/10/2001	Not Sustained	600
	268087	CPD	Unnecessary physical contact - on duty	11/20/2000	12/27/2000	8/10/2001	Unfounded	600
	268186	CPD	Damage/ trespassing property	1/1/2001	1/1/2001	4/25/2001	Not Sustained	600
	272233	CPD	Search of premise/ vehicle without a warrant	6/16/2001	6/16/2001	9/27/2001	Not Sustained	600
	273990	CPD	Arrestee - during arrest	8/16/2001	8/16/2001	9/10/2008	Not Sustained	600
	278210	CPD	Arrestee - during arrest	2/7/2002	2/7/2002	5/5/2003	Not Sustained	600
	282281	CPD	Search of person without a warrant	7/11/2002	7/11/2002	12/27/2002	Not Sustained	600
	285970	CPD	Search of person without a warrant	11/24/2002	11/24/2002	10/15/2003	Not Sustained	600
	289584	CPD	Neglect of duty/conduct unbecoming	5/18/2003	5/20/2003	10/31/2003	Not Sustained	600
	290351	CPD	Racial/ Ethnic	6/24/2003	6/24/2003	1/29/2004	Not Sustained	600
	290737	CPD	Inadequate/ failure to provide service	7/9/2003	7/10/2003	1/22/2004	Not Sustained	600
	292900	CPD	Inadequate/ failure to provide service	9/3/2003	10/7/2003	2/21/2004	Unfounded	600
	293410	CPD	Arrestee - during arrest	9/18/2003	10/30/2003	2/21/2004	Exonerated	600
	292685	CPD	Miscellaneous	9/27/2003	9/27/2003	3/25/2004	Not Sustained	600
	297949	CPD	Reports - failed to submit/improper	5/14/2004	5/14/2004	3/14/2005	Unfounded	600
	301884	CPD	Miscellaneous	11/10/2004	11/10/2004	9/28/2005	Sustained	2
	305183	CPD	Arrestee - during arrest	4/27/2005	4/27/2005	10/6/2006	Unfounded	600
	311462	CPD	Neglect of duty/conduct unbecoming	3/1/2006	3/1/2006	10/5/2006	Not Sustained	600
	312637	CPD	Illegal Arrest	3/7/2006	4/28/2006	12/14/2006	Not Sustained	600
	1001043	CPD	Illegal Arrest	11/1/2006	11/4/2006	2/22/2007	Unfounded	600
	1001877	CPD	Arrestee - during arrest	12/8/2006	12/9/2006	9/7/2007	Not Sustained	600
	1040287	CPD	Misuse of department/ equipment supplies	10/1/2010	10/1/2010	1/11/2011	Unfounded	600
Larry Hoy #2667	200476	CPD	Use of weapon	5/10/1993	5/10/1993	2/10/1994	Not Sustained	*
	203205	CPD	Vehicle licensing - state	8/23/1993	8/30/1993	3/3/1994	Sustained	*
	206640	CPD	Inadequate/ failure to provide service	2/3/1994	2/3/1994	4/7/1994	Exonerated	*
	221540	CPD	Arrestee - during arrest	10/5/1995	10/6/1995	2/2/1996	Exonerated	*
	250420	CPD	Neglect of duty/conduct unbecoming - on duty	12/12/1998	12/12/1998	5/11/1999	Not Sustained	*
	252266	CPD	Search of premise/ vehicle without a warrant	3/15/1999	3/17/1999	6/24/1999	Unfounded	*
James Kazmierczak #13464	214769	CPD	No Arrest	1/7/1995	111995	7/7/1995	Not Sustained	*
Matthew Kerlin #17797	1080991	CPD	Escape	6/14/2016	6/14/2016	*	*	*
Steven Kurtovich #17945	171592	CPD	Reports - fail to submit/improper	10/14/1989	10/14/1989	1/10/1990	Unfounded	*
	180319	CPD	Arrestee - during arrest	11/9/1990	11/9/1990	3/20/1991	Not Sustained	*
	181708	CPD	Arrestee - during arrest	1/14/1991	1/14/1991	4/30/1991	Not Sustained	*
	196463	CPD	Miscellaneous	10/30/1992	11/10/1992	10/27/1993	Sustained	*
	197890	CPD	Use of profanity	1/1/1993	1/12/1993	3/23/1993	Not Sustained	*
	214580	CPD	Search of premise/ vehicle without a warrant	12/22/1994	12/28/1994	3/8/1995	Not Sustained	*
	227634	CPD	Neglect of duty/conduct unbecoming - on duty	5/4/1996	6/3/1996	8/29/1996	Exonerated	*
	228214	CPD	Arrestee - during arrest	6/22/1996	6/22/1996	12/28/1996	Not Sustained	*
	241895	CPD	D.U.I. - off duty	12/3/1997	12/3/1997	4/15/2000	Sustained	*

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Michael Malinowski #2088	252299	CPD	No Arrest	3/9/1999	3/18/1999	1/29/2000	Not Sustained	*
	265583	CPD	Improper arrest	9/9/2000	9/11/2000	3/7/2001	Not Sustained	600
	275611	CPD	Rape/sex offenses	10/17/2001	10/17/2001	4/29/2002	Not Sustained	600
	278232	Invisible Institute	Federal civil suit	*	2/8/2002	6/3/2003	Not Sustained	600
	285819	Invisible Institute	Verbal abuse	*	11/18/2002	3/20/2003	Unfounded	600
	286150	CPD	Arrestee - during arrest	11/10/2002	12/4/2002	9/4/2001	Unfounded	600
	286744	Invisible Institute	Use Of Profanity	*	1/2/2003	1/7/2004	Not Sustained	600
	286944	Invisible Institute	Excessive force - off duty	*	1/10/2003	6/16/2003	Unfounded	600
	287577	Invisible Institute	Search of premise/ vehicle without a warrant	*	2/11/2003	8/20/2003	Not Sustained	600
	290062	Invisible Institute	Unnecessary physical contact - on duty	*	6/11/2003	2/7/2004	Not Sustained	600
	303135	Invisible Institute	Unncessary physical contact - on duty	*	1/14/2005	9/20/2005	Unfounded	600
	303138	Invisible Institute	Federal civil suit	*	1/14/2005	3/28/2005	Not Sustained	600
	304240	Invisible Institute	Illegal Arrest	*	3/16/2005	6/28/2005	Unfounded	600
	304488	Invisible Institute	Search of premise/ vehicle without a warrant	*	3/29/2005	8/18/2005	Unfounded	600
	307381	Invisible Institute	Arrestee - during arrest	*	7/29/2005	11/7/2005	Unfounded	600
	1045209	Invisible Institute	Unncessary physical contact - on duty	3/28/2011	5/6/2011	8/20/2014	Not Sustained	600
	1045509	Invisible Institute	Unncessary physical contact - on duty	5/18/2011	5/18/2011	7/31/2013	Not Sustained	600
	1077363	CPD	Miscellaneous	9/26/2015	9/29/2015	12/7/2015	No Affidavit	600
	1007635	Invisible Institute	Arrestee - during arrest	*	*	*	Not Sustained	*
	312135	Invisible Institute	Illegal Arrest	*	*	*	Unfounded	*
Andrew McGlynn #9814	269161	CPD	Inadequate/ failure to provide service	2/10/2001	2/12/2001	8/23/2001	Not Sustained	600
	277120	CPD	Neglect of duty/conduct unbecoming	12/7/2001	12/19/2001	4/4/2002	Unfounded	600
	280518	CPD	Arrestee - during arrest	5/11/2002	5/12/2002	4/2/2003	Not Sustained	600
	281737	CPD	Inadequate/ failure to provide service	6/21/2002	6/22/2002	2/14/2003	Unfounded	600
	283544	CPD	Inadequate/ failure to provide service	8/23/2002	8/24/2002	1/29/2003	Exonerated	600
	293392	CPD	Neglect of duty/conduct unbecoming	10/29/2003	10/29/2003	5/7/2004	Not Sustained	600
	293538	CPD	Search of premise/ vehicle without a warrant	10/30/2003	11/3/2003	5/19/2004	Not Sustained	600
	294364	CPD	Inventory procedures	11/7/2003	12/9/2003	11/15/2004	Unfounded	600
	299962	CPD	Arrestee - during arrest	8/3/2004	8/13/2004	4/13/2005	Unfounded	600
	300111	CPD	Prisoner's property - inventory/receipt	8/9/2004	8/19/2004	3/16/2005	Unfounded	600
	302045	CPD	Search of premise/ vehicle without a warrant	11/17/2004	11/17/2004	6/14/2005	Unfounded	600
	306658	CPD	Use/display of weapon	6/29/2005	7/1/2005	11/18/2005	Exonerated	600
	310092	CPD	Search of premise/ vehicle without a warrant	12/5/2005	12/11/2005	6/5/2006	Unfounded	600
	310880	CPD	Search of premise/ vehicle without a warrant	1/27/2006	1/27/2006	8/28/2006	Unfounded	600
	312203	CPD	Unnecessary physical contact - on duty	4/8/2006	4/8/2006	8/7/2007	Not Sustained	600
	315089	CPD	Search of premise/ vehicle without a warrant	8/23/2006	8/24/2006	1/18/2007	Not Sustained	600
	1002708	CPD	Prisoner's property - inventory/receipt	1/13/2007	1/14/2007	4/23/2007	No Affidavit	600
	1003235	IPRA	Complainant alleged that the accused officers pointed their guns at her and the victims while they were inside her vehicle and conducted unjustified search	2/4/2007	2/4/2007	7/3/2008	Unfounded	*
	1003235	CPD	Excessive force - off duty	2/4/2007	2/4/2007	8/13/2008	Not Sustained	600
	1004742	CPD	Search of premise/ vehicle without a warrant	4/5/2007	4/7/2007	8/22/2007	No Affidavit	600
	1010448	CPD	Arrestee - after arrest prior to lockup	10/25/2007	10/25/2007	9/15/2009	Not Sustained	600
	1021797	IPRA	Excessive force. Complainant alleged that McGlynn struck him several times, then was searched and arrested a week later without justification	11/20/2007	11/18/2008	5/22/2013	Not Sustained	*
	1021797	CPD	Civil suit - third party	11/20/2007	11/18/2008	6/12/2013	Not Sustained	600

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Officer's Name & Star Number	CR / Log Number	Source Chicago Police Department (CPD)/ Independent Police Review Authority (IPRA)	Category/Description	Incident Date	Date of Complaint	Closing Date	Final Finding	Penalty
Andrew McGlynn #9814	1011160	CPD	Damage/ trespassing property	11/26/2007	11/26/2007	3/24/2008	No Affidavit	600
	1015235	CPD	Neglect of duty/conduct unbecoming	3/25/2008	3/5/2008	7/7/2008	No Affidavit	600
	1015507	CPD	Damage/ trespassing property	4/5/2008	4/5/2008	7/7/2008	No Affidavit	600
	1018268	IPRA	Excessive force during arrest: Female officer (McGlynn's partner?) kneed suspect in the back and threatened the complainant. Complainant also alleged the officers failed to inventory or return $3,900.	7/15/2008	7/17/2008	8/3/2009	Not Sustained	*
	1018496	CPD	Prisoner's property - inventory/receipt	7/16/2008	7/25/2008	12/5/2008	No Affidavit	600
	1033469	CPD	Illegal Arrest	1/27/2010	1/27/2010	5/10/2010	No Affidavit	600
	1072877	IPRA	Excessive force	12/8/2014	12/8/2014	2/5/2015	Unfounded	*
	1072877	CPD	Arrestee - during arrest	12/8/2014	12/8/2014	6/16/2015	Unfounded	600
	1076413	CPD	Miscellaneous	7/29/2015	7/29/2015	1/1/2016	Not Sustained	600
	1018268	CPD	Arrestee - after arrest prior to lockup	15-Jul-2008	17-Jul-2008	9/29/2009	Not Sustained	600
	1010448	No Affidavit	*[IPRA claims this CR is exempt from production because it involves a juvenile]*					
Edward McGovern #17323	235044	CPD	Communication operation procedures	2/27/1997	3/4/1997	9/15/1997	Not Sustained	*
	261156	CPD	Reports - failed to submit/improper	3/28/2000	3/29/2000	2/9/2001	Unfounded	600
	267904	CPD	Use of profanity	12/16/2000	12/16/2000	3/12/2001	Not Sustained	600
	282072	CPD	Unnecessary physical contact - on duty	7/4/2002	7/4/2002	3/20/2003	Unfounded	600
	282832	CPD	Use of profanity	7/30/2002	7/30/2002	12/3/2002	Not Sustained	600
	283886	CPD	Inadequate/ failure to provide service	8/28/2002	9/5/2002	4/4/2003	Unfounded	600
	289155	CPD	Inadequate/ failure to provide service	5/1/2003	5/1/2003	12/5/2003	Unfounded	600
	289363	CPD	Search of premise/ vehicle without a warrant	5/11/2003	5/11/2003	12/9/2003	Not Sustained	600
	291876	CPD	Search of premise/ vehicle without a warrant	8/26/2003	8/26/2003	12/3/2004	Unfounded	600
	297448	CPD	Search of premise/ vehicle without a warrant	4/23/2004	4/24/2004	3/11/2005	Unfounded	600
	297588	CPD	Arrestee - during arrest	4/30/2004	4/30/2004	3/16/2005	Unfounded	600
	297827	CPD	Search of premise/ vehicle without a warrant	5/11/2004	5/11/2004	5/13/2005	Not Sustained	600
	298207	CPD	Neglect of duty/conduct unbecoming - on duty	5/24/2004	5/26/2004	2/12/2005	Not Sustained	600
	301749	CPD	Inadequate/ failure to provide service	11/3/2004	11/3/2004	6/20/2005	Unfounded	600
	1013608	CPD	Arrestee - during arrest	3/27/2006	1/23/2008	5/14/2008	No Affidavit	600
	1003466	CPD	Illegal Arrest	9/26/2006	2/16/2007	7/11/2007	Not Sustained	600
	1018321	CPD	Arrestee - during arrest	7/16/2008	7/18/2008	1/26/2009	Not Sustained	600
	1044040	CPD	Neglect of duty/conduct unbecoming - on duty	3/16/2011	3/17/2011	7/26/2011	No Affidavit	600
	1052022	CPD	Inadequate/ failure to provide service	2/21/2012	2/21/2012	4/26/2012	No Affidavit	600
Kevin McKendry #10599	1019626	IPRA	Excessive force - complainant alleges McKendry kicked him about the stomach and body without justification (during arrest) and removed $350.00 from pockets without inventory or return of same; alleges false arrest	8/28/2008	9/2/2008	10/18/2011	Not Sustained	*
	1032906	IPRA	Unnecessary display of weapon - Complainant alleges officers in uniform with ski masks pointed gun at his head without reason and refused to identify themselves (driving CPD marked vehicle 7364)	1/3/2010	1/3/2010	8/12/2010	Not Sustained	*
	1035616	IPRA	Excessive force - firearm discharge with hits	4/20/2010	4/20/2010	2/8/2011	Unfounded	*
	1055406	Invisible Institute	Improper search of vehicle	7/9/2012	7/9/2012	11/7/2012	No Affidavit	*
	1057310	Invisible Institute	Improper search of person	9/24/2012	9/24/2012	11/27/2012	No Affidavit	*
	1058134	Invisible Institute	Improper search of vehicle	10/30/2012	10/31/2012	4/15/2014	Exonerated	*

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Kevin McKendry #10599	1064218	Invisible Institute	Search of premise without a warrant	8/12/2013	8/13/2013	7/25/2014	Not Sustained	*
	1066852	Invisible Institute	Illegal Arrest	12/27/2013	1/2/2014	3/21/2014	No Affidavit	*
	1067676	Invisible Institute	Improper search of person	2/24/2014	2/24/2014	6/25/2014	No Affidavit	*
	1068404	Invisible Institute	Search of premise without a warrant	4/4/2014	4/5/2014	6/9/2014	*	*
	1074294	IPRA	Excessive force	3/17/2015	3/19/2015	Pending	Pending	Pending
James O'Brien #20466	1046501	IPRA	Excessive force during processing: Complainant alleged that Det. O'Brien kept him handcuffed to lockers with his arms over his head for over two hours, slapped him multiple times in the face and struck him multiple times on his side with a pipe (over a telephone book), and left him in a cold room.	8/21/1991	6/27/2011	3/29/2013	Unfounded	*
	1009053	IPRA	In a letter to the Office of Professional Standards, complainant alleged that he was physically abused by Dets. Halloran and O'Brien to provide a false confession to the murders of his aunt and grandfather. He further alleged that officers threatened him and denied his request for counsel and that they threatened to have his girlfriend locked up for murder.	10/20/1992	9/6/2007	12/17/2012	Unfounded	*
	1028607	IPRA	Excessive force during arrest: Complainant alleged that O'Brien participated in mistreatment during arrest, threatened to beat him, and "generally resorted to abuse, threats, coercion and trickery to obtain a confession"; **complainant maintains he falsely confessed to end the mistreatment**	4/14/1993	7/27/2009	6/22/2012	Not Sustained	*
	1013093	IPRA	Excessive force: Complainant alleged he was **coerced into confessing to a crime** he did not commit by being physically abused and refused food, sleep, and required medication	3/1/1997	1/3/2008	11/26/2013	Not Sustained	*
	280512	CPD	Unnecessary physical contact - on duty	5/9/2002	5/11/2002	3/4/2003	Not Sustained	600
	1022647	IPRA	Excessive force during processing: Complainant alleged he was falsely arrested, and that while being questioned about death of his daughter/stepdaughter, the accused detectives punched him, did not allow him to use a washroom, denied him his right to an attorney, left him in a cold interview room and coerced him into a video confession regarding the death.	8/5/2002	12/23/2008	2/7/2012	Not Sustained	*
	1022647	CPD	Arrestee - after arrest prior to lockup	8/5/2002	12/23/2008	4/5/2012	Not Sustained	600
	287115	CPD	Inventory procedures	1/1/2003	1/19/2003	6/30/2003	Unfounded	600
	291722	CPD	Residency	8/20/2003	8/20/2003	2/3/2004	Unfounded	600
	291855	CPD	Search of premise/ vehicle without a warrant	8/25/2003	8/25/2003	4/8/2004	Not Sustained	600
	1009053	CPD	Miscellaneous	9/6/2007	9/6/2007	3/9/2015	Unfounded	600
	1017646	CPD	Inadequate/ failure to provide service	6/24/2008	6/25/2008	10/14/2008	No Affidavit	600
	1078028	CPD	Search of premise/ vehicle without a warrant	11/12/2015	11/12/2015	9/23/2016	Not Sustained	600
	1079140	CPD	Inadequate/ failure to provide service	1/21/2016	2/5/2016	4/6/2016	No Affidavit	600
	1079345	CPD	Illegal Arrest	2/22/2016	2/22/2016	3/8/2016	No Affidavit	600
Daniel O'Donnell #1927	277305		*[Pending production by CPD]*					
	1051775	IPRA	Excessive force when responding to disturbance at Complainant's residence	1/29/2012	2/8/2012	8/4/2014	Not Sustained	*
	218052	CPD	Arrestee - during arrest	5/28/1995	5/28/1995	8/5/1995	Unfounded	*
	277305	CPD	Fail to obtain a complaint register number	12/28/2001	12/29/2001	1/29/2005	Not Sustained	600
	286593	CPD	Inadequate/ failure to provide service	12/24/2002	12/25/2002	7/1/2003	Not Sustained	600

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Daniel O'Donnell #1927	292900	CPD	Inadequate/ failure to provide service	9/5/2003	10/7/2003	2/27/2004	Unfounded	600
	298108	CPD	Miscellaneous	5/2/2004	5/21/2004	3/16/2005	Exonerated	600
	1019950	CPD	Search of premise/ vehicle without a warrant	9/13/2008	9/14/2008	10/23/2008	No Affidavit	600
	1034165	CPD	Search of person without a warrant	11/7/2006	2/26/2010	7/20/2010	No Affidavit	600
	1050338	CPD	Miscellaneous	11/29/2011	11/29/2011	2/10/2012	No Affidavit	600
	1051775	CPD	Arrestee - during arrest	1/29/2012	2/8/2012	8/20/2014	Not Sustained	600
	1066530	CPD	Illegal Arrest	1/5/2012	12/10/2013	2/10/2015	Exonerated	600
Eric Olsen #19456	229642	CPD	Arrestee - during arrest	8/14/1996	8/14/1996	12/2/1998	Not Sustained	*
	232240	CPD	Use of profanity	11/17/1996	11/17/1996	2/27/1997	Not Sustained	*
	233470	CPD	Arrestee - during arrest	1/8/1997	1/8/1997	4/16/1997	Not Sustained	*
	235916	CPD	Arrestee - during arrest	4/7/1997	4/7/1997	7/11/1997	Unfounded	*
	238587	CPD	Misconduct during issuance of citation	7/22/1997	7/22/1997	10/8/1997	Not Sustained	*
	239027	CPD	No Arrest	8/7/1997	8/7/1997	11/8/1997	Not Sustained	*
	240539	CPD	No Arrest	10/4/1997	10/4/1997	2/27/1998	Not Sustained	*
	242152	CPD	Arrestee - during arrest	12/16/1997	12/16/1997	3/25/1998	Not Sustained	*
	245001	CPD	Inadequate/ failure to provide service	4/26/1998	4/30/1998	7/15/1998	Not Sustained	*
	247371	CPD	Use of profanity	8/2/1998	8/2/1998	12/28/1998	Not Sustained	*
	251742	CPD	Search of person without a warrant	2/13/1999	2/18/1999	5/12/1999	Unfounded	*
	252488	CPD	No Arrest	3/25/1999	3/25/1999	10/30/2000	Sustained	*
	262173	CPD	Arrestee - during arrest	5/8/2000	5/10/2000	1/4/2001	Not Sustained	600
	263066	CPD	Neglect of duty/conduct unbecoming - on duty	6/14/2000	6/14/2000	2/27/2001	Unfounded	600
	273471	CPD	Search of premise/ vehicle without a warrant	7/28/2000	7/29/2001	11/15/2001	Not Sustained	600
	264666	CPD	Miscellaneous	8/9/2000	8/9/2000	2/28/2001	Not Sustained	600
	264878	CPD	Arrestee - during arrest	8/15/2000	8/16/2000	5/8/2001	Unfounded	600
	265153	CPD	Neglect of duty/conduct unbecoming - on duty	8/25/2000	8/25/2000	2/28/2001	Not Sustained	600
	265534	CPD	Use of profanity	9/8/2000	9/9/2000	3/7/2001	Not Sustained	600
	266003	CPD	Racial/ Ethnic	9/25/2000	9/25/2000	3/9/2001	Not Sustained	600
	266073	CPD	Use of profanity	9/28/2000	9/29/2000	3/9/2001	*	*
	267837	CPD	Search of premise/ vehicle without a warrant	12/12/2000	12/12/2000	3/13/2001	Unfounded	600
	271558	CPD	Arrestee - during arrest	5/12/2001	5/21/2001	12/14/2001	Not Sustained	600
	277987	CPD	Use/display of weapon	1/21/2002	1/29/2002	2/27/2003	Not Sustained	600
	279963	CPD	Arrestee - during arrest	4/20/2002	4/20/2002	3/20/2003	Unfounded	600
	283058	CPD	Arrestee - during arrest	8/5/2002	8/7/2002	10/8/2003	Unfounded	600
	285659	CPD	Arrestee - during arrest	9/24/2002	11/11/2002	5/1/2003	Unfounded	600
	292890	CPD	Illegal Arrest	10/6/2003	10/6/2003	4/12/2004	Not Sustained	600
	294370	CPD	Search of premise/ vehicle without a warrant	11/29/2003	12/9/2001	2/7/2005	Exonerated	600
	1012607	CPD	Miscellaneous	3/27/2004	12/11/2007	*	*	*
	297581	CPD	Inventory procedures	4/27/2004	4/30/2004	1/25/2005	Not Sustained	600
	309790	CPD	Search of premise/ vehicle without a warrant	11/17/2005	11/22/2005	2/28/2006	Unfounded	600
	310392	CPD	Search of premise/ vehicle without a warrant	1/1/2006	1/1/2006	3/7/2007	Not Sustained	600
	314450	CPD	Use/display of weapon	7/20/2006	7/25/2006	5/25/2007	Not Sustained	600
	1009991	CPD	Illegal Arrest	8/1/2007	10/10/2007	2/7/2008	No Affidavit	600
	1051467	CPD	Unncessary physical contact - on duty	1/6/2012	1/25/2012	7/9/2014	Sustained	0
	266431	CPD	Search of premise/ vehicle without a warrant	10/14/2000	10/14/2000	3/1/2001	Not Sustained	600

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James Riley #509	132050	CPD	Miscellaneous	7/8/1983	7/8/1983	9/21/1993	Not Sustained	*
	189558	CPD	Arrestee - after arrest prior to lockup	12/14/1991	12/28/1991	3/27/1992	Unfounded	*
	201838	CPD	Federal civil suit	8/18/1993	7/7/1993	12/6/1993	Unfounded	*
	1057100	CPD	Arrestee - after arrest prior to lockup	7/11/2001	10/18/2012	12/12/2013	Unfounded	600
	291750	CPD	Civil suit - third party	6/27/2003	8/21/2003	2/17/2004	Unfounded	600
	299005	CPD	Miscellaneous	8/3/2003	6/30/2004	4/21/2005	Unfounded	600
Leonard Rolston #20101	172573	CPD	Arrestee - during arrest	12/2/1989	12/3/1989	7/9/1990	Not Sustained	*
	195704	CPD	Reports - failed to submit/improper	7/23/1991	10/7/1992	10/14/1994	Sustained	*
	205961	CPD	Medical roll	1/1/1994	1/2/1994	3/23/1995	Sustained	*
	231334	CPD	Arrestee - after arrest prior to lockup	10/4/1996	10/12/1996	3/5/1997	Not Sustained	*
	243166	CPD	Arrestee - during arrest	2/2/1998	2/3/1998	*	Unfounded	*
	243506	CPD	Misuse of department/ equipment supplies	2/18/1998	2/20/1998	3/31/1999	Sustained	*
	254170	CPD	Use of weapon	6/7/1999	6/7/1999	1/26/2000	Not Sustained	*
	255773	CPD	Use of profanity	8/11/1999	8/12/1999	4/15/2000	Not Sustained	*
	268507	CPD	Absent without permission	1/15/2001	1/15/2001	3/6/2002	Sustained	100
	1021145	CPD	Altercation/disturbance - neighbor	10/26/2008	10/26/2008	4/21/2009	Not Sustained	600
James Shader #9609	308367	CPD	Inadequate/ failure to provide service	9/11/2005	9/12/2005	6/16/2006	Exonerated	600
John Spellman #19002	224509	CPD	Arrestee - during arrest	1/12/1996	1/31/1996	7/1/1996	Not Sustained	*
	227676	CPD	Neglect of duty/conduct unbecoming - on duty	6/4/1996	6/5/1996	8/24/1996	Not Sustained	*
	229665	CPD	Inadequate/ failure to provide service	8/14/1996	8/14/1996	1/8/1997	Unfounded	*
	233222	CPD	Arrestee - during arrest	12/29/1996	12/30/1996	3/20/1997	Unfounded	*
	240998	CPD	Arrestee - during arrest	10/21/1997	10/22/1997	4/5/2001	Not Sustained	*
	242131	CPD	Arrestee - during arrest	12/14/1997	12/15/1997	4/29/1998	Not Sustained	*
	244220	CPD	Traffic	2/13/1998	3/23/1998	7/17/1998	Not Sustained	*
	245283	CPD	No Arrest	5/12/1998	5/13/1998	10/14/1998	Not Sustained	*
	248975	CPD	Miscellaneous	9/9/1998	10/5/1998	2/11/1999	Exonerated	*
	250027	CPD	Miscellaneous	10/29/1998	11/23/1998	7/23/1999	Unfounded	*
	250712	CPD	Arrestee - during arrest	12/27/1998	12/28/1998	6/21/1999	Unfounded	*
	254995	CPD	Use of profanity	7/10/1999	7/11/1999	10/23/1999	Not Sustained	*
	260033	CPD	Miscellaneous	12/17/1999	2/15/2000	1/31/2001	Not Sustained	*
	259311	CPD	Search of premise/ vehicle without a warrant	1/13/2000	1/14/2000	1/24/2001	Not Sustained	600
	261511	CPD	Miscellaneous	4/4/2000	4/12/2000	9/13/2000	Not Sustained	600
	265070	CPD	Neglect of duty/conduct unbecoming - on duty	8/12/2000	8/23/2000	2/16/2001	Exonerated	600
	275014	CPD	Arrestee - during arrest	9/24/2001	9/24/2001	11/14/2002	Not Sustained	600
	278102	CPD	Search of premise/ vehicle without a warrant	2/3/2002	2/3/2002	6/21/2002	Not Sustained	600
	285970	CPD	Search of person without a warrant	11/24/2002	11/24/2002	10/15/2003	Not Sustained	600
	290351	CPD	Racial/ Ethnic	6/24/2003	6/24/2003	1/29/2004	Not Sustained	600
	290737	CPD	Inadequate/ failure to provide service	7/9/2003	7/10/2003	1/22/2004	Not Sustained	600
	292900	CPD	Inadequate/ failure to provide service	9/3/2003	10/7/2003	2/21/2004	Unfounded	600
	293410	CPD	Arrestee - during arrest	9/18/2003	10/30/2003	2/21/2004	Exonerated	600
	292648	CPD	Search of person without a warrant	9/25/2003	9/25/2001	2/21/2004	Unfounded	600
	299186	CPD	Search of premise/ vehicle without a warrant	7/3/2004	7/9/2004	3/16/2005	Exonerated	600
	303331	CPD	Arrestee - during arrest	1/26/2005	1/26/2005	12/7/2005	Not Sustained	600
	315315	CPD	Miscellaneous	9/5/2006	9/5/2006	3/12/2008	Unfounded	600
	1041168	CPD	Miscellaneous	11/1/2010	11/2/2010	2/2/2011	Not Sustained	600

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John Spellman #19002	1048551	CPD	Sexual Harassment	8/24/2011	9/15/2011	7/21/2012	Unfounded	600
	1048435	CPD	Miscellaneous	9/12/2011	9/12/2011	7/28/2014	Unfounded	600
	1073776	CPD	Racial/ Ethnic	1/22/2015	2/13/2015	3/25/2015	No Affidavit	600
Joseph Struck #20857	185049	CPD	Arrestee - during arrest	6/19/1991	6/19/1991	9/10/1991	Not Sustained	*
	185238	CPD	Communication operation procedures	6/25/1991	6/27/1991	10/25/1991	Exonerated	*
	189076	CPD	Use of profanity	12/2/1991	12/2/1991	2/20/1992	Not Sustained	*
	193492	CPD	No Arrest	7/10/1992	7/10/1992	10/30/1992	Unfounded	*
	195233	CPD	Search of premise/ vehicle without a warrant	9/18/1992	9/18/1992	10/30/1992	Exonerated	*
	196925	CPD	Search of premise/ vehicle without a warrant	11/28/1992	11/30/1992	2/1/1993	Exonerated	*
	198647	CPD	Search of premise/ vehicle without a warrant	2/13/1993	2/13/1993	5/12/1993	Unfounded	*
	200578	CPD	Arrestee - during arrest	5/14/1993	5/15/1993	8/9/1993	Not Sustained	*
	200726	CPD	Inventory procedures	5/23/1993	5/23/1993	7/27/1993	Unfounded	*
	202096	CPD	Use of profanity	7/17/1993	7/17/1993	11/1/1993	Not Sustained	*
	202637	CPD	Arrestee - during arrest	8/6/1993	8/7/1993	12/4/1993	Unfounded	*
	211690	CPD	Arrestee - during arrest	8/28/1994	8/29/1994	11/15/1994	Not Sustained	*
	216008	CPD	Arrestee - during arrest	3/3/1995	3/4/1995	10/6/1995	Not Sustained	*
	218874	CPD	Arrestee - during arrest	6/25/1995	6/26/1995	12/13/1995	Not Sustained	*
	220343	CPD	Neglect of duty/conduct unbecoming	8/9/1995	8/21/1995	10/31/1995	Not Sustained	*
	222404	CPD	No Arrest	11/7/1995	11/7/1995	3/15/1996	Not Sustained	*
	222686	CPD	Theft	11/19/1995	11/20/1995	1/12/1996	Unfounded	*
	226503	CPD	Miscellaneous	4/19/1996	4/19/1996	6/11/1996	Not Sustained	*
	238205	CPD	Miscellaneous	7/6/1997	7/6/1997	9/24/1997	Unfounded	*
	240519	CPD	No Arrest	10/2/1997	10/3/1997	3/17/1998	Not Sustained	*
	254170	CPD	Use of weapon	6/7/1999	6/7/1999	1/26/2000	Not Sustained	*
	1062804	IPRA	Excessive force, suspect coercion: **Complainant alleges that officers choked/beat him until he confessed to murder** (confession later retracted)	6/8/1999	6/3/2013	3/20/2014	Not Sustained	*
	269802	CPD	Altercation/disturbance - traffic	3/13/2001	3/13/2001	7/27/2001	Not Sustained	600
	1066866	CPD	Illegal Arrest	6/7/2001	1/3/2014	7/23/2014	Exonerated	600
	304678	CPD	State Civil Suit	3/18/2003	4/7/2005	9/20/2005	Unfounded	600
	292868	CPD	Search of premise/ vehicle without a warrant	9/28/2003	10/6/2003	10/14/2005	Unfounded	600
	299530	CPD	Inventory procedures	7/19/2004	7/24/2004	1/4/2007	Unfounded	600
	1018238	CPD	Illegal Arrest	4/14/2005	7/16/2008	10/23/2008	No Affidavit	600
	1021468	CPD	Illegal Arrest	9/15/2007	11/6/2008	1/22/2009	No Affidavit	600
	1013404	CPD	Miscellaneous	1/14/2008	1/15/2008	5/21/2008	Not Sustained	600
	1075019	CPD	Civil suit - third party	2/4/2015	5/5/2015	7/20/2015	No Affidavit	600
	1074617	CPD	Inventory procedures	3/3/2015	4/10/2015	11/13/2015	Exonerated	600
James Tencza #9203	179853	CPD	Racial/ Ethnic	10/21/1990	10/21/1990	1/30/1991	NS	*
	179941	CPD	Inadequate/ failure to provide service	10/24/1990	10/25/1990	1/31/1991	Exonerated	*

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Brian Tierney #19446	225934	CPD	Miscellaneous	3/27/1996	3/28/1996	6/2/1996	Sustained	*
	226750	CPD	Arrestee - during arrest	3/29/1996	4/30/1996	11/7/1996	Not Sustained	*
	226691	CPD	Arrestee - during arrest	4/26/1996	4/26/1996	1/4/1997	Not Sustained	*
	228344	CPD	Escape	6/27/1996	6/27/1996	1/13/1997	Sustained	*
	229947	CPD	Search of premise/ vehicle without a warrant	8/23/1996	8/23/1996	1/8/1997	Exonerated	*
	232784	CPD	Prisoner's property - inventory/receipt	12/11/1996	12/12/1996	2/25/1997	Unfounded	*
	241042	CPD	Traffic	10/23/1997	10/23/1997	10/7/1999	Sustained	*
	241065	CPD	Reports - fail to submit/improper	10/23/1997	10/24/1997	2/26/1998	Not Sustained	*
	255778	CPD	Medical roll	8/12/1999	8/12/1999	11/11/1999	Not Sustained	*
	260085	CPD	Neglect of duty/conduct unbecoming - on duty	2/16/2000	2/18/2000	12/4/2000	Unfounded	600
	262429	CPD	Neglect of duty/conduct unbecoming - on duty	3/20/2000	5/23/2000	2/1/2001	Unfounded	600
	264364	CPD	Arrestee - after arrest prior to lockup	7/28/2000	7/29/2000	2/7/2001	Not Sustained	600
	267942	CPD	Search of premise/ vehicle without a warrant	12/18/2000	12/18/2000	3/12/2001	Not Sustained	600
	270931	CPD	Search of premise/ vehicle without a warrant	4/27/2001	4/27/2001	9/5/2001	Not Sustained	600
	270977	CPD	Use/display of weapon	4/29/2001	4/29/2001	7/23/2002	Unfounded	600
	273092	CPD	Unncessary physical contact - on duty	7/16/2001	7/16/2001	12/19/2001	Unfounded	600
	286474	CPD	Miscellaneous	8/1/2002	12/18/2002	10/31/2003	Unfounded	600
	284819	CPD	Arrestee - during arrest	8/14/2002	10/8/2002	2/14/2003	Not Sustained	600
	293885	CPD	Federal civil suit	11/2/2002	11/17/2003	2/21/2004	Not Sustained	600
	285952	CPD	Arrestee - during arrest	11/22/2002	11/23/2002	5/1/2003	Not Sustained	600
	287956	CPD	Arrestee - during arrest	2/25/2003	3/3/2003	2/3/2004	Exonerated	600
	1004111	CPD	Inadequate/ failure to provide service	3/14/2007	3/15/2007	9/21/2007	No Affidavit	600
	1010030	CPD	Miscellaneous	10/11/2007	10/11/2007	3/21/2008	No Affidavit	600
	1031484	CPD	Miscellaneous	11/1/2009	11/1/2009	3/2/2010	Exonerated	600
	1043300	CPD	Search of premise/ vehicle without a warrant	9/19/2010	2/14/2011	6/17/2011	No Affidavit	600
	1056657	CPD	Illegal Arrest	8/21/2012	8/29/2012	12/13/2012	Exonerated	600
Jose Torres #4477	284167	CPD	No Arrest	9/15/2002	9/15/2002	2/14/2003	Not Sustained	600
	299713	CPD	Inadequate/ failure to provide service	7/21/2004	8/2/2004	7/7/2006	Sustained	1
	1046489	CPD	Telephone - attorney/relative privileges	6/14/2011	6/27/2011	11/8/2011	Exonerated	600
	1069915	CPD	Miscellaneous	6/7/2014	6/20/2014	8/6/2014	No Affidavit	600
	1076753	CPD	Illegal Arrest	8/15/2015	8/17/2015	10/6/2015	No Affidavit	600
Robert Tovar #12847	157605	CPD	Arrestee - during arrest	8/21/1987	8/21/1987	4/18/1998	Not Sustained	*
Robert Trotman #15946	279088	CPD	Search of premise/ vehicle without a warrant	3/17/2002	3/17/2002	10/22/2002	Exonerated	600
	315741	CPD	Reports - failed to submit/improper	9/24/2006	9/25/2006	2/8/2007	Unfounded	600
	1008473	IPRA	Excessive force during traffic stop	4/26/2007	8/16/2007	11/5/2008	Unfounded	*
	1008473	CPD	Arrestee - during arrest	4/26/2007	8/16/2007	1/26/2009	Unfounded	600
	1021336	CPD	Inadequate/ failure to provide service	11/1/2008	11/1/2008	4/21/2009	Not Sustained	600
	1029889	CPD	Inventory procedures	9/7/2009	9/8/2009	3/2/2010	No Affidavit	600
	1059110	CPD	Inadequate/ failure to provide service	12/10/2012	12/19/2012	2/26/2013	No Affidavit	600
Maureen Ziegenhorn #365	181051	CPD	Prisoner's property - inventory/receipt	12/13/1990	12/13/1990	4/10/1991	Unfounded	*
	190540	CPD	Misuse of department/ equipment supplies	2/20/1992	2/20/1992	8/9/1993	Not Sustained	*
	202724	CPD	Inadequate/ failure to provide service	8/9/1993	8/10/1993	11/15/1993	Unfounded	*
	203214	CPD	Reports - fail to submit/improper	8/30/1993	9/30/1993	11/24/1993	Unfounded	*
	209403	CPD	Miscellaneous	6/5/1994	6/5/1994	8/10/1994	Not Sustained	*
	226892	CPD	Use of profanity	5/4/1996	5/6/1996	8/13/1996	Not Sustained	*

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Maureen Ziegenhorn #365	238951	CPD	Arrestee - during arrest	8/7/1997	8/5/1997	4/21/1998	Not Sustained	*
	255822	CPD	State Civil Suit	8/2/1998	8/13/1999	4/5/2000	Exonerated	*
	262023	CPD	Misconduct during issuance of citation	5/2/2000	5/2/2000	3/16/2001	Not Sustained	600
	266053	CPD	Neglect of duty/conduct unbecoming	9/28/2000	9/28/2000	5/16/2001	Not Sustained	600

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APPENDIX B

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Day 1

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A. After it happened I saw like footprints -- as I'm laying on the ground in the Citgo, footprints running back that way like chasing Meechie or whoever they was chasing 'cause I really did see somebody running from that way, like 54th, back 54th and Damen, like that way.

Q. 54th and what, Damen?

A. Yes. And that's when I really hit the floor 'cause I'm like, ah, I'm fittin' to die; oh, my God, and I was just scared.

Q. Now, Brandy, did you see Googie at that gas station on May 6, 2001?

A. No, he was nowhere around.

Q. Brandy, do you remember speaking to the police on June 20, 2001, correct?

A. Um-hum.

Q. You have to say yes or no.

A. Yes, sir.

Q. And that was at Area 1, a police station, correct?

A. Yes.

Q. That was 51st and Wentworth?

A. Yes, sir.

Q. These were Chicago police detectives that

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A. Yes.

MR. PAPA: Judge, may I approach?

THE COURT: Yes.

MR. PAPA: Thank you.

Q. Brandy, I'm going to show you what's been marked as People's Exhibit Number 3 for identification. This is your handwritten statement, correct?

A. Yes, sir.

Q. It's got your name at the top, correct?

A. Yes, sir.

Q. It says the statement of Brandy Grant?

A. Yes, sir.

Q. And it says that it was taken on June 21, 2001?

A. Yes, sir.

Q. At about 12:10?

A. Yes.

Q. At Area 1?

A. Yes.

Q. And that present were ASA Colleen Daly, Detective Foster, and Detective Forberg, correct?

A. Yes.

Q. Now, Brandy, this document, that's your

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handwritten statement, it's four pages long, correct?

A. Yes, sir.

Q. I'm going to just ask you some questions. Okay.

At the bottom of each of these charges, Brandy, your signature appears on page 1, page 2, page 3, and then at the top of page 4?

A. Yes, sir.

Q. There is an actual addition on page 1 of the the statement, correct?

A. Um-hum.

Q. That's yes?

A. Yes, sir.

Q. Your initials appear in those areas, correct?

A. Yes.

Q. The addition is in the left-hand margin of this document, correct?

A. Yes, sir.

Q. You wanted that addition put in there, correct?

A. Yes, sir.

Q. And it was by the state's attorney, correct?

A. Yes, it was. I need to talk.

Q. Okay. On the second page of your handwritten

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Q. You also told Miss Daly, and it's in your handwritten statement, that you never saw Meechie firing a gun, correct?

A. Yes, sir.

Q. You also told Miss Daly that after you heard the gunshots you saw a pair of black shoes run past the door to that gas station, correct?

A. Yep.

Q. And that a short time later Quiana came in and asked if everybody was okay, right?

A. Yes, sir.

Q. You then went outside and saw the old man slumped behind the car, correct?

A. (Nodding head.)

Q. And that was the same car that Meechie was standing by, correct?

A. Yes, sir.

Q. In the handwritten statement, Brandy, you said that you were treated well by the police and by the assistant state's attorney, correct?

A. Yes, because I was scared, but I was really not treated nice by them.

Q. Well, it's contained in your handwritten statement, correct?

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A. Yes, sir.

Q. You told Miss Daly, and it's contained in your handwritten statement, that you had been allowed to use the bathroom whenever you needed to, correct?

A. Yes, sir.

Q. You had pop to drink, you had a double cheeseburger and fries to eat, correct?

A. Yes, sir.

Q. And that you also told Miss Daly that no one had made any promises or threats to you in order for you to give that statement, correct?

A. Yes, sir.

Q. You told her that, correct?

A. Yes, sir.

Q. And you also said that you were making the statement freely and voluntarily, right? Is that yes?

A. I didn't even say anything. I didn't say nothing. I just was ready to go because I was harassed. I was everything. I was three months pregnant. I was going through a lot. I'm stressed out still right now to this day 'cause I lied on him. They had me to lie on him. They told -- they coerced me, Judge, I promise you. They made this story up. They kept saying Google did it. He did not do it. He

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was nowhere around. And I'm not saying that for the simple fact, you know, that I'm scared of anybody. He didn't do it. He was nowhere around. He was not in the car with us. It was me, Quiana, and Brandy, the only three of us in the car. Mario wasn't even around. I don't even remember if Mario was or not. But he was not in the car with us. I just want to speak to the Judge and tell her that becaue I think she's the only one that will listen to me. The detectives would not listen to me. They was not trying to hear anything. They told us that if we did did not say who did that, that it would be crimes on us 'cause we was there that night at the gas station. And I was just ready to go. And I'm sorry for what I did and I just signed the statement on you because I was ready to go and they said we was gonna beat that case and I just did it because I have kids. And I was there that night. I wish I wasn't there. It was a nightmare.

Your Honor, look at my hair (indicating). It's been stressing me out that much that I had to put this man away for that long.

THE COURT: Do you need tissue, ma'am?

A. And I'm suffering now for what I did.

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(Witness crying.)

THE COURT: Do you want some water, Miss?

A. No. Thank you, ma'am.

(Short pause.)

MR. PAPA: You ready, Brandy?

THE COURT: Are you ready to proceed, Miss Butler?

A. Yes, sir -- yes, ma'am.

BY MR. PAPA:

Q. Okay. Brandy, I'm going to keep asking you some questions. Okay?

Brandy, I'm going to keep asking you some questions. Okay? If you need some time, just let me know. Are you okay?

Brandy, just so we're all clear, you're not in custody here today because of anything that happened on May 6th, 2001, correct?

MR. CONNIFF: Objection.

A. I know --

THE COURT: Just a moment. There's an objection.

MR. CONNIFF: I'll withdraw it.

THE COURT: All right.

BY MR. PAPA:

Q. Brandy, after you signed the handwritten statement, after you had given that handwritten

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statement, later that same morning on June 21st, 2001, you were then taken --

A. To a grand jury.

Q. -- you were taken to this building, correct?

A. Yes, sir.

Q. They brought you up to the fourth floor of this building, right?

A. Yes, sir.

Q. And once you were at the fourth floor in this building you met another assistant state's attorney, correct?

A. Yes, sir.

Q. Her name was Kathy Lanahan, right?

A. Yes, sir.

Q. And again, she did the same thing, she identified herself to you as being Kathy Lanahan, right?

A. Yes, sir.

Q. And she told you that she was an assistant state's attorney which meant that she was a lawyer and a prosecutor but not your lawyer, right?

A. Yes, sir.

Q. And then when you met with Miss Lanahan. Again, you had a conversation with her about what you

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A. Four days ago or something. The state's attorney came and got us, me and Quiana, to my house and I went with them and he was like we're gonna just ask you questions. I was telling them that I wanted to tell the truth about what happened because the officers cursed and they made me say that. I was just scared. I promise you that I was scared. I was just ready to go home because I was harassed. They kept harassing me and Quiana for no apparent reason. I was very afraid. I cannot talk for nobody else. I just wanna tell the truth 'cause I feel a load off my back and I know that's why I'm going through the struggle I'm going through now 'cause God, you should not bear false witness and I can't do that. They made that, they coerced that story. They sat there and made it up, this is what he did. They wrote all that down and I just was saying like I'm ready to go, and I didn't take it serious like that because I ain't never been in no trial or nothing like this. I promise you.

Q. Miss Grant, this statement that the Prosecutor showed you, that was a statement that was written out by a prosecutor, correct?

A. Yes, sir.

Q. And that was a female prosecutor?

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the shooter?

A. I did not see him.

Q. But on June 21st when the state's attorney wrote out this statement for you, you signed this statement?

A. The Detective Foster them made that story up. I'm telling y'all, you gotta believe me. They told me to sign that statement. They told me if I didn't do it that I was gonna be doing time for that; me, Quiana. You can ask Quiana. I don't need to ask her. We was the only ones there; me, Emanuel, and Quiana. Wasn't nobody else there. Shemika wasn't there -- or the other statements that was signed across them. They kept showing us statements that he said he did it, which he didn't sign that statement. They was trying to make it seem like oh, yeah, well, he say he did it, so you might as well turn him in, he say he did it or you guys gonna be staying here for days and days. You're gonna have your baby in here. I'm like, oh, my God.

Q. So the detectives were telling you that Googie was involved?

A. Yes, they kept saying it.

Q. And that you were to sign a statement that he

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was involved or that you would be charged?

A. Charged with it, yes.

Q. Now, this took place, this statement that you signed, People's Exhibit 3, that was at about -- that was after midnight, right?

A. Yes, sir.

Q. And you're in the police station?

A. Yes, sir.

Q. Now, after you signed that statement did they let you go?

A. I think it happened after I did that grand -- they told me do the grand jury. They was like then you can go home after you do that. You did a good job. That's what they told me.

Q. You went to the grand jury on June the 21st also, correct?

A. Yes, sir.

Q. So that was early the next moring?

A. Yes, sir. The same night I took that picture because I spent the night and went to the jury the next morning, that's when they tried to bribe me with cigarettes and stuff and I was like get outta here and I tried to go on the rampage so they could just leave me alone forever.

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Q. How did you get to the grand jury?
A. They took me.
Q. When you say they, who are you referring to?
A. Foster and the other guy.
Q. Had you been in the police station all night?
A. Yes, sir.
Q. Were you in custody at that point for any crime that you committed?
A. No, sir.
Q. And you gave them the handwritten statement at 12:10 in the morning?
A. Yes, sir.
Q. And they didn't let you go home?
A. No, sir.
Q. They kept you in custody all night long until the following morning?
A. Yes, sir, until the grand jury.
Q. And then they drove you to the grand jury?
A. Yes, sir.
Q. They never said go home and appear the following morning at the grand jury?
A. No, sir.
Q. When you got to the grand jury, you were with detectives?

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A. Yes, sir, they was in the other room, though, when I went in the grand jury. They just was out there.

Q. But they were present in the area there?

A. Yes, sir.

Q. Had they talked to the state's attorney, if you know?

A. I can't really remember.

Q. And did you talk to a state's attorney before you went into the grand jury?

A. Give me a moment. I have to think about it because I'm trying to see.

Q. Do you remember?

A. I kind of.

Q. Well, before you went into the grand jury they had the handwritten statement which was written out by the state's attorney?

A. Yes, sir.

Q. And he dove you down to the grand jury?

A. Yes, sir.

Q. And they took you into the grand jury?

A. Yes, sir.

Q. And the state's attorney asked you in the grand jury --

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RECROSS-EXAMINATION

BY MR. CONNIFF:

Q. The state's attorney asked you if you could read and write. Do you recall that?

A. (Nodding head.)

Q. And you were in police custody at the time this was written out and you were reading it, correct?

A. Yes, sir.

Q. And before the state's attorney ever arrived you had had an ongoing dispute with the detectives about the facts?

A. Yes, sir.

Q. And you told them what you have told this jury today?

A. Yes, sir.

Q. And they didn't accept it?

A. Did not accept it at all.

Q. And they didn't let you go home, did they?

A. No.

Q. And they didn't let you go home all night long?

A. I stayed there for at least two days.

Q. They didn't let you go home before you went to the grand jury?

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A. Right.
Q. They drove you to the grand jury?
A. Yes, sir.
Q. And they drove you back from the grand jury?
A. Yes, sir.
MR. CONNIFF: Nothing further.
THE COURT: Any redirect?
MR. PAPA: I have no further questions of Brandy, Judge.
THE COURT: Thank you, Miss Grant. You're excused.
A. Thank you, Judge.
(Witness excused.)
THE COURT: Ladies and gentlemen, this is a good time to see that you get a lunch, and this time it's on the County. I don't know if that's a plus or not. I'll find out from you afterwards. The sheriff will take you over to the second floor in the next building, the administrative building, for a hot lunch. And have them back in the courtroom, Rocky, I don't know who's going to be taking you, it's now 1:25, in an hour. We will break for lunch at this time.
(The lunch recess was had.)

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A. They grabbed me.
Q. Did you talk to him?
A. No.
Q. You didn't talk to him?
A. No.
Q. So they grabbed you and what happened?
A. They grabbed me and they let me go.
Q. Did you ever tell Detective Forberg that on May the 6th of 2001 you went to the Citgo station at 55th and Damen to get some blunts?
A. No, I was never there.
Q. I'm not asking you whether you were there. Do you understand, Mr. Clay? I am asking if you ever told the detective that?
A. No.
Q. Did you ever tell the detective that you met Quiana Davis, Shemika Mason, and Brandy Grant there?
A. No.
Q. Did you ever tell the detective that you were inside the store at the Citgo station when Meechie came in and asked you for some pot?
A. No.
Q. Did you ever tell the detective that because Meechie was a Gangster Disciple he was unable to cross

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to the east side of Damen Avenue to buy cannabis from the Vicelord operation? Did you ever tell the detective that?

A. No.

Q. Did you ever tell the detective that you and Meechie went to the same school together when you were young?

A. No.

Q. Did you and Meechie go to school together when you were young?

A. No.

Q. You don't know Meechie?

A. I know Meechie from the neighborhood.

Q. You know Meechie. Is Meechie in the Conservative Vicelords?

A. No.

Q. What gang is Meechie in?

A. He's a GD.

Q. What's a GD?

A. A Gangster Disciple.

Q. Now, is a Gangster Disciple people or folks?

A. They folks.

Q. What are Conservative Vicelords?

A. Peoples.

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Q. The gangs under the people sign and the gangs under the folks sign, are they friendly?

A. Around the neighborhood they is.

Q. So the GDs and the Conservative Vicelords are friendly around the area of 55th and Damen?

A. Yes.

Q. Now, when you were talking to Detective Forberg on June the 2nd did you tell him that on the night of May the 6th of 2001 at about 1:30 you heard five to six gunshots as Meechie was walking to go to his car? Did you ever tell him that?

A. No.

Q. Did you ever tell him that Meechie ran toward you saying that his uncle had been shot?

A. Yes.

Q. Did you ever tell the detective that some guy on the street by the name of Norman, a Vicelord from 54th and Damen, did the shooting? Did you ever tell him that?

A. No.

Q. Did you ever tell the detective -- or did you ever look at a photograph? Did the detective show you any photograph when you talked to him on June the 2nd?

A. They showed me photographs about six

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Q. Did they show you a photograph of any cars?
A. No.
Q. And so you say that after you talked to Detective Forberg he let you go, right?
A. Yes.
Q. How long were you and he together?
A. They had me for like 20 minutes.
Q. 20 minutes and then --
A. And they let me go.
Q. Mr. Clay, I'd like to direct your attention to June the 11th of 2003. On that day did you have occasion to see Detective Forberg again?
A. Yes.
Q. And where was that?
A. They came and grabbed me from coming out the liquor store.
Q. And then you went to Area 1 with the detectives, is that right?
A. Yes.
Q. And at that time Detective Forberg asked you for some more detail about this Norman, this Conservative Vicelord that allegedly done this shooting, is that right?
A. No.

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Q. He didn't ask you that?
A. No.
Q. Did you ever tell the detective that you don't remember what you told him about Norman?
A. No.
Q. On that day, on June the 11th of 2001, did Detective Forberg confront you with Meechie's statement, what Meechie said about what happened on May the 6th? Did he ever say anything like that to you?
A. No.
Q. Did you ever tell the detective on June the 11th of 2001 that Googie, Kevin Jackson, pulled up in a car with Quiana Davis and Manuel Stewart at the gas station?
A. No.
Q. Did you ever tell the detective that Quiana Davis got out of the car to talk to Shemika Mason who was walking with you?
A. Yes.
Q. Did you ever tell the detective that Meechie got out of Jenkins's car and began talking to Quiana Davis?
A. No.

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Q. Did you ever tell the detective that Meechie asked Quiana Davis out on a date that evening?

A. No.

Q. Did you ever tell the detective that Quiana Davis and Meechie went into the store at the gas station there and were hugging?

A. No.

Q. Did you ever tell the detective, and this is all on June the 11th, right, Mr. Clay, you understand that?

A. Yes.

Q. Did you ever tell the detective that Meechie and Davis exited the store and Meechie was whispering in Quiana Davis's ear? Did you tell him that?

A. No.

Q. Vernon, did you tell him that then you heard some shooting?

A. No.

Q. Did you tell the detective that then you saw Googie's car flee southbound on Damen Avenue?

A. No.

Q. Did you tell the detective that you saw the defendant running southbound through a lot with a gun in his hand?

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A. No.
Q. You never told the detective any of that stuff on June the 11th?
A. No.
Q. What did you tell him on June the 11th, by the way?
A. I told him I was never there.
Q. You told him you were home sleeping?
A. Yes.
Q. Okay. Did you have occasion to talk to the detective on June the 12th, the next day?
A. They had me in custody for three days.
Q. They had you in custody for three days. So you were still there the next day, right?
A. Yes.
Q. So you talked to the detective the next day on June the 12th?
A. No.
Q. You didn't talk to Detective Forberg on June the 12th at all?
A. No.
Q. Did you talk to any detectives on June the 12th?
A. No.

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Q. On June the 12th would you have told Detective Forberg that you may have been withholding further detail regarding the shooting because of fear?

A. No.

Q. Did you tell Detective Forberg that you and Googie were members of the same gang?

A. No.

Q. Did you tell Detective Forberg that you feared for your safety from fellow gang members if they discovered that you talked to the police?

A. No.

Q. Did you tell the detective that after you spoke to the police on June the 2nd you were confronted by Googie at a bus stop near 55th and I-94?

A. No.

Q. Did you tell the detective that at that time Googie questioned you about the shooting there that happened at the gas station?

A. No.

Q. Did you tell the detective that you told Googie that you didn't say anything to the police?

A. No.

Q. Did you tell the detective that that night of the shooting Quiana Davis had bought a blunt and was

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rolling it as she walked to Googie's car?

A. No.

Q. Did you tell the detective that Meechie said to Quiana Davis, "Get off that bullshit," meaning to forget about being with Googie?

A. No.

Q. Did you tell the detective that you turned and saw Googie firing shots into a car?

A. No.

Q. Did you ever tell the detective that Meechie ran toward 55th Street and fled across Damen Avenue towards the Marathon station?

A. No.

Q. Vernon, did you have occasion to talk to Detective Forberg on the 13th of June?

A. Yes.

Q. You did talk to him on the 13th. You didn't talk to him on the 12th but you talked to him on the 13th?

A. Yes.

Q. So the 12th in the police station what did you do all day? Nothing?

A. They had me in a room.

Q. So you just sat there?

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A. I went to sleep.
Q. You slept the whole day?
A. No.
Q. Now, the next day on the 13th at about 2:30 in the morning, so this is the evening of July the 12th, early morning hours of -- I'm sorry, June the 13th -- late evening hours of June the 12th, early morning hours of June the 13th you were at the police station, right?
A. Yes.
Q. And you talked to Detective Forberg, is that right?
A. Yes.
Q. Did you meet a state's attorney by the name of Lisa Hennelly?
A. No.
Q. You didn't meet a state's attorney?
A. No.
Q. Did you have occasion to sit down with Detective Forberg and anybody else, any females, and talk to them about what happened on May the 6th of 2001?
A. You say eight females?
Q. A female, any woman?

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A. No.

Q. You didn't see any women there at the police station when you were there, right?

A. No, they had me in a room.

Q. Well, Detective Forberg -- you talked to Detective Forberg, right?

A. Yes.

Q. And did you and Detective Forberg discuss what happened on the evening of May the 6th, 2001 there at the gas station?

A. No.

Q. You didn't talk to him about that?

A. No.

Q. Well, what did the two of you talk about?

A. I asked him when was I going home.

Q. What did he say?

A. He said everybody say I wasn't there, so he said I was leaving to be home shortly. He say they gonna write up my property and then I could sign for my property and then I could leave.

Q. Well, Detective Forberg took a picture of you when you were there at police station, didn't he?

A. No.

Q. He didn't take any pictures of you?

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A. Not that I know of.

Q. Did Detective Forberg and the state attorney or anybody sit down with you and write piece of paper events that happened --

A. No.

Q. Let me finish.

A. Oh. Excuse me.

Q. -- events that happened on May the 6th, 2001?

A. No.

Q. Never did that? Don't know anything about that?

A. No.

MR. DARMAN: Judge, may I approach?

THE COURT: Yes.

MR. DARMAN: Showing to counsel what I've marked as People's Exhibit Number 6 for identification.

Q. Let me ask you something, Mr. Clay, before I show you this. You said nobody took a picture of you or nobody wrote out any statements from you, right?

A. No.

Q. And you didn't sign anything while you were there at the police station, is that correct?

A. Only thing I signed was for my property.

Q. So they took your property when you came into

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the police station?

A. Yes.

Q. And you couldn't get it back until you signed something for it, right?

A. Yes.

Q. But you did sign for it?

A. Yes.

Q. Only thing you signed at the police station, right?

A. Yes, that's what I know of.

Q. I want to show you what I've marked as People's Exhibit Number 5 for identification. That's a picture, right? That first thing on top, there's a picture, isn't it?

A. Yes.

Q. That's a picture of you, isn't it?

A. Yes.

Q. Isn't that a picture of you there in Area 1 in the Area 1 police station?

A. That's the police station. I don't know if it's at Area 1 police station.

Q. Is that your signature right there, Vernon Clay?

A. Yes.

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your signature, isn't it?

A. That's not my signature right there.

Q. That's not your signature right there. Okay.

Let me show you another part of People's Exhibit 5. This looks like a piece of paper with a bunch of writing on it, is that correct?

A. Yes.

Q. And right here at the bottom of the page, that says Vernon Clay, doesn't it?

A. Yes.

Q. Is that your writing?

A. Yes.

Q. You signed that piece of paper right there?

A. Yes, that's the paper they said I had to sign for my property.

Q. So this is the piece of paper you signed to get your property back?

A. Yes.

Q. Did you read this writing before you signed to get your property back?

A. No.

Q. So they just gave you this paper and you just signed it?

A. They told me if I don't sign the paper to get

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my property back, they said they was gonna come back, they was gonna lock me up, they was gonna harrass me some more.

Q. They said we're going to have to harass you some more if you don't sign up for getting your property back?

A. Yeah.

Q. Well, look here on page 2. Does that say Vernon Clay right there (indicating)?

A. Yes.

Q. Is that your signature?

A. Yes.

Q. Did you read any of this before you signed it?

A. No.

Q. What about that on the bottom of page 3 there, is that Vernon Clay? Is that your signature (indicating)?

A. Yes.

Q. Now, over here (indicating) there's a little, looks like a correction on the side here. Do you see that? Right here (indicating), something is written out on the side of the margin of that piece of paper.

A. Yes.

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A. No, it had the M license plates on it.
Q. I'm sorry?
A. It was a Crown Vic.
Q. Crown Victoria?
A. Yes.
Q. And they took you to 51st and Wentworth?
A. Yes.
Q. And what happened when you got to 51st and Wentworth?
A. When I got to 51st and Wentworth they took me in a room with a camera and they asked me where was I on May something and I told them I was at home sleep getting ready for day reporting and they asked me -- talking about some people calling me Lil' Man it's about. I asked them who was Lil' Man. They called me Lil' Man, we know you Lil' Man. They was harassing me and then they asked me, like we know something about a Cit -- do you know something aobut a Citgo shooting. I told them no, I wasn't never there, they say okay, go home.
Q. Which detectives were that, do you know their names?
A. No.
Q. You said you got picked up again on June the

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11th?

A. Yes.

Q. And what time of day was that?

A. That was about 6:00 o'clock.

Q. 6:00 o'clock at night or in the morning?

A. In the evening.

Q. Where were you when you were picked up at 6:00 o'clock in the evening on June the 11th?

A. I was in a car. I was coming from the mall.

Q. You were in a car coming from the mall?

A. Yes.

Q. Were you with anyone?

A. No.

Q. What mall were you coming from?

A. Ford City.

Q. And you were driving down the street?

A. Yes.

Q. What happened?

A. I pulled in the gas station to get some gas, I jumped out, they come -- as I'm coming out to pump my gas, they come pull up in the gas station.

Q. And when you say they pulled up in the gas station, who pulled up?

A. The two detectives that had me the first

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time.

Q. And what happened then?

A. They pulled up, jumped out, handcuffed me and and put in the car.

Q. And they took you where?

A. Back to 51st and Wentworth.

Q. That was on June 11?

A. Yes.

Q. At about 6 p.m.?

A. Yes.

Q. And you got to 51st and Wentworth did you go inside?

A. Yes.

Q. Where did they take you?

A. They took me in a dark room and closed the door and left me in there for a minute.

Q. They took you in a room, it was dark?

A. Yes.

Q. By that you mean the lights were off?

A. Yes.

Q. Was it an office or was it some other kind of a room?

A. It was a interrogation room.

Q. But the lights were off in there?

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A. Yes.
Q. And when they put you in that room, did they hang around and talk to you?
A. No, they closed the door.
Q. And was the door locked?
A. Yes.
Q. So you weren't free to go?
A. No.
Q. Now, when they picked you up, were you committing any crime at that time?
A. No.
Q. Were you doing anything wrong?
A. No.
Q. How long did you stay in that room?
A. I stayed in there for three days.
Q. In that room?
A. Yes.
Q. So the Prosecutor asked you about being at Area 1 on the 11th, you said that you were?
A. Yes.
Q. That you were picked up at 6:00 o'clock on the 11th?
A. Yes.
Q. So they kept you at Area 1 on the night of

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the 11th, right, all night long?

A. Yes.

Q. And they kept you all day on the 12th?

A. On my birthday, yeah.

Q. And they kept you the night of the 12th?

A. Yes.

Q. And finally on the early morning hours of the 13th they came to you with some papers to sign?

A. They came in there and told me -- first they grabbed me for a lineup, took me to a lineup, then they came back up in there, they told me -- they was like, well, we don't need you, you can gone ahead 'cause they took my property and whatever and they was like we don't need you. They was like the only thing you gotta do is just sign your property. They was like people say you wasn't there, so the only thing you gotta do is sign this piece of paper and you go home.

Q. Now, on the 11th, the 12th, and the 13th, were the detectives coming in and out of the room talking to you?

A. They was coming in there harassing me.

Q. When you say harassing you, what were they doing?

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A. The 11th when they took in there -- they came in there, they told me -- they was like, you gonna suffer 'cause tomorrow your birthday and woo, woo, woo, woo. They was like, you gonna say something about something. And then they was trying to make, you know, me say something, that I wasn't there, actually.

Q. And then you said finally on the 13th when they came to you with the papers you said to them when are you going to let me go?

A. Yes.

Q. Did you ask them about that on the 12th, too?

A. The 12th they did not come in there. They left me alone 'cause it was my birthday.

Q. Now, they came in on the 13th, the Prosecution asked you about whether these papers were all together. When they came in on the 13th, was this document stapled together the way it is now?

A. No.

Q. Was this picture stapled on top of another picture that all the pages of this are all stapled together?

A. No.

Q. How were these pages presented to you?

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A. The picture was by itself. This was like on a desk with a lot of papers (indicating). The only thing was out was this part right here (indicating), the bottom with all this. I signed this, they flipped it over, did like this (indicating). I signed it, they flipped over.

Q. You're indicating that they just picked up the bottom of the page and had you sign at the bottom?

A. Yes.

Q. And they told you that you were signing to get your property so you could go home?

A. Yes.

Q. How far did you go in school, Vernon?

A. I went to ninth grade.

Q. And this particular statement, this was written out by someone else?

A. Yes.

Q. And according to the statement, this was June the 13th at 2:30 a.m. in the morning. Did you know what time it was when you were signing these papers?

A. No. When I signed the papers it was about 3:00 o'clock. When I signed the papers to get my property to go out, he said tell Brandy we looking for her.

(Z-159)

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Q. And after you signed the papers to get your property did they let you go then?

A. Yeah. They said tell Brandy -- they say tell Brandy we looking for her. If you don't tell Brandy we looking for her, we gonna come back and lock you up.

Q. And what time did you leave Area 1 on the 13th?

A. About 3:30.

Q. 3:30 in the morning?

A. Yes.

Q. And it wasn't until June the 13th at 3:30 in the morning after you signed the papers that they let you go from the police station?

A. As soon as I signed the papers, they gave me my property and told me to leave and they told me to find Brandy. If I don't find Brandy, they was gonna lock me up.

Q. By Brandy are you referring to Brandy Grant?

A. Yes.

Q. That wasn't the last contact that you had with the police?

A. No.

Q. On the 28th they picked you up again?

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court?

A. Yes.

Q. What hours were you going there?

A. I had to go report there from 7:30 in the morning to about 3:30 in the afternoon.

Q. You say they were waiting for you when you came out?

A. Yes.

Q. And on the 28th they picked you up?

A. Yes.

Q. And where were you when they picked you up?

A. I was coming out of E and J liquor store.

Q. And what time of day was that?

A. It was about 8:30 or 9:00 o'clock. I was getting ready to go to daily reporting and they picked me up.

Q. In the morning?

A. Yes.

Q. And that was when they took you to the grand jury?

A. Yes. They ain't tell me nothing about that. The only thing they was telling me like would I sign, like yeah, we trick -- you know, woo, woo, woo, woo, woo, and all that. Now if you don't say this, we

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gonna lock you up. You already fittin' to go to trial and you on daily reporting, so they broke it down.

Q. The Prosecution asked you whether you ever told the police that you were afraid of other gang members. Do you remember that?

A. Not that I recall.

Q. Based on your experience with the police in this case, who were you more afraid of in this case?

A. The police.

MR. CONNIFF: Nothing further.

REDIRECT EXAMINATION

BY MR. DARMAN:

Q. Are you aware of me, Vernon?

A. No, not you.

Q. Good. Good. How did you get to court today, Vernon?

A. How I get to court?

Q. Yeah, how did you get to court?

A. Bus.

Q. Who did you come here with?

A. Me.

Q. You come here by yourself?

A. Yes.

Q. You didn't come with Shemika or any of these

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A. Yes, two of them.

Q. Two of them. Detective Foster and Detective Forberg, correct?

A. I guess. I don't remember they name, but.

Q. Okay. They were asking you questions about the murder of Ernest Jenkins that had happened on May 6, 2001, right?

A. Yes, they was.

Q. They were asking you questions, you were giving them answers, right?

A. Well, basically I tried telling them that I was not there. They kept arguing with me, calling me B's, telling me I was there because I was with a girl name Quiana and Brandy. And then I had a warrant at the time, I was running from the police, and I had had a warrant and they told me if I go along with what they want me to say or whatever, they was gonna take care of my warrant.

Q. During the conversation that you were having with the detectives, you weren't handcuffed in any way, correct?

A. No.

Q. Again, they were just asking you questions and you were telling them what happened?

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picture, right?

A. Yes. But at that time I signed anything to get up out that police station. I had a warrant and I did not want to go to jail.

MR. PAPA: Judge, may I approach?

THE COURT: Yes.

MR. PAPA: Thank you.

Q. Shemika, I'm going to show you what's been marked as People's Exhibit Number 7 for identification. You recognize what this is, correct?

A. Yeah.

Q. That's the handwritten statement that you provided back on June 13, 2001, correct?

A. Yes.

Q. That's your name at the top, Shemika Mason, taken on June 13th at about, 2:17, correct?

A. Yes.

Q. Your name appears at the bottom of the first page, right?

A. Yes.

Q. It's actually printed, right?

A. Yes.

Q. You printed it?

A. Yes, I did.

(Z-184)

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CROSS-EXAMINATION

BY MR. CONNIFF:

Q. Miss Mason, People's Exhibit Number 7, this was written -- this is not in your handwriting, correct?

A. No.

Q. And it bears the date of June the 13th of 2001, is that right?

A. Yes.

Q. Is that your handwriting that date?

A. No, it is not.

Q. And it has the time as 02:17 hours?

A. Yes.

Q. 2:17 in the morning?

A. What, when I was picked up?

Q. No. When were you picked up, what time of day was it?

A. I was picked up at about, I believe, 9 or 10:00 o'clock, somewhere between there that, at night.

Q. 9 or 10:o'clock at night. And where were you when you were picked up?

A. Sitting out on the outside of my house in a car with some friends smoking some marijuana.

Q. And detectives picked you up?

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A. Yes.
Q. And they took you to Area 1?
A. Yeah, 51st and Wentworth.
Q. How long were you at Area 1?
A. I was there until the next day.
Q. By the next day, what time of day were you released?
A. I think I got home about 12 or one that afternoon.
Q. 12 or one in the afternoon?
A. Yes.
MR. CONNIFF: I don't have anything else, Judge.
THE COURT: Thank you. Miss Mason, you're excused.
(Witness excused)
THE COURT: Call your next witness.
MR. DARMAN: Judge, we'd call Manuel Stewart.
THE COURT: Step up. Remain standing. Raise your right hand.
(Witness duly sworn.)
THE COURT: Be seated. Proceed.

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A. No.

Q. And you didn't tell them that you had heard about the shooting and that you weren't involved?

A. No.

Q. Okay. Now, did you go home on the 19th or did you stay in the police station?

A. I stayed in the police station.

Q. Okay. On the 20th of June did you talk to the detectives again?

A. Yes, sir.

Q. Now, did you tell them at that time -- did you talk to them about what happened on May the 6th of 2001?

A. Yes, sir.

Q. Did you tell them that you were driving and that you pulled into the gas station?

A. Yes, sir.

Q. Did you tell them that you were with Mario Brown, Googie, Quiana Davis, and Brandy Grant and they were all in the car with you?

A. Yeah. I lied, though.

Q. You lied?

A. Yeah.

Q. How come you lied?

(Z-209)

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A. 'Cause they scared me. They said they was gonna lock me up for it or whatever.

Q. They said they were going to lock you up for the murder?

A. Yes, sir.

Q. Who told you that?

A. The police officers.

Q. Which ones?

A. I don't know them by name, sir.

Q. Were they Asian guys, were they African American guys, were they white guys, were they Mexican guys? What were they?

A. I know one of them was white. I don't remember what the other one was, sir.

Q. Okay. And they told you they would lock you up for this murder if what?

A. If I didn't say he did it.

Q. Say who did it?

A. Kevin Jackson.

Q. So you basically ratted him out then?

A. Yes, sir.

Q. So you told them that he was with you along with those other folks that I've just mentioned, right, at the time of the shooting?

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MR. DARMAN: Be nice.

MR. CONNIFF: All right. Tell them we're ready for them.

THE DEPUTY SHERIFF: All rise.

(The following proceedings were had before the jury:)

THE COURT: You may all be seated. Return the witness to the witness stand.

(Witness resumed the stand.)

THE COURT: You continue to be under oath, sir. All right. Be seated and remember to keep your voice up so we can all hear you.

A. Okay.

THE COURT: Continue.

MR. DARMAN: Judge, I have no further questions.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. CONNIFF:

Q. Mr. Watson -- I'm sorry, Mr. Stewart, you were arrested on June 19. You were taken -- The police picked up on June 19, 2001?

A. Yes, sir.

Q. Where were you when they picked you up?

A. At Citgo gas station.

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Q. What time of day was it?
A. I don't remember exactly. It had to be about 3:30 or 4.
Q. In the afternoon?
A. Yes, sir.
Q. And you were taken to Area 1?
A. Yes, sir.
Q. And you were held at Area 1, arrested June 19?
A. Yes, sir.
Q. And all day on June the 20th?
A. Yes, sir.
Q. And then this statement, showing you what is People's Exhibit -- this statement is dated June the 20th of 2001?
A. Yes, sir.
Q. And the time that that statement -- By the way, that's not your handwriting, is it?
A. No.
Q. The time of the statement is 7:10 p.m., in the evening?
A. Yes, sir.
Q. After you signed the statement did the police let you leave?

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A. No, sir.

Q. Did you stay at the police station?

A. Nah, we went to the -- down here to the grand jury.

Q. Right. They kept you all night at the station that night?

A. Yes, sir.

Q. Were you picked up for any case or any crime on the 19th?

A. No, sir.

Q. They kept you all night on the the 20th and they drove you to the grand jury the next morning, the 21st?

A. I don't remember exactly, but I think so, sir.

Q. You went to the grand jury on the 21st of June, right?

A. Yeah.

MR. CONNIFF: Judge, for the record, that exhibit I'm referring to is People's Exhibit 8.

THE COURT: Very well.

MR. CONNIFF: I have no further questions.

THE COURT: Redirect.

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Q. Okay. Somebody shot you?
A. Yes, sir.
Q. How far away from you was the person that shot you when you saw him shooting?
A. From this courtrom, from this here (indicating) to that window, twice the size of this room. So that mean he was like from coming into the filling station, I was like at the third or the fourth pump at the filling station. It's right here (indicating).
MR. DARMAN: I don't know, Judge, may the record refelct --
A. I'll say from that door right there, from here, twice this size (indicating). Say a hundred and twenty feet, something like that.
BY MR. DARMAN:
Q. A hundred and twenty feet you think it was?
A. Well, it was twice the size of this room.
Q. The person that shot you, Mr. Watson, was it a man or a woman?
A. It was a man.
Q. Was it a white man, a black man, Asian man, Mexican man?
A. It was a black male Caucasian.

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Q. A black male Caucasian?
A. A black male Caucasian.
Q. What's that?
A. That's a black African American.
Q. Okay. All right. And from about a hundred and twenty feet away you saw his face, right?
A. No, I could not see his face.
Q. You couldn't see his face?
A. The only thing I could see that he was dark black, dark.
Q. Okay.
A. He was blacker than the mask that he had on his head.
Q. Okay.
A. And he didn't weigh no more than about a hundred and twenty pounds.
Q. So he was a little guy?
A. He was a little, thin guy, about hundred and twenty pounds.
Q. Okay. And did you tell the police all those things?
A. I told the police everything that I'm saying today.
Q. Was it this guy here that shot you

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(indicating)?

A. I never seen that young man before.

Q. So you don't know whether he did shoot you or whether he didn't shoot?

A. I didn't say. I didn't identify that man in the lineup or nothing. I never seen him before.

Q. The police did show you a couple of lineups, right?

A. They showed me copies of pictures of everybody that sit here.

Q. Was this fellow here (indicating) in the lineups that the police showed you?

A. No. If he was, I didn't identify him as the person who shot me 'cause he don't look nothing like the guy 'cause the guy who shot me, when I say black, I mean he's a black person, but he was dark, dark black.

Q. So the bottom line is, Mr. Watson, you don't know who shot you, right?

A. No.

MR. DARMAN: Judge, may I approach?

THE COURT: Yes.

MR. DARMAN: Showing to counsel what I've marked as People's Exhibit Number 9 and 10 for

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Day 2

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MR. DARMAN: Q. Detective, there is a bunch of papers here but what I'd like to direct your attention to is that photograph on People's Exhibit Number 8.

Is that a photograph of Manuel Stewart the person you talked to on June 20 of 2001?

A. Yes.

Q. Detective, when you interviewed Manuel Stewart in 2001 did he tell you that he saw Kevin Jackson shoot the victim and that there was no Ricky on the scene, that he made up that story to protect Kevin Jackson?

A. Yes, he told me that.

MR. DARMAN: I don't have any further questions, Judge.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. CONNIFF:

Q. Did you tell Detective Forberg that?

MR. DARMAN: Objection.

I'll withdraw that objection, Judge.

THE COURT: Very well.

MR. CONNIFF: Q. Did you tell Detective Forberg that?

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Q. Okay. What happened when you finished interviewing him?

A. We informed some of the other detectives in the area beginning their shifts or at the conclusion of their shifts that we were interested in finding other witnesses.

Q. So you -- you allowed them to continue your investigation, is that correct?

A. That's correct.

Q. Okay. And what happened to Vernon Clay at that time?

A. He remained at Area 1.

Q. Did he tell you there was any particular reason that he wanted to stay there with you guys at Area 1?

A. He stated that he was a bit fearful that if -- that he and Kevin Jackson were members of the same gang and that if fellow gang members found out that he was cooperating that he would be in some kind of danger.

Q. Now, detective, I'd like to direct your attention to the same day later on that day 6-12 at about 9:00 -- or about 4:30, p.m.

Did you go back to work at that time?

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Q. Did you also tell her that Vernon Clay was there in the police station and that -- and you were asking her to interview him?
A. Yes, we did.
Q. Did she indeed interview him?
A. Yes, she did.
Q. About 1:45 or 2:00 o'clock did she go into a room that he was present in?
A. Yes.
Q. Who else was present besides the State's Attorney and Vernon Clay?
A. Myself.
Q. At that time did she introduce herself to him as an Assistant State's Attorney?
A. Yes, she did.
Q. Did she ask him about the shooting which had occurred on May 6 of 2001?
A. Yes, she did.
Q. Did he will tell her about that shooting?
A. Yes, he did.
Q. That conversation lasted about how long, detective?
A. Um -- approximately a half hour, maybe a little bit longer.

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Q. Did he tell her the same thing, basically, that he had told you?
A. Yes.
Q. Did she offer to write that statement down for him?
A. Yes, she did.
Q. Did he agree to do that?
A. Yes, he did.
Q. Did they then have a subsequent conversation?
A. Yes, they did.
Q. And you were sitting in the room the whole time, correct, so far?
A. So far, yes.
Q. All right. And she began writing down the statement?
A. Yes.
Q. He was telling her as she was writing?
A. Yes.
Q. She was asking him questions. There was a dialogue between the two?
A. Yes, there was.
Q. Once the State's Attorney was finished writing out the statement, detective, did she ask

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detective, did you have occasion to interview an individual by the name of Manuel Stewart?

A. Yes, I did.

Q. He was the witness that I just asked you about, right?

A. That is correct.

Q. Before interviewing Manuel Stewart did you have occasion to speak to a detective by the name of Kevin Howley?

A. Yes, I did.

Q. And you learned that he had interviewed -- he had interviewed Manuel Stewart earlier?

A. That is correct.

Q. And -- and he told you the information he gleaned from that interview, correct?

A. That is correct.

Q. Now, detective, you said at about 1 o'clock you interviewed or sometime in the afternoon hours you interviewed Manuel Stewart, correct?

A. Yes, sir.

Q. When you first interviewed Manuel Stewart, detective, who was present, yourself, obviously, Manuel Stewart, anybody else?

A. No, sir; I don't believe --

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Q. And that was in an interview room there at Area 1?
A. Yes, it was.
Q. He was unhandcuffed, was he not?
A. He was not handcuffed. , No.
Q. At that time, detective, did he tell you that on the evening of the shooting he was driving a car and it pulled into the gas station there at 55th and Damen?
A. Yes, he did.
Q. Did he tell you that Mario Brown -- I'm sorry -- Mario Brown, Kevin Jackson, Quiana Davis and Brandi Grant were in the car with him?
A. Yes, he did.
Q. Did he tell you that Brandi Grant went into the store to buy some blunts?
A. Yes, he did.
Q. Did he tell you then --
MR. CONNIFF: Judge, I'd object to leading.
THE COURT: Um -- this is course of investigation?
MR. DARMAN: Judge, it's to prove up the impeachment on another witness or on Manuel Stewart, quite frankly.

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first paragraph of this statement out loud. Assistant State's Attorney Lisa Hennelly then read the rest of the statement out loud while Manny followed along reading to himself. Manny states that he was allowed to make any changes or corrections if he wanted.

MR. DARMAN: Q. Detective -- um -- People's Exhibit 8 there the statement that you have, the photograph as well as the copy of the photograph that was identified as a picture of the defendant, are all of those items in the same or substantially the same condition as they were when you saw them back on the day the statement was given?

A. Yes, they are.

Q. Now, detective, that statement was finished up around what time 8:30, 9:00 o'clock?

A. Roughly, yes.

Q. What happened at that time?

A. Um -- Stewart was informed that he would be going to the -- asked if he wanted to go to the Grand Jury the next morning. He stated that -- um -- he'd go. Basically, he wasn't really too happy about it; but he said he'd stick around and go.

Q. Okay. And did you stay there with him?

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Day 3

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conversation with those three girls, his three friends, and at that time, the defendant told them, hey, don't talk to the police, don't tell the police what you saw.

Now, we know all of that happened on May 6th, 2001. And we know all of that happened because of what's called eye witness testimony, people that were actually there at that gas station observing, seeing it with their own eyes, watching it themselves, seeing this defendant, Kevin Jackson, shooting that gun.

Now, at the beginning of this trial, my partner got up here in his opening statement and said you might meet some witnesses that you guys might not like. Well, you know what? After seeing Brandi and Shemika and Vernon Clay and Manny Stewart all testify here in court, I'm confident that none of you like them. I'm confident that none of you would want them as your friends or your next-door neighbors.

But what you have to focus on in this case, focus on what those four individuals, what they talked to the police about shortly after the murder, what they talked and told the Assistant State's

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Actual, substantive evidence. Four handwritten statements, three grand jury transcripts all telling you that it is this defendant who shot and killed Ernest Jenkins.

Folks, you also have to focus on the relationship that these four witnesses have with the defendant. Manny Stewart, the defendant's cousin; Shemika and Brandi, friends of the defendant from the neighborhood, they have known him for several years; Vernon Clay, Little Man, he is -- he belongs to the same gang, the Vice Lords, that the defendant does.

Do you really expect those witnesses to come into this courtroom, as the defendant sits there looking at him or at them, do you really expect those witnesses to be able to point to the defendant and tell you that he's the shooter, that he's the killer? Of course not. Use your common sense.

One of the best things and greatest things about being jurors is that you determine who is telling the truth, what witness is telling the truth, and what witness is lying. You determine the credibility of each witness that comes into this courtroom and gives testimony.

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Kevin Jackson committed first degree murder.

And there was a very interesting thing that happened during the testimony of Detective Forberg, and I know that you caught it, and I'm going to repeat it here. He lied to you. He lied to you, and he smirked about it.

And it came at the point having to do with whether these people chose to stay voluntarily all of these hours in the police station with the police, as though we should rename this the Marriott Area 1 and that they were given little bars of soap and toothbrushes and everything else. This is the impression that he was trying to create with you.

But do you remember what he said? And he slipped at the end of his testimony on one of these witnesses. Remember where he said, before he went to the grand jury, I informed him that he would be going to the grand jury, and then he quickly corrected himself, and he said, oh, I asked them if they would be willing to go testify before the grand jury. Isn't that something? Isn't that something? He slipped.

And I asked him, was that a slip of

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the tongue? And did you watch him when he answered me? He got a half smile on his face, and he knew he had been caught, and he said, yes.

And I submit to you, ladies and gentlemen, that here was a detective who thinks that this is a game, who thinks that this is a game, that he can come in here and -- as though he's reading from a script, can come in here into a courtroom in Cook County and with good citizens like yourself, take an oath to tell the truth, and he's going to get up there and sell you this nonsense, nonsense, which you would have known even without this admission, that these young people were not sitting in this room and choosing to remain there voluntarily and that they could leave anytime they wanted to. But he got caught in it, and he smiled about it.

And I submit to you, that's the mentality of what's going on here. They're trying to fool you. And the fact that he's smiling means maybe this is the way things are done. Do you want to know how it is when people get convicted? You have some insight into this process, ladies and gentlemen, from what you have heard in this courtroom.

And this process was so sloppy and it

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was so unprofessional and it was so without caring for what the facts and the evidence were that they have even got in one of these statements Vernon Clay shooting from the passenger's side of the vehicle.

And you heard the State's Attorney. And I don't know how you feel about it, but I thought this again, they want to talk about the law. We'll talk about the facts.

You heard the State's Attorney trying to get Dr. Segovia to say maybe it was consistent with this guy in the driver's seat somehow turning his body around. I suppose they're going to argue that he turned his whole body around and was facing the rear so the shots can come from the passenger's side of the car. Nonsense.

And you know why those statements are like this, because they didn't care and they didn't care because they didn't talk to the medical examiner. At the time the statements were prepared, nobody paid any attention to what happened in the case.

Had they talked to the medical examiner, they would know, hey, we got a problem

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Continue.

MR. CONNIFF: But that's why we have jury trials.

And I'm going to ask you, when you go back to the jury room to look at this evidence, you can take these form statements and throw them right out the window. You heard the evidence in the case. You know what happened in this case. And do the job that you took an oath to do, that we questioned you about when we selected you as jurors.

This case, there is not even -- it's not even close to being proof beyond a reasonable doubt. We ask you to find Kevin Jackson, as you properly should based upon the evidence, not guilty, and I thank you all for your attention during this trial.

THE COURT: State's Attorney? Proceed.

MR. DARMAN: Thank you, Judge.

REBUTTAL ARGUMENT

BY MR. DARMAN:

Good afternoon, ladies and gentlemen. It was a fine speech, wasn't it?

Let's talk about unsupported accusations. The detective they talked about was

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actually a fellow by the name of John Clisham. You remember. Short guy, blond hair. Thank God the Chicago Police Department has better memories than the defense.

Unsupported allegations. We're going to get up here, and we're going to make accusations and allegations against people who didn't do anything, that are completely innocent, but we're going to blame the wrong guy right in front of all of you. And we're supposed to believe anything that comes out of their mouths on that side of the table. Unbelievable.

This is a police frame. This is Brian Forberg doing the Chicago Police Department number on Kevin Jackson. Can you believe that? Ladies and gentlemen, all right. If the Chicago Police Department, if Brian Forberg was going to put a case on this guy, would he have followed up on Norman?

Remember, Vernon Clay originally told the police that it was Norman that did the shooting. And Brian Forberg went to his computer data base and found a gang banger from 54th and Damen by the name of Norman MacIntosh, and he was wandering around

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showing Norman MacIntosh in photo arrays to people. Is that a guy that's putting a case on Kevin Jackson? No.

What about these negative photo arrays? If Brian Forberg was going to put a case on Kevin Jackson, would Stanley Watson get up here -- be able to get up here and say he looked at this guy in a photo array and didn't identify him?

What about Meechie? Well, you heard from the witness stand that Meechie didn't identify him either. Do you think if the police were going to put a case on him Meechie wouldn't identify him?

What about Samir Ali? Probably the one witness you heard that's a civilian that didn't have a beef with anybody. Do you think the cops would let that guy get away without saying he saw who did it if they were going to put a case on Kevin Jackson? No.

I'll tell you what, ladies and gentlemen. I wouldn't want Brian Forberg's job. I wouldn't want his partner, John Foster's, job either. Not only do you have to deal with the people you saw on the witness stand and guys like this, but you've

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got to come into court and get smashed by people who aren't even paying any attention to what you're doing or trying to do, which is investigate a crime. Your reputation has to get sullied by people that aren't even paying any attention.

You know what, folks? This bears a little bit of mention here. One of the jury instructions you're going to get, 1.01, the judge is going to tell you probably in the first 15 seconds, "Neither sympathy nor prejudice should influence you." Don't let it.

Physical evidence. Let's talk about the physical evidence for a minute. We don't want to talk about the law. Let's talk about the physical evidence.

All right. The setup is the car was parked there at the gas pump. Right? Michael Watson standing in front of the back of the car near the gas pump putting the gas in the car. Michael tells you that from the witness stand. It's stipulated evidence the victim, the dead victim, was in the driver's seat of the car.

What's Michael Watson tell you is happening? Michael Watson tells you that Meechie is

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witnesses. Were the witnesses forthright with the detectives at the very beginning? No. But they weren't going to tell the detectives the truth until they knew the detectives knew a little bit more, and that's what happened.

Then when the detectives started approaching people and telling them that we heard Googy was there with a gun, that's what somebody else is saying, they're like, all right.

This was good police work, folks. This wasn't somebody putting a case on Kevin Jackson. You have in front of you a veritable mountain of evidence that tells you that Kevin Jackson is guilty. You have witnesses that were there. You have their handwritten statements to State's Attorneys telling them Googy is the shooter. You have their grand jury testimony telling you that Googy is the shooter.

And you have to remember the circumstances under which these statements were given. The handwritten statement was given to the State's Attorney, not to the police anymore. The police were there, but the State's Attorney is there now.

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Michael Watson lied about his nephew, Meechie. You think Michael Watson would even hardly tell the police his name if he had the chance? I doubt it. But the police -- again, they did a good job. They investigated. They're not going to just say, okay, if that's your name, let me see your driver's license, let me see your identification.

And it's not because they're trying to harass people or do bad things. It's because, unlike normal folks, some of these folks that you have seen and heard from, ladies and gentlemen, the truth is not the first thing that comes to their lips. It's not forced out of them, but you have to make them understand that you know what you're talking about, you know what happened out there on 55th and Damen, or you had a good idea.

Meechie is the shooter. Meechie is the shooter now.

What evidence did we hear that Meechie was the shooter? Any? I didn't hear any. As a matter of fact, if Meechie was the shooter, don't you think these witnesses would have rolled on Meechie in a heartbeat?

The Conservative Vice Lords that got

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the other evidence entered into evidence will go back.

Was that chart entered into evidence?

MR. PAPA: It was not.

(WHEREUPON, a recess was had in the above matter while the jury deliberated.)

THE COURT: We're on the record.

The last question that came out from the jury is: "What is the law for hung jury? How long do we stay tonight? Is there a time limit? How do we sleep?"

Now, the attorney, Conniff, and the prosecutor, Papa, are both in court. You want your client out here?

MR. CONNIFF: Judge, he probably should be out here.

(Brief pause.)

MR. CONNIFF: Judge, Kevin Jackson is now present in court.

THE COURT: Mr. Jackson, for your information, there's a new question.

"What is the law for hung jury? How long do we stay tonight? Is there a time limit?

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ATTACHMENT 1

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Rahm Emanuel
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

April 11, 2017

Brandon Clark
brandon.clark@pillsburylaw.com

Re: **NOTICE OF RESPONSE TO FOIA REQUEST**
FOIA FILE NO.: PO58085

Dear Mr. Clark:

The Chicago Police Department (CPD) is in receipt of your Freedom of Information Act (FOIA) request. In it, you request:

> *...any Complaint Registers (also known as "CRs") filed by Ms. Quina Davis (alternate spelling: Quiana Davis, Quina L Davis), or by Ms. Dezreen Davis, or by any individual residing at 5543 Seeley Avenue Chicago, IL 60636...*

CPD interpreted from your description that you are seeking Complaint Register # 272791. Information responsive to your request is available and attached. At this time you are being provided a copy of Complaint Register # 272791. Please be advised that certain information is redacted from the documents pursuant to the following sections of FOIA.

Under the terms of the Act, "private information" is exempt from disclosure. 5 ILCS 140/7(1)(b). Private information, such as employee numbers, personal telephone numbers (residential and mobile/cell) and home address are exempt and are redacted. The redacted information is exempt from disclosure under 5 ILCS 140/7(1)(b) of the Freedom of Information Act, which states "private information, unless disclosure is required by another provision of this Act, a State or federal law or court order" is exempt. The FOIA statute, in 5 ILCS 140/2(c-5), defines "private information" as follows:

> "Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, *home or personal telephone numbers,* and personal email addresses. Private information also includes *home address* and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person."

The name, address and other information that could be used to identify witnesses and people who may incidentally appear in the report have been redacted. The redacted information is exempt from disclosure under 5 ILCS 140/7(1)(d) which exempts records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

> (iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident

reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;

You have the right to have a denial reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General, 500 S. 2nd Street, Springfield, Illinois 62706, (877) 299-3642. You also have the right to seek judicial review by filing a lawsuit in Cook County Circuit Court.

If you require additional assistance, please contact this office at (312)745-5308.

Sincerely,

Fred Marshall
Freedom of Information Officer

Chicago Police Department
Attention Freedom of Information
Legal Affairs Unit
3510 S. Michigan Ave
Chicago, IL 60653

SUMMARY REPORT DIGEST-
COMPLAINT REGISTER INVESTIGATION NO.: 272791
CHICAGO POLICE DEPARTMENT

DATE OF REPORT (DAY-MO.-YEAR): 21 Feb 03

To be used in all cases that are to be classified as either EXONERATED, UNFOUNDED, NOT SUSTAINED or in SUSTAINED cases where the Disciplinary Recommendation does not exceed FIVE (5) DAYS SUSPENSION.

SUBMIT ORIGINAL AND 3 COPIES IF ASSIGNED TO SAME UNIT AS ACCUSED.
SUBMIT ORIGINAL AND 4 COPIES IF NOT ASSIGNED TO SAME UNIT AS ACCUSED.

TO: SUPERINTENDENT OF POLICE
ATTENTION ☐ ADMINISTRATOR IN CHARGE, OFFICE OF PROFESSIONAL STANDARDS
☒ ASSISTANT DEPUTY SUPERINTENDENT, INTERNAL AFFAIRS DIVISION

FROM-INVESTIGATOR'S NAME	RANK	STAR NO.	SOCIAL SEC. NO.	EMPLOYEE NO.	UNIT ASSIGN.
KUTA, Anthony W.	Sgt.	1811	[redacted]	[redacted]	610

ADDRESS OF INCIDENT	DATE OF INCIDENT - TIME	BEAT OF INCIDENT	LOCATION CODE
[redacted]	On going since 30 May 01,4 Jul 01	712	19

ACCUSED

	NAME	RANK	STAR NO.	SOCIAL SEC. NO.	EMPLOYEE NO.	UNIT ASSIGN.
1.	Forberg, Brian	Det.	21249	[redacted]	[redacted]	610
2.	Foster, John	Det.	20288	[redacted]	[redacted]	610

	SEX/RACE	D.O.B.	DATE OF APPOINTMENT	DUTY STATUS (TIME OF INCIDENT)		PHYS. COND. CODE
1.	M/W	[redacted]960	10 Jul 1995	☒ ON DUTY ☐ OFF DUTY	☒ SWORN ☐ CIVILIAN	01
2.	M/W	[redacted]1966	19 Nov 1992	☒ ON DUTY ☐ OFF DUTY	☒ SWORN ☐ CIVILIAN	01

	IF APPLICABLE - DATE ARRESTED/INDICTED	CHARGES	COURT BRANCH	DISPOSITION & DATE
1.	DNA	DNA		
2	DNA	DNA		

COMPLAINANTS

NAME	ADDRESS**	CITY STATE	TELEPHONE	SEX/RACE	D.O.B./AGE	PHYS. COND. CODE
[redacted]	[redacted]		[redacted]	F/B	[redacted]959	01

VICTIMS

NAME	ADDRESS**	CITY STATE	TELEPHONE	SEX/RACE	D.O.B./AGE	PHYS. COND. CODE
[redacted]	[redacted]		[redacted]	[redacted]	[redacted]	01

WITNESSES

NAME	ADDRESS**	CITY STATE	TELEPHONE	SEX/RACE	D.O.B./AGE	PHYS. COND. CODE
None						

☐ SEE ATTACHED SHEET FOR ADDITIONAL ACCUSED, COMPLAINANTS, VICTIMS, WITNESSES,

ALLEGATIONS

The complainant alleges that a shooting occured in May 2001 and her daughter(victim) was present on the scene. The complainant alleges that the accused detectives are constantly harrassing her and her daughter(victim)in that on several occasions they came to her residence and threatened them with arrest. The complainant further alleges that on 4 Jul 2001,the accused entered and searched her residence without justification.

Arrest: None

REF: RD# G259321

I.A.D. LOCATION CODES*

01	Food Sales/Restaurant	11	Public Transportation Veh./Facility
02	Tavern/Liquor Store	12	Park District Property
03	Other Business Establishment	13	Airport
04	Police Building	14	Public Property Other
05	Lockup Facility	15	Other Private Premise
06	Police Maintenance Facility	16	Expressway/Interstate System
07	CPD Automotive Pound Facility	17	Public Way - Other
08	Other Police Property	18	Waterway, Incl. Park District
09	Police Communications System	19	Private Residence
10	Court Room		

I.A.D. PHYSICAL CONDITION CODES†

01	No Visible Injury - Apparently Normal
02	No Visible Injury - Under Influence
03	Injured, Not Hospitalized
04	Injured, Not Hospitalized - Under Influence
05	Injured, Hospitalized
06	Injured, Hospitalized - Under Influence
07	Injured, Refused Medical Aid
08	Injured, Refused Medical Aid - Under Influence
09	Deceased
10	Deceased - Under Influence

** IF CPD MEMBER, LIST RANK, STAR, SOCIAL SECURITY, EMPLOYEE NOS, IN ADDRESS BOX, PAX/BELL IN TELEPHONE BOX,

CPD-44.112A (1/84)

C.R. NO. 272791

A153

SUMMARY

Briefly summarize the investigation describing your efforts to prove or disprove the allegation(s). Indicate whether witnesses or evidence support or do not support the allegation(s).
In sustained cases ONLY, copies of the accused member's Summary of Previous Disciplinary Actions and Record of Previous Complimentary History will be included as attachments.

The reporting sergeant was assigned to this investigation on 1 Aug. 2002 after it was reassigned from the 007th district by ADS John Minogue,Internal Affairs Division. (Attachments 1-4)

Upon assignment the reporting sergeant reviewed all reports recorded under RD# G259321. This incident is a homicide that occured at 2006 W. Garfield on 6 May 2001. The reports indicate that the victim of this complaint register number was a witness to the homicide. The reporting sergeant located the alleged victim [redacted] at [redacted] and interviewed her at that location. The reporting sergeant identified himself and the victim [redacted] denied that she was in fact the victim. After the purpose of the interviewed was revealed she admitted who she was. She stated that she was present at the time of the shooting/homicide. She also stated that she did not want to be a witness or give detectives a statement because she is a friend of the alleged offender and did not want to give him any trouble. She stated that everytime the accused detectives came to her residence she went up to the 2nd floor and her mother told them that she was not there. When asked if she saw the detectives searching her residence of 4 Jul 01 she replied that she did not. On that date when the accused detectives came to the 1st fl. and she again went to the second fl. When she came back down her mother,the complainant,told her that the accused searched the apartment looking for her. (Attachment # 14)

The reporting sergeant learned from [redacted] that her mother [redacted] was deceased on 25 Jan 2002 from bronchial asthma. This incident is recorded under RD# HH146868. (attachment # 17).

The reporting sergeant supplied the accused with notice of allegations,administrative rights and request to secure counsel and ordered them to submit written reports. Both stated basically the same account that they were assigned to the investigation and were just trying to do their assigned duty and conduct an interview. Both denied ever entering the [redacted] residence and searching it for the victim.(Attachments 6-13)

The reporting sergeant found that the alleged victim was deceptive in dealing with the police and her own identity and subsequently conducted a name check of [redacted] which revealed that she is wanted on a I.E.A.D.S. warrant LDS/W02B4100 for theft. All attempts to locate her met with negative results

ATTACHMENTS

INVESTIGATIVE REPORTS-SUPPORTING ALLEGATION LIST ATTACHMENT NUMBERS:	INVESTIGATIVE REPORTS-SUPPORTING ACCUSED MEMBER(S) LIST ATTACHMENT NUMBERS:	PHYSICAL EVIDENCE LIST ATTACHMENT NUMBERS:	TOTAL NUMBER OF ATTACHMENTS SUBMITTED WITH THIS FILE:
None	5,9,13,14	None	23

FINDINGS--RECOMMENDATIONS

Summarize the findings and recommendations. Rule violations will be cited by number only. One overall recommendation for Disciplinary Action will be made by the investigator. The recommendation will be for ALL sustained findings; recommendations will NOT be made for each sustained allegation.
Example: 1. Violation noted, no disciplinary action warranted. 2. That the accused member be reprimanded. 3. That the accused member be suspended for ..... days (not to exceed 5 days).

ALLEGATION # 1 That the accused detectives harrased and threatened the victm and complainant with arrest.
FINDINGS: NOT SUSTAINED - There is insufficient evidence to either prove or disprove the allegation

ALLEGATION # 2 That the accused detectives entered and searched the victim's residence without legal justification.
FINDING: NOT SUSTAINED - There is insufficient evidence to either prove or disprove the allegation

RECOMMENDATION: No disciplinary action warranted.

REVIEWED
OCT 28 2003

DATE INITIATED (DATE COMPLAINT WAS RECEIVED FOR INVESTIGATION)	DATE COMPLETED (DATE OF THIS REPORT)	ELAPSED TIME (TOTAL TIME, EXPRESSED IN DAYS)
1 Aug 2002	21 Feb 2003	203

Investigator will initiate the Command Channel Review form by completing the Investigator's Section.

INVE [redacted] #1811

IF NECESSARY, USE AN 8½ x 11" SHEET OF WHITE PAPER TO CONTINUE ANY ITEM.

COMPLAINT AGAINST DEPARTMENT MEMBER
CHICAGO POLICE DEPARTMENT

INITIAL COMPLAINT CATEGORY: 030
C.R. NO: 272791

TO COMMANDING OFFICER - INVESTIGATING UNIT: 007th District
UNIT: 007
MANNER COMPLAINT RECEIVED: ☐BELL ☐PAX ☐LETTER ☐IN PERSON

RECEIVED FROM COMPLAINANT BY—NAME	RANK	STAR/EMPL. NO.	UNIT NO.	DAY OF WK	DATE	TIME
TOPPINS, Yolanda	Civ.	[redacted]	113	Thur	05 Jul 01	1215

REGISTERED WITH O.P.S. BY—NAME	RANK	STAR/EMPL. NO.	UNIT NO.	DAY OF WK	DATE	TIME
SAME AS ABOVE				SAME	AS ABOVE	

ACCUSED

NAME	RANK	STAR NO.	UNIT NO.	SOCIAL SECURITY NO	DUTY STATUS
1.					☐ON ☐OFF
2.					☐ON ☐OFF
3.					☐ON ☐OFF
4.					☐ON ☐OFF
5.					☐ON ☐OFF

LOCATION OF INCIDENT	DAY OF WK	DATE	TIME	TOTAL ACCUSED	TOTAL COMPL.	TOTAL WIT.
[redacted]	ON-GOING SINCE 30 May 01					

COMPLAINANT

NAME	*ADDRESS (STREET, APT. NO., CITY, STATE)	ZIP CODE
[redacted] (F/B [redacted] 59)	[redacted]	60636

HOME PHONE NO.	CONTACT AT	TIME	PHONE NO.
[redacted]			

CHECK ONE C	V	W	ADDITIONAL COMPLAINANT/VICTIM/WITNESS NAME	*ADDRESS (STREET, APT. NO., CITY, STATE)	PHONE NO.
	X		[redacted]	[redacted] SAME AS ABOVE	

FOR ADDITIONAL ACCUSED, COMPLAINANTS (C), VICTIMS (V), WITNESSES (W), USE ANOTHER FORMSET.
*IF CPD MEMBER, LIST RANK, STAR/EMPLOYEE, SOCIAL SECURITY NOS. IN ADDRESS, PAX/BELL IN PHONE NO. BOX.

NARRATIVE OF ALLEGATIONS

The complainant stated that a shooting occurred in May 2001 and her daughter (victim) was present on the scene. The complainant alleges that two male white, in casual dress, one with the possible last name of "Frost" are constantly harassing her and her daughter (victim) in that on several occasions they came to her residence and threatened them with arrest. The complainant further alleges that on 4 Jul 01, the officers entered and searched her residence without justification.

ARREST: None

CASE UPDATED
JUL 12 2001
RECORDS SOC. MGT.

INVESTIGATOR ASSIGNED	RANK	STAR/EMPL. NO.	UNIT NO.	SOCIAL SECURITY NO.
1. [illegible] McDermott	SGT	[redacted]	007	[redacted]
2.				

DATE ASSIGNED — TIME	DAY OF WK.	DATE ASSIGNED — TIME	DAY OF WK.
1. [illegible]	WED	2.	

CPD-44.202 (Rev. 11/84)

ATTACHMENT 1 C.R. NO. 272791

IAD COPY—INVESTIGATOR'S UNIT C.O.: MAKE ASSIGNMENT, RETURN TO IAD IMMEDIATELY

A155

WORKSHEET

COMPLAINT AGAINST DEPARTMENT MEMBER
CHICAGO POLICE DEPARTMENT

INITIAL COMPLAINT CATEGORY | C.R. NO. 272791

TO COMMANDING OFFICER - INVESTIGATING UNIT | UNIT | MANNER COMPLAINT RECEIVED ☑ BELL ☐ PAX ☐ LETTER ☐ IN PERSON

RECEIVED FROM COMPLAINANT BY—NAME	RANK	STAR/EMPL. NO.	UNIT NO.	DAY OF WK	DATE	TIME
TOPPINS YOLANDA	CIV	[redacted]	113	-		1215

REGISTERED WITH O.P.S. BY—NAME	RANK	STAR/EMPL. NO.	UNIT NO.	DAY OF WK	DATE	TIME
SAME AS ABOVE				SAME AS ABOVE		

ACCUSED

NAME	RANK	STAR NO.	UNIT NO.	SOCIAL SECURITY NO.	DUTY STATUS
1.					☐ON ☐OFF
2.					☐ON ☐OFF
3.					☐ON ☐OFF
4.					☐ON ☐OFF
5.		On-going			☐ON ☐OFF

LOCAT[redacted]	DAY OF WK	DATE	TIME	TOTAL ACCUSED	TOTAL COMPL.	TOTAL WIT.
		Since	30	MAY 01		

COMPLAINANT

NAME	*ADDRESS (STREET, APT. NO., CITY, STATE)	ZIP CODE
[redacted] (F/B	[redacted] 547 [redacted]	60636

PHONE	TIME	PHONE NO.
[redacted]	1st Flr	

CREEK ONE C	V	W	ADDITIONAL COMPLAINANT/VICTIM/WITNESS NAME	*ADDRESS (STREET, APT. NO., CITY, STATE)	PHONE NO.
			[redacted]	SAMES AS A	

FOR ADDITIONAL ACCUSED, COMPLAINANTS (C), VICTIMS (V), WITNESSES (W), USE ANOTHER FORMSET.
*IF CPD MEMBER, LIST RANK, STAR/EMPLOYEE, SOCIAL SECURITY NOS. IN ADDRESS, PAX/BELL IN PHONE NO. BOX.

NARRATIVE OF ALLEGATIONS

WITNESS
Regards to a shooting "Frost" 2 male casual dress harassing him to come to the house drove by the house and waved to her. entered

INVESTIGATOR ASSIGNED	RANK	STAR/EMPL. NO.	UNIT NO.	SOCIAL SECURITY NO.
1.				
2.				

DATE ASSIGNED — TIME	DAY OF WK.	DATE ASSIGNED — TIME	DAY OF WK.
1.		2.	

CPD-44.202A (Rev. 8/85)

WORKSHEET

ATTACHMENT 1 | C.R. NO.

A156

OFFICE OF THE SUPERINTENDENT
Internal Affairs Division

2 August 2001

TO: Commanding Officer Unit 610

FROM: John Minogue
Assistant Deputy Superintendent
Internal Affairs Division

SUBJECT: Reassignment of Complaint Register Number 272791

Complaint Register Number 272791 will be assigned from District 007 to Unit 610, effective 2 August 2001.

Immediately upon receipt of this reassignment, kindly provide the information listed below and return the 2nd copy to the Internal Affairs Division, Records Section.

INVESTIGATOR ASSIGNED: _____

STAR/EMPLOYEE: _____

UNIT: _____

SOCIAL SECURITY NUMBER: _____

DATE and TIME ASSIGNED: _____

[redacted] 211

John Minogue
Assistant Deputy Superintendent
Internal Affairs Division

DATA ENTERED

AUG 0 3 2001 DM

Records Sect., IAD

JM/jc

CR# 272791

Attachment # 2

Records

007 District 17 JUL 01

TO: **Commander Maurice Ford**
007th District

FROM: **Sgt. Thomas McDermott #834**
007th District

SUBJECT: **C.R. #272791**
Request for Reassignment

1. Reporting Sergeant was assigned the above C.R. investigation on 11 Jul 01. Reporting Sergeant contacted the complainant [redacted] on 16 Jul 01. The complainant related that the accused member had left a business card with her. The complainant stated that Det. John Foster of Area One Violent Crimes had been "harassing" her and her daughter. The complainant further related that the accused detective was investigating a homicide.

2. Reporting Sergeant requests that this investigation be handled by a Sergeant from Area one Detective Division.

[redacted]
Sgt. Thomas McDermott #834

APPROVED:
[redacted]

CR# 272791

Attachment # 3

007th District

24 July 2001

To: Terry G. Hillard
Superintendent of Police

Attention: John Minogue
Assistant Deputy Superintendent
Internal Affairs Division

From: Maurice D. Ford
Commander
007th District

Subject: Reassignment of Complaint Register Number #272791

The undersigned requests that Complaint Register Number #272791 be reassigned to Area One Violent Crimes. The complainant stated that Detective John Foster left his business card with her.

Based on this information it is requested that this Complaint Register Number be reassigned to Area One Violent Crimes.

[redacted]
Maurice D. Ford
Commander
District Commander

Approved:

[redacted]
Area 1 Deputy Chief

[redacted]
Chief of Patrol

[redacted]
First Deputy Superintendent, B.O.S.

SERVICE
27 JUL 01 15 29

CR# 272791

Attachment # 4

CHICAGO POLICE DEPARTMENT

CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

G259321

Case Id : 1613267
Sup Id : 963579 OASR339

CLEARED CLOSED (ARREST AND PROSECUTION)		DETECTIVE SUP. APPROVAL COMPLETE			
Last Offense Classification/Re-Classification	IUCR Code	Original Offense Classification			IUCR Code
HOMICIDE / First Degree Murder	0110	HOMICIDE / First Degree Murder			0110
Address of Occurrence	Beat of Occur	No of Victims	No of Offenders	No of Arrested	
[redacted]	915	1	1	1	
Location Type	Location Code	Secondary Location			
Gas Station	220				
Date of Occurrence	Unit Assigned	Date RO Arrived	Fire Related?	Gang Related?	Domestic Related?
06-MAY-2001 01:30	0931	06-MAY-2001 01:35	NO	NO	NO

Reporting Officer	Star No	Approving Supervisor	Star No	Primary Detective Assigned	Star No
FORBERG, Brian	21249	KUTA, Anthony	1811	FORBERG, Brian	21249
Date Submitted		Date Approved		Assignment Type	
13-NOV-2001 18:21		13-NOV-2001 18:55		FIELD	

THIS IS A FIELD INVESTIGATION CLEARED CLOSED (ARREST AND PROSECUTION) REPORT

VICTIM(S):

JENKINS, Ernest
Male / Black / 54 Years
DOB: [redacted] 1947
RES: [redacted]
Chicago IL
EMPLOYMENT: Retired Mechanic
SSN: [redacted]

OFFENDER(S):

JACKSON, Kevin -- In Custody--
"Google"
Male / Black / 20 Years
DOB: [redacted] 1981
RES: [redacted]
Chicago IL
DESCRIPTION: 5'09, 150, Black Hair, Short Hair StyleBrown Eyes, Dark Complexion
SSN: [redacted]
IR#: [redacted] CB #: 14821072
RELATIONSHIP TO VICTIM:
JENKINS, Ernest No Relationship

G259321

CR# 272791

Attachment # 5

VICTIM INJURIES: JENKINS, Ernest
Shot, Multiple Gsw'S

TRANSPORTED TO: JENKINS, Ernest (Victim)
Transported To Cook County

WEAPON(S): INV#:
Used Displayed
Unknown Or Unpublished Gun Make Code--Unknown--, Unknown
SERIAL#:

VALUED AT:

LOCATION OF INCIDENT: [redacted]
Chicago IL
220 - Gas Station

DATE & TIME OF INCIDENT: 06-MAY-2001 01:30

DEATH INFORMATION: JENKINS, Ernest (Victim)
DATE OF DEATH: 06-MAY-2001 02:15

AUTOPSY INFORMATION:

WEATHER AND LIGHTING:
WEATHER: Clear
TEMPERATURE: Approximately 55
LIGHTING: Artificial
LIGHTING SOURCE: Street Lighting

MOTIVE CODE(S): Gangs

CR# 272791

CAUSE CODE(S): Dna

Attachment # 5A

METHOD CODE(S): Person(S) Shot

CAU CODE(S): Dna

PERSONNEL ASSIGNED:

Assisting Detective/Youth Inv.

GIRARDI, Robert I	# 20479	BEAT: 5121
STRUCK, Joseph A	# 20857	BEAT: 5121
CASTELLANOS, Judy L	# 21195	BEAT: 5139

Detective/Youth Investigator

FORBERG, Brian P	# 21249	
ROLSTON, Leonard T	# 20101	BEAT: 5139

First Officer On Scene

O DONNELL, Daniel G	# 1927	BEAT: 0910

Forensic Investigator

TOVAR, Robert M	# 12847	BEAT: 9602
SHADER, James M	# 9609	BEAT: 9602

Reporting Officer

MCGLYNN, Andrew J	# 9814	BEAT: 0931
KERLIN, Matthew D	# 17797	BEAT: 0931

WITNESS(S):

[redacted]

DOB: [redacted]

RES: [redacted]

EMPLOYMENT: Unemployed

SSN: [redacted]

[redacted]

DOB: [redacted]

RES: [redacted]

CR# 272791

Attachment # 58

EMPLOYMENT: [redacted]
SSN: [redacted]

OTHER INDIVIDUALS INVOLVED:

[redacted] (Additional Victim)
DOB: [redacted]
RES: [redacted]
SSN: [redacted]

[redacted] (Person Reporting Offense)
DOB: [redacted]
RES: [redacted]

[redacted] (Additional Victim)
DOB: [redacted]
RES: [redacted]
SSN: [redacted]

CRIME CODE SUMMARY: 0110 - Homicide - First Degree Murder

IUCR ASSOCIATIONS: 0110 - Homicide - First Degree Murder
JENKINS, Ernest (Victim)
JACKSON, Kevin (Suspect)

ASSOCIATED ARRESTS: 14821072

CR# 272791

ASSOCIATED CASES: G361251

Attachment # 5C

REPORT DISTRIBUTIONS: No Distribution

INVESTIGATION:

THIS IS A CLOSED CLEARED BY ARREST AND PROSECUTION REPORT

DATE & TIME ASSIGNED:
07 May 2001; Third Watch

VICTIM:
JENKINS, Earnest L. M/1/54 DOB [redacted]1947
[redacted] No Phone
SS# [redacted] IR# [redacted]
Retired auto mechanic

ADDITIONAL VICTIMS:
[redacted]

IN CUSTODY:
JACKSON, Kevin M/1/19 DOB [redacted]1981
AKA: Googy
[redacted] No Phone
SS# [redacted]
IR# [redacted] CB#14821072

ARRESTING OFFICERS:
Det. B. Forberg #21249
Det. J. Foster #20288

DATE, TIME & LOCATION OF ARREST:
19 June 2001; 1900 hours; 5458 S. Damen

CHARGES:
720ILCS 5/9-1 First Degree Murder

MANNER/MOTIVE:
Offender approached victims on foot from rear as they parked at a gas pump/gang related.

EVIDENCE:
Inventory #2585631- Four(4) Polaroid photos of various angles of Kevin JACKSON's vehicle.

NOTIFICATIONS:
Felony Review ASA Colleen Daly
Felony Review ASA Lisa Hennelly
Felony Review ASA Bower

PERSONNEL ASSIGNED:
009th District
Bt 990 Lt. Dunn #416
Bt 991 Lt. Riley #509
Bt 910 Sgt. O'Donnell #1927
Bt 911 P.O. S. Kurtovich #17945
P.O. E. McGovern #17323
Bt 931 P.O. M. Kerlin #17797
P.O. A. McGlynn #9814

Mobile Crime Lab
Beat F/I J. Shader #9609
F/I R. Tovar #12847

Area One Detective Division
Bt. 5139 Det. J. Castellanos #21195
Det. L. Rolston #20101
Bt. 5121 Det. R. Girardi #20479
Det. J. Struck #20857
Bt. 5132 Det. J. Clisham #20600
Bt. 5133 Det. D. Kowalski #21004
Det. E. Kaup #20504
Bt. 5112 Det. J. Halloran #20453
Det. J. O'Brien #20466
Bt. 5125 Det. B. Forberg #21249
Det. J. Foster #20288

WITNESSES:
[redacted]

CR# 292791

Attachment # 5E

Attachment #

[redacted]

[redacted]

STATEMENTS:

[redacted] Oral & written to R/Ds & ASA. Handwritten taken on 20 June 2001, at 1910 hours by ASA L. Hennelly in the presence of Det. CLISHAM.

[redacted] Oral & written to R/Ds & ASA. Handwritten taken on 21 June 2001, at 00:10 hours by ASA C. Daly in the presence of Dets. J. FOSTER & B. FORBERG.

[redacted] Oral & written to R/Ds & ASA. Handwritten taken on 13 June 2001, at 02:17 hours by ASA C. Daly in the presence of Det. J. FOSTER.

[redacted] Oral & written to R/Ds & ASA. Handwritten taken on 13 June 2001, at 02:30 hours by ASA L. Hennelly in the presence of Det. B. FORBERG.

[redacted] Oral to R/Ds.

INVESTIGATION:

In the course of the investigation in the Homicide of Earnest JENKINS and aggravated battery of [redacted] the R/Ds received anonymous information that JENKINS and [redacted] went to the gas station to pick up [redacted] first name [redacted] a cousin to [redacted] The R/Ds were informed that [redacted] was not welcome in the area and may have been the intended target of the shooting. When the shooting occurred JENKINS was in the car, [redacted] was at the gas pump, and [redacted] (nka: [redacted] was paying for the gas.

In furtherance of this investigation, the reporting detectives learned from the surviving victim, [redacted] that he had seen the offender approximately a month prior to the shooting in a car in front of E&J Liquors at 5441 S. Damen. [redacted] described the car as a box style chevy with tan doors and primer in the front and rear. He stated that the car was frequently in the neighborhood and he believed it belonged to someone living on the south side of Garfield Blvd. He also stated that he did not know anyone called [redacted]

On or about 18 May 2001 the R/Ds toured areas south of Garfield Blvd and located the described vehicle at approximately [redacted] occupied by Kevin JACKSON and [redacted] JACKSON and [redacted] agreed to accompany the R/Ds to Area One in furtherance of this investigation.

JACKSON was advised of his Miranda rights to which he related he understood and waived. He denied having any knowledge of the shooting at the Citgo Gas station at 55th and Damen. He stated he heard that an old man had been killed, but he had no further knowledge of the incident. He stated

that the only persons that used the car were himself, [redacted] and his cousin [redacted] He conceded that he and his cousins frequently drove around the area in the vehicle, but dismissed any connection between his car and the person responsible for the shooting at the Citgo. He also stated that he had on previous occasions driven to the E&J Liquor store. JACKSON stated that he knew a M/B subject with the nickname [redacted] to be a GD gang member from north of Garfield Blvd. He stated he knew [redacted] on sight, but had no further knowledge of him. JACKSON stated that although he was a vice lord, did not have any problems with the GDs. He denied being on the scene at the time of the shooting.

[redacted] was advised of his Miranda rights to which he related he understood and waived. He stated that he heard about the shooting at the Citgo from people in the neighborhood. When asked, he was unable to remember what he heard about the shooting and from whom heard about it. He stated that JACKSON and [redacted] often drove around in the car, and that each one of them used the car freely. He also denied any connection between the car and the person responsible for the shooting. He stated that sometimes they drive around with friends from the westside, [redacted] stated that he knew [redacted] from the area. He stated that [redacted] was a GD from the other side of Garfield Blvd. He denied being at the scene at the time of the shooting.

R/Ds attempts to locate the victim and witnesses to view JACKSON and [redacted] in a lineup were unsuccessful and both subjects were released.

R/Ds secured their vehicle in the parking lot of Area One where the R/Ds took polaroid photos of it. The vehicle was subsequently taken from the lot without the R/Ds knowledge or consent.

R/Ds located [redacted] who viewed computer generated photos which included Kevin JACKSON and [redacted] and was unable to make an identification. [redacted] viewed the photo of JACKSON's car and identified it as the car he had seen the gunman in one month prior to the shooting.

On 02 June 01 R/Ds located [redacted] who R/Ds learned was on the scene at the time of the shooting but fled prior to the police arriving. [redacted] agreed to accompany the R/Ds to Area One in furtherance of this investigation. [redacted] related that he went to the Citgo to get some blunts and met [redacted] and [redacted]. Once inside [redacted] a subject known to him from the neighborhood, came into the gas station and asked [redacted] if he had any cannabis. [redacted] explained that since [redacted] was a gangster disciple he was unable to cross Damen to the east side of street which was a vice lord location and drug operation to buy cannabis. [redacted] stated that he and [redacted] went to the same school when they were younger and had no animosity even though [redacted] was a vice lord, and a rival gang member. [redacted] told [redacted] that no one had any cannabis to sell that night. At this time [redacted] left the station with [redacted] following behind him. [redacted] stated that he heard five or six gunshots as [redacted] was walking to his car. At this point [redacted] ran toward [redacted] and said that his uncle had been shot.

[redacted] then identified JACKSON's car from the photographs as being at the gas station at the time of the shooting with JACKSON and [redacted] as its occupants.

[redacted] stated that he had heard in the neighborhood that [redacted] a vice lord from the area of 54th and Damen was the gunman. He stated he could provide no further information at this time.

The R/Ds subsequently learned that a photo array containing known vice lords, including [redacted] from the area of 54th/ 55th and Damen was shown to [redacted] stated that the offender was not among the photos.

The R/Ds located [redacted] also known as, [redacted] at his house where he related the following in essence and not verbatim. [redacted] stated that JENKINS and [redacted] his uncle, were taking him to the store. He related that JENKINS said that he needed to get some gas. He advised JENKINS not to go into the gas station, knowing it to be possibly dangerous because it was in a vice lord area. [redacted] explained that he had problems with vice lord gang members in the past. He went into the gas station to pay for the gas and as he returned to the car he observed a M/B walking out of the north alley on the east side of Damen. He alerted his uncle [redacted] who was at the gas pump that he believed the M/B had a gun. As he instructed JENKINS to get out of the station, the shooting began and he fled to westbound on 55th street to safety. He denied attempting to buy cannabis from [redacted]. When asked why he failed to come forward on his own, he stated that he did want to be involved any further in the investigation.

[redacted] viewed the photo array which included [redacted] and stated that the offender was not among the photos. [redacted] then viewed an array which included Kevin JACKSON and [redacted] and was unable to make an identification.

The R/Ds reinterviewed [redacted]. When asked to provide greater detail regarding [redacted] from his previous statement, [redacted] stated he was unable to recall what he told the R/Ds. R/Ds confronted [redacted] with [redacted] claim that he was uninterested in buying cannabis from him. At this time [redacted] provided the R/Ds with a more detailed account of the events in the gas station at the time of the shooting.

[redacted] stated the following in essence and not verbatim. He related that "Google" (Kevin JACKSON) pulled up in the car with [redacted] and [redacted] ([redacted]). [redacted] stated that [redacted] got out of the car to talk to [redacted] who was walking with [redacted] got out of JENKIN's car and started talking to [redacted] asked [redacted] "what's up with a dip tonight", meaning that he wanted to date her that night. [redacted] replied that "I got a man" which [redacted] understood as a reference to JACKSON. At this point [redacted] and [redacted] went into to the store and start hugging. [redacted] exited the store with [redacted] and [redacted] watched him whisper in her ear. He then heard shooting. He saw the car that JACKSON was in previously flee southbound on Damen. He saw JACKSON running southeast through the lot with a gun in his hand.

In a subsequent interview [redacted] related that he had been withholding further detail regarding the shooting. He explained that his reluctance was based on fear. He clarified that he and JACKSON were members of the same street gang and feared for his safety if fellow gang members were to learn of his cooperation. [redacted] related that after his previous statement on 02 June he was confronted by JACKSON at the bus stop at 55th and the Dan Ryan Expressway. He stated JACKSON had questioned him as to what he had told the police about the shooting and the events of that night. He

told JACKSON that he did not say anything to the police.

[redacted] now related that [redacted] had bought a blunt and was rolling it as she walked toward JACKSON's car. As she made her way to the car he heard [redacted] tell [redacted] to "get off that bullshit" meaning to forget about being with JACKSON. [redacted] then stated that he heard one shot and ran. He heard more shots, turned around and saw JACKSON firing shots into the victim's car. He stated that [redacted] ran toward 55th street, while JACKSON fled across Damen toward the Marathon station.

[redacted] further related that he was walking to the Citgo gas station with [redacted] and [redacted] to get some chips. He stated that when they arrived at Citgo, [redacted] was jumping out of JACKSON's car. [redacted] stated that JACKSON and [redacted] were not boyfriend and girlfriend, but just "messing around". He further stated that when [redacted] approached [redacted] about dating, JACKSON was in the car with the windows down. When the group entered the station to buy their chips and blunts, [redacted] put his arm around [redacted]

He stated that at the time of the shooting JACKSON was standing on the passenger side of the car shooting into the victim's car. [redacted] added that [redacted] drove the away in the car JACKSON had been in. He again stated that he saw JACKSON flee across Damen toward the Marathon station.

Felony Review ASA Lisa HENNELLY was contacted and responded to Area One Violent Crimes. Once there she reviewed the facts of the case. ASA HENNELLY then interviewed the following;

[redacted] was interviewed by ASA HENNELLY in the presence of the R/Ds. He related the same account as detailed above. His statement was subsequently reduced to writing by the ASA on 13 June 01 at 0230 hours in the presence of Detective FORBERG.

R/Ds located [redacted] who [redacted] stated was on the scene at the time of the shooting. [redacted] related that she was out with JACKSON, [redacted] She stated that they pulled into the Citgo gas station at 55th and Damen. She and [redacted] and [redacted] went into the station to buy blunts. JACKSON and [redacted] remained in the car.

[redacted] and [redacted] went into the gas station. [redacted] stayed outside the station store and called out to [redacted] who was standing near a car at a gas pump. [redacted] and [redacted] walked toward and each other and she stopped looking at them. After making her purchases she exited the store and saw JACKSON standing near the alley, but still in the Citgo station lot holding a gun in his hand. She watched as JACKSON fired the gun four or five times in the direction of [redacted] who now was standing near the same car as he was earlier. As JACKSON fired the gun, [redacted] saw the man who was filling the car with gas fall to the ground. JACKSON finished shooting and fled on foot across the lot toward Garfield Blvd.

[redacted] stated that [redacted] and [redacted] ran into the gas station store and she ran to [redacted] house. She stayed over night at [redacted] house that night. [redacted] then related that early that same morning JACKSON came over to [redacted] house and instructed her, [redacted] and [redacted] not to talk to the police if they were questioned. JACKSON then proceeded to question [redacted] and [redacted] about what they had already told the police.

Felony Review ASA Colleen DALY was contacted and responded to Area One Violent Crimes. Once there she reviewed the facts of the case. ASA DALY then interviewed the following;

[redacted] was interviewed by ASA DALY in the presence of the R/Ds. She related the same account as is detailed above. Her statement was subsequently reduced to writing by the ASA on 13 June 01 at 0217 hours in the presence of Detective FOSTER.

On 13 June [redacted] (AKA: [redacted]) was located by Dets. Kowalski and Kaup, assigned to the second watch. [redacted] was interviewed and related the following in essence and not verbatim. He repeated his previous account and added the following. He stated that he, JENKINS, and his uncle, [redacted] planned to go to "William's Inn" on 57th and Ashland. JENKINS stated that he needed to get gas, and he advised JENKINS not to go Amoco, located across the street on the eastside of Damen, which he knew to be dangerous because the vice lords hang out there. Instead he advised JENKINS to go to the Citgo if he had to get gas. He was returning to the car when he saw a M/B emerge from the alley with a black semi-automatic handgun. He jumped into the car and told JENKINS to drive away that the guy has a pistol. JENKINS told him to wait for [redacted] He stated that he put JENKINS car in gear and attempted to pull out, but the car stalled. He stayed in the car until the shooting stopped and then jumped out and fled westbound on 55th street.

The R/Ds located [redacted] who agreed to accompany the R/Ds to Area One in furtherance of this investigation. [redacted] was reinterviewed and related the following in essence and not verbatim.

[redacted] initially repeated the statement she had given to Detective ROLSTON on the night of the shooting. She stated that she was making a purchase in the station store with [redacted] when she heard gunfire and fearing for her safety fled from the station westbound on 55th street. She realized that her friend was still at the station and returned. She saw a man shot inside a brown car. She approached him, felt his pulse, and he moved a little. She then yelled for the station attendant to call the police.

R/Ds confronted her with the fact that other persons at the gas station that night had been interviewed by the R/Ds and had been cooperating in the investigation. She was informed that her friend [redacted] had already made a statement in regards to this investigation. [redacted] was informed that [redacted] had been located and also made a statement regarding his observations the night of the shooting. She was not told what those statements were.

[redacted] then related that she went to the gas station in the car with [redacted], and [redacted]. She went inside and heard what she believed to be a car backfire. She realized that the sound was gunshots and she pulled a woman customer to the floor to shield her from danger. After a few minutes she went outside and approached the victim's car where she found him shot. She went back into the gas station store and argued with an unknown woman about her juice. She again denied witnessing the shooting.

When she was confronted by the fact that this statement contradicted her previous statement given to the detectives on the scene that night, [redacted] offered no explanation. When the R/Ds questioned her about Kevin JACKSON, she related that JACKSON was not there at the time of the shooting. She further related that even if JACKSON was at the gas station he could not have shot the old man

because JACKSON was not that kind of boy.

[redacted] then agreed to a polygraph examination regarding her statement and the shooting incident. Dets. Kaup and Kowalski brought [redacted] to the exam which was administered by examiner R. Bartik at 1910 hours on 13 June 01.

Dets. Kaup and Kowalski informed the R/Ds that [redacted] had failed the examination. R/Ds confronted [redacted] with polygraph results at which time she related the following in essence and not verbatim.

[redacted] stated she was not truthful with the R/Ds in her previous conversation. She stated that she and Kevin JACKSON live near each other on the south side of Garfield Blvd. She knew JACKSON's cousins, [redacted] and [redacted] for a long time and had recently been dating JACKSON on and off. [redacted] explained to the R/Ds that JACKSON came to her after he was questioned by the police about the shooting and asked why she, [redacted] and [redacted] had informed on him.

[redacted] then stated she, [redacted] and JACKSON went to the gas station to get food and blunts. At the station she saw [redacted] walking from the store toward a car at a gas pump. [redacted] exited the car and the two said hello to each other. [redacted] walked over to her and started talking loud about "gettin a dip", which she explained to mean a dating encounter of a sexual nature. [redacted] denied the request and walked into the station store as [redacted] followed alongside still pressing his request for a date. [redacted] related that [redacted] went into the station store with her and was groping at her playfully. He left the store first and walked back to the car he was at originally. As she returned to JACKSON's car she noticed JACKSON across the street near the opening of the alley holding a gun. Once seated in the car she heard a loud noise that sounded like a car backfiring. She ducked down in the seat, opened the door, and crouched down on the ground. She looked in the direction of the gunshots and saw JACKSON walking toward the victim's car shooting a dark colored gun into the car.

[redacted] then ran southbound across Garfield Blvd. She paused to look back to the station where she saw [redacted] driving out of the station and JACKSON running across Damen. She remembered that she had left [redacted] and [redacted] back at the gas station and returned there. On her way back to the station she saw [redacted] walking back with a gas can. She related that [redacted] told her that his car ran out of gas. At the station she observed the car [redacted] had previously been standing at with the passenger door open. She went into store and found [redacted] but not [redacted] and argued with an unknown woman. The three went over to the victim's car finding him slumped over in the driver's seat. [redacted] felt his chest, but he was dead. By this time [redacted] had bought one dollar in gas and left. [redacted] stated that the police arrived and they told them they did not see anything.

[redacted] refused to render her statement into a handwritten form. [redacted] acknowledged that her relationship with JACKSON had at times been romantic and refused to reduce the above account in a handwritten document.

On 19 June 01 the R/Ds located Kevin JACKSON and placed him into custody. JACKSON was advised of his Miranda rights which he acknowledged he understood. JACKSON then invoked his right

to counsel and right to remain silent.

[redacted] was advised of his Miranda rights to which he related he understood and waived. He denied having any firsthand knowledge of the JENKINS homicide. He stated that he had heard about the shooting, but was not involved. When asked, [redacted] was unable to recall where he was at the time of the shooting.

The R/Ds informed him that JACKSON's car had been identified at the scene at the time of the shooting. The R/Ds further informed him that he had been identified in the car, parked in the gas station at the time of the shooting, and that several cooperating persons had already given statements in furtherance of this investigation. [redacted] stated that he did not believe the R/Ds and repeated his statement that he was not at the gas station at the time of the shooting.

[redacted] then agreed to a polygraph examination. Det. CLISHAM brought [redacted] to the exam which was administered by examiner K. HOWLEY at 1045 hours on 20 June 01.

[redacted] was re-advised his Miranda rights which he stated he understood and waived. Det. CLISHAM informed [redacted] that he had failed the polygraph and challenged his earlier account.

[redacted] was re-interviewed and related the following in essence and not verbatim. He stated that he was driving and pulled into the gas station. He stated that [redacted] JACKSON, [redacted] and [redacted] were in the car with him. [redacted] went into the store to buy some blunts. [redacted] said they needed more blunts and went into the store to buy them after [redacted] refused. JACKSON said "hold on there's dude" referring to [redacted] and got out of the car and ran across the street to some other vice lords. At this point [redacted] was getting back into the car, when [redacted] heard a gunshot. He turned around and saw JACKSON firing the gun five or six times at [redacted] and anyone else in the car. Once he finished shooting, JACKSON ran across Damen and through the alley.

On 20 June 01 [redacted] and [redacted] individually, viewed a lineup at Area One Violent Crimes in which Kevin JACKSON and [redacted] participated and were unable to make an identification.

R/Ds re-interviewed [redacted] regarding his relationship with [redacted] and he related the following in essence and not verbatim. He stated that he knew [redacted] from the neighborhood, but denied having any past intimate contact with her. He denied having any contact with [redacted] or [redacted] at the gas station on the night JENKINS was killed. He stated he had no interest in cooperating further in this investigation.

Felony Review ASA Lisa HENNELLY was contacted and responded to Area One Violent Crimes. Once there she reviewed the facts of the case. ASA HENNELLY then interviewed the following;

[redacted] was interviewed by ASA HENNELLY in the presence of Det. CLISHAM. His statement was subsequently reduced to writing by the ASA on 20 June 01 at 1910 hours in the presence of Detective CLISHAM where [redacted] related the same account of the shooting as detailed above, adding the following at this time;

[redacted] related that JACKSON said "there goes dude", referring to [redacted] as [redacted] and [redacted] were talking. JACKSON then went across the street near the Marathon station and talked to a guy named [redacted] [redacted] stated that were other people around and that people were getting in and out of his car. After a few minutes passed [redacted] heard a gunshot and turned around and saw JACKSON shooting at a car that was parked at a gas pump. [redacted] could see the man in the driver's seat body jerk as the gunshots hit him. [redacted] drove to 54th and Hoyne where he ran out of gas, and [redacted] went to a girlfriend's house and [redacted] returned to the Citgo to get some gas. He stated that when he returned a crowd had gathered by the victim's car, and that JACKSON was gone.

The R/Ds reinterviewed [redacted] who related the following in essence and not verbatim.

[redacted] stated she went to the gas station with her friend [redacted] and [redacted] [redacted] and Kevin JACKSON. As she got out of the car she saw [redacted] who said hello to her and [redacted] [redacted] was in a car parked at one of the gas pumps. She then went into the store to buy a blunt and soda pop. She stated that once she was inside she heard gunshots. She looked out the window and saw JACKSON firing a gun. He was running from the Damen side of the station shooting the gun at [redacted] and the car. At this point [redacted] was standing outside of the car. She heard approximately four or five shots and went to the floor in the gas station. After the shooting stopped she saw a pair of black gym shoes run past the station's front door. She got off the floor and [redacted] came in to make sure she was safe. [redacted] then related that she went outside and saw an old man slumped in the driver's seat of the car [redacted] had been standing near when JACKSON was shooting. The police arrived soon afterward.

Felony Review ASA DALY was contacted and responded to Area One Violent Crimes. Once there she reviewed the facts of the case. ASA DALY then interviewed the following;

[redacted] was interviewed by ASA DALY in the presence of the R/Ds. She related the same account as detailed above. Her statement was subsequently reduced to writing by the ASA on 21 June 01 at 0010 hours in the presence of Dets. FORBERG & FOSTER.

The R/Ds efforts to locate [redacted] proved negative.

After reviewing the facts of this case, Felony Review ASA's approved the charge of 1st Degree Murder on Kevin JACKSON. He was scheduled to appear in Branch 66 on 22 May 01.

With this the R/Ds request that this assignment be classified CLEARED CLOSED BY ARREST AND PROSECUTION.

REPORT OF:
Det's B. FORBERG #21249 & J. FOSTER #20288

NOTIFICATION OF CHARGES/ALLEGATIONS
CHICAGO POLICE DEPARTMENT

GIVEN TO ACCUSED
DATE 19 AUG 02 TIME 1705

NAME OF ACCUSED	RANK	STAR NO.	UNIT OF ASSIGNMENT
Brian Forberg	Det.	21249	610

The law provides that if you are to be charged with a criminal offense or if your separation from the Department will be sought, you are to be advised in writing of the specific illegal or improper acts alleged against or attributed to you.

Furthermore, Department policy provides that you have a right to be advised in writing of the names of complainants and allegations against you prior to any questioning of you concerning the allegation regardless of the nature of the allegation and even if the allegation is such that it will not result in the filing of criminal charges or the filing of separation charges.

Accordingly, you are hereby advised that the following allegations have been attributed to you:

COMPLAINANTS:

1. [redacted]
2.
3.
4.

The complainant stated that a shooting occured in May 2001 and her daughter(victim) was present on the scene. The complainant alleges that the accused detectives are constantly harassing her and her daughter in that on several occasions they came to her residence and threatened them with arrest. The complainant further alleges that on 4 Jul 01, the detectives entered and searched her residence without justification.

Arrest: None

The undersigned hereby acknowledges receipt in writing of the charges or allegations against him.

Signature [redacted] #21249

WITNESSED [redacted]

PREPARE IN DUPLICATE:
Original copy to investigator's file.
Copy to accused member.

CPD-44.115 (Rev. 6/89)

COMPLAINT REGISTER NO.
272791
ATTACHMENT NO.
6

ADMINISTRATIVE PROCEEDINGS RIGHTS
(Statutory)
CHICAGO POLICE DEPARTMENT

GIVEN TO MEMBER
DATE: 19 Aug 02 TIME: 1705

NAME OF ACCUSED	RANK	STAR NO	UNIT OF ASSIGNMENT
Brian Forberg	Det.	21249	610

The law provides that you are to be advised of the following:

1. Any admission or statement made by you in the course of this hearing, interrogation or examination may be used as the basis for your suspension or as the basis for charges seeking your removal or discharge or suspension in excess of 30 days.
2. You have the right to counsel of your choosing to be present with you to advise you at this hearing, interrogation or examination and you may consult with him as you desire.
3. You have a right to be given a reasonable time to obtain counsel of your own choosing.
4. You have no right to remain silent. You have an obligation to truthfully answer questions put to you. You are advised that your statements or responses constitute an official police report.
5. If you refuse to answer questions put to you, you will be ordered by a superior officer to answer the questions.
6. If you persist in your refusal after the order has been given to you, you are advised that such refusal constitutes a violation of the Rules and Regulations of the Chicago Police Department and will serve as a basis for which your discharge will be sought.
7. You are further advised that by law any admission or statement made by you during the course of this hearing, interrogation or examination and the fruits thereof cannot be used against you in a subsequent criminal proceeding.

The undersigned hereby acknowledges that he was informed of the above rights.

Signature [redacted] 21249

WITNESSES [redacted]

DISTRIBUTION
COMPLAINT REGISTER INVESTIGATION

Original to investigator's file
Duplicate to affected member

COMPLAINT REGISTER NO 272791

ATTACHMENT NO 7

CPD-44 105 (Rev 10/93)

WAIVER OF COUNSEL/REQUEST TO SECURE COUNSEL
CHICAGO POLICE DEPARTMENT

NAME OF ACCUSED	RANK	STAR NO.	UNIT OF ASSIGNMENT
Brian Forberg	Det.	21249	610

[X] WAIVER OF COUNSEL

I, the undersigned, hereby acknowledge that I have received and read the charges/allegations against me and I knowingly and voluntarily wish to proceed with the hearing, examination or interrogation without having counsel of my own choosing present to advise me during this hearing, examination or interrogation.

Date-Time 19 Aug 2002 Signature [redacted] 21249

[ ] REQUEST TO SECURE LEGAL COUNSEL

I, the undersigned, having been advised of my right to counsel of my own choosing at all hearings, examinations and interrogations in connection with the charges/allegations against me which have been given to me in writing and receipt of which is hereby acknowledged, elect to secure the services of counsel and agree to proceed with said hearing, examination or interrogation at

_____ hours, on _____, 19 ____ in Room _____

_____ Chicago, Illinois, at which time said hearing, examination or interrogation shall be commenced. By placing my signature upon this statement, I affirm my wish to secure said counsel and agree to comply with Department hearing, examination or interrogation scheduled on the date aforesaid.

Date-Time _____ Signature _____

WITNESSES [redacted]

DISTRIBUTION
COMPLAINT REGISTER INVESTIGATION

Original to investigator's file
Duplicate to affected member

COMPLAINT REGISTER NO. 272791

ATTACHMENT NO. 8

CPD-44.108 (Rev. 10/93)

19 August 2002

TO: Commander J. Jackson
Commander Area One Detective Division

FROM: Det. B. Forberg #21249

SUBJECT: CR# 272791

The R/D was to investigate a homicide that occurred in May 2001. The R/D learned that [redacted] was a witness to the incident. The R/D also learned that [redacted] was possibly the girlfriend of a potential suspect. The R/D attempted to make contact with [redacted] on numerous occasions to interview her. The R/D was unsuccessful in these efforts, in part from [redacted] lack of cooperation.

At no time did the R/D or his partner, Det. J. Foster, ever harass [redacted] The R/D and his partner never entered the [redacted] residence and did not search the same.

[redacted] 21249
Det. B. Forberg #21249

APPROVED:

_____

_____

CR# 272791
Attach # 9

NOTIFICATION OF CHARGES/ALLEGATIONS
CHICAGO POLICE DEPARTMENT

GIVEN TO ACCUSED
DATE: 19 AUG 02 TIME: 1910

NAME OF ACCUSED	RANK	STAR NO.	UNIT OF ASSIGNMENT
John Foster	Det.	20288	610

The law provides that if you are to be charged with a criminal offense or if your separation from the Department will be sought, you are to be advised in writing of the specific illegal or improper acts alleged against or attributed to you.

Furthermore, Department policy provides that you have a right to be advised in writing of the names of complainants and allegations against you prior to any questioning of you concerning the allegation regardless of the nature of the allegation and even if the allegation is such that it will not result in the filing of criminal charges or the filing of separation charges.

Accordingly, you are hereby advised that the following allegations have been attributed to you:

COMPLAINANTS:

1. [redacted]
2.
3.
4.

The complainant stated that a shooting occured in May 2001 and her daughter(victim) was present on the scene. The complainant alleges that the accused detectives are constantly harassing her and her daughter in that on several occasions they came to her residence and threatened them with arrest. The complainant further alleges that on 4 Jul 01, the detectives entered and searched her residence without justification.

Arrest: None

The undersigned hereby acknowledges receipt in writing of the charges or allegations against him.

Signature [redacted] 20288

WITNESS [redacted]

PREPARE IN DUPLICATE:
Original copy to investigator's file.
Copy to accused member.

CPD-44.115 (Rev. 5/89)

COMPLAINT REGISTER NO.
272791
ATTACHMENT NO.
10

ADMINISTRATIVE PROCEEDINGS RIGHTS
(Statutory)
CHICAGO POLICE DEPARTMENT

GIVEN TO MEMBER
DATE: 19 AUG 02 TIME: 1910

NAME OF ACCUSED	RANK	STAR NO	UNIT OF ASSIGNMENT
John Foster	Det.	20288	610

The law provides that you are to be advised of the following:

1. Any admission or statement made by you in the course of this hearing, interrogation or examination may be used as the basis for your suspension or as the basis for charges seeking your removal or discharge or suspension in excess of 30 days.
2. You have the right to counsel of your choosing to be present with you to advise you at this hearing, interrogation or examination and you may consult with him as you desire.
3. You have a right to be given a reasonable time to obtain counsel of your own choosing.
4. You have no right to remain silent. You have an obligation to truthfully answer questions put to you. You are advised that your statements or responses constitute an official police report.
5. If you refuse to answer questions put to you, you will be ordered by a superior officer to answer the questions.
6. If you persist in your refusal after the order has been given to you, you are advised that such refusal constitutes a violation of the Rules and Regulations of the Chicago Police Department and will serve as a basis for which your discharge will be sought.
7. You are further advised that by law any admission or statement made by you during the course of this hearing, interrogation or examination and the fruits thereof cannot be used against you in a subsequent criminal proceeding.

The undersigned hereby acknowledges that he was informed of the above rights.

Signature [redacted] 20288

[redacted]

DISTRIBUTION
COMPLAINT REGISTER INVESTIGATION

Original to investigator's file
Duplicate to affected member

COMPLAINT REGISTER NO 272791

CPD-44 105 (Rev 10/93)

ATTACHMENT NO 11

WAIVER OF COUNSEL/REQUEST TO SECURE COUNSEL
CHICAGO POLICE DEPARTMENT

NAME OF ACCUSED	RANK	STAR NO.	UNIT OF ASSIGNMENT
John Foster	Det.	20288	610

☒ WAIVER OF COUNSEL

I, the undersigned, hereby acknowledge that I have received and read the charges/allegations against me and I knowingly and voluntarily wish to proceed with the hearing, examination or interrogation without having counsel of my own choosing present to advise me during this hearing, examination or interrogation.

Date-Time 19 Aug 2002 Signa[redacted] 2002

☐ REQUEST TO SECURE LEGAL COUNSEL

I, the undersigned, having been advised of my right to counsel of my own choosing at all hearings, examinations and interrogations in connection with the charges/allegations against me which have been given to me in writing and receipt of which is hereby acknowledged, elect to secure the services of counsel and agree to proceed with said hearing, examination or interrogation at

_____ hours, on _____ 19 _____ in Room _____

_____ Chicago, Illinois, at which time said hearing, examination or interrogation shall be commenced. By placing my signature upon this statement, I affirm my wish to secure said counsel and agree to comply with Department hearing, examination or interrogation scheduled on the date aforesaid.

Date-Time _____ Signature _____

WITNESSES [redacted]

DISTRIBUTION
COMPLAINT REGISTER INVESTIGATION

Original to Investigator's file
Duplicate to affected member

COMPLAINT REGISTER NO. 272791

ATTACHMENT NO. 12

CPD-44.106 (Rev. 10/93)

AREA ONE DETECTIVE DIVISION 19 August 2002

TO: Commander Area One Detective Division

FROM: Det. J. Foster # 20288

SUBJECT: CR# 272791

1. R/D was assigned to investigate a homicide that occurred in may 2001. R/D learned that [redacted] was a witness to the incident. R/D also learned that [redacted] was possibly the girlfriend of a potential suspect. R/D attempted to make contact with [redacted] on numerous occasions to interview her but was unable to do so because in part of [redacted] lack of cooperation.

2. At no time did R/D or his partner Det. Brian Forberg ever harass [redacted] R/D or his partner never entered the [redacted] residence and subsequently could not have searched it.

[redacted] #20288
Det. J. Foster # 20288

CR# 272791
Attachment # 13

Bureau of Investigative Services
Area One Detective Division

21 Feb 2003

TO: James Jackson
Commander
Area One Detective Division

FROM: Sgt. Anthony Kuta # 1811

SUBJECT: Victim Statement, CR # 272791
[redacted] DOB: [redacted]
[redacted] Tel. [redacted]

The reporting sergeant interviewed the above victim at her apartment [redacted]. Upon initial contact [redacted] denied that she was the victim. After the reporting sergeant explained the purpose of his visit she admitted that she was in fact the victim [redacted]. She stated that she was present at the time of the shooting/homicide. She also stated that she was a friend of the offender JACKSON,Kevin M/B/20 IR# [redacted] and that she was not interested in being a witness or giving a statement to detectives. Every time the accused detectives came to the house to conduct an interview she stated that she went up the back stairs to the second floor and her mother told the detectives that she was not at home. The reporting sergeant inquired about the events on 4 July 01 when her mother alleged that the accused detectives searched her apartment. She related that on that date she saw them coming and again she went upstairs. Upon her return her mother told her that they searched the apartment looking for her. She admitted that she did not see the accused enter the apartment because she was on the 2nd floor. The reporting sergeant then verified her correct birth date and address as she gave false data to the original reporting officers.

The reporting sergeant inquired about her mother the listed complainant of this complaint register number. [redacted] related that her mother [redacted] F/B/47 was deceased on 25 Jan 2002 from natural causes.

[redacted] 1354

Sgt. Anthony Kuta # 1811

CR# 272791

Attachment 14

CHICAGO POLICE DEPARTMENT

CASE SUPPLEMENTARY REPORT

3510 S. Michigan Avenue, Chicago, Illinois 60653
(For use by Chicago Police - Bureau of Investigative Services Personnel Only)

HH146868

Case Id : 1958019
Sup Id : 1159058 CA9R339

MORGUE | **DETECTIVE SUP. APPROVAL COMPLETE**

Last Offense Classification/Re-Classification	IUCR Code	Original Offense Classification			IUCR Code
NON-CRIMINAL / Death	5084	NON-CRIMINAL / Death			5084
Address of Occurrence	**Beat of Occur**	**No of Victims**	**No of Offenders**	**No of Arrested**	**SCR No**
[redacted]	722	1		0	
Location Type	**Location Code**	**Secondary Location**			
Residence	290				
Date of Occurrence	**Unit Assigned**	**Date PO Arrived**	**Fire Related?**	**Gang Related?**	**Domestic Related?**
25-JAN-2002 04:41	0722	25-JAN-2002 04:45	NO	NO	NO

Reporting Officer	Star No	Approving Supervisor	Star No	Primary Detective Assigned	Star No
FOLEY, Patrick	20143	FOLEY, Patrick	20143	ROLSTON, Leonard	20101
Date Submitted		**Date Approved**		**Assignment Type**	
27-JAN-2002 09:50		27-JAN-2002 09:51		FIELD	

THIS IS A FIELD INVESTIGATION MORGUE REPORT

VICTIM(S): [redacted]
Female / Black / 43 Years
RES: [redacted]
Chicago IL
[redacted]

VICTIM INJURIES: [redacted]
CAUSE: Unknown
REASON Unknown
EXTENT: Fatal

TRANSPORTED TO: [redacted] (Victim)
Transported To Med. Exam Office
By Bt #771
on 25-JAN-2002 00:00
Transport Was Authorized By Henderson #13

LOCATION OF INCIDENT: [redacted]
Chicago IL
290 - Residence

HH146868

DATE & TIME OF INCIDENT: 25-JAN-2002 04:41

CR# 272791
Attach # 17

PERSONNEL ASSIGNED:

Detective/Youth Investigator
ROLSTON, Leonard T # 20101

Reporting Officer
BUFORD, Randall # 8958 BEAT: 0722
SCALES, Chinyere A # 10591 BEAT: 0722

WITNESS(ES):

[redacted]

RES: [redacted]

OTHER COMMUNICATIONS:
Business: [redacted]

OTHER INDIVIDUALS INVOLVED:

[redacted] (Person Reporting Offense)

RES: [redacted]

OTHER COMMUNICATIONS:
Business: [redacted]

[redacted] (Person Discovering)

RES: [redacted]

OTHER COMMUNICATIONS:
Business: [redacted]

CRIME CODE SUMMARY: 5084 - Non-Criminal - Death

IUCR ASSOCIATIONS: 5084 - Non-Criminal - Death

[redacted] (Victim)

REPORT DISTRIBUTIONS: No Distribution

INVESTIGATION:

HH146868, ME#453 Jan 02, 610: Dr. Mileusnic performed an autopsy on the remains of Dezreen Davis on 25 Jan 02 and determined the cause and manner of death to be Bronchial Asthma / Natural.

REQUEST FOR TIME EXTENSION - COMPLAINT REGISTER INVESTIGATION NO.: 272791

CHICAGO POLICE DEPARTMENT

DATE OF REQUEST: 1 Sept 02

TO: SUPERINTENDENT OF POLICE

ATTENTION:
- ☐ ADMINISTRATOR IN CHARGE, OFFICE OF PROFESSIONAL STANDARDS
- ☒ ASSISTANT DEPUTY SUPERINTENDENT, INTERNAL AFFAIRS DIVISION

FROM - INVESTIGATOR'S NAME	RANK	STAR NO.	UNIT
KUTA, Anthony W.	Sgt.	1811	610

AN EXTENSION OF 30 DAYS IS REQUESTED TO COMPLETE THIS COMPLAINT REGISTER INVESTIGATION FOR REASON(S) INDICATED BELOW:

- ☐ ACCUSED UNAVAILABLE FOR INTERVIEW (GIVE REASON AND EXPECTED DATE OF RETURN)
- ☐ COMPLAINANT/WITNESS UNAVAILABLE FOR INTERVIEW (GIVE NAME AND REASON)
- ☐ REPORTS, RECORDS, STATEMENTS, LABORATORY TESTS UNAVAILABLE (SPECIFY) — DATE CERTIFIED LETTER SENT
- ☒ OTHER (DESCRIBE) The reporting sergeant was on 9B furlough and did not have sufficient time to complete the investigation.

DATE CASE ASSIGNED	ELAPSED TIME OF INVESTIG.	NO. OF PRIOR REQUESTS	INVES[redacted]
1 Aug 02	30 DAYS	none	

APPROVED - UNIT COMMANDING OFFICER	ATTACHMENT NO.	CR NO
	18	272791

CPD-44.114 (REV 5/82)

REQUEST FOR TIME EXTENSION - COMPLAINT REGISTER INVESTIGATION NO.: 272791

CHICAGO POLICE DEPARTMENT

DATE OF REQUEST: 1 Oct 02

TO: SUPERINTENDENT OF POLICE

ATTENTION: ☐ ADMINISTRATOR IN CHARGE, OFFICE OF PROFESSIONAL STANDARDS

☒ ASSISTANT DEPUTY SUPERINTENDENT, INTERNAL AFFAIRS DIVISION

FROM - INVESTIGATOR'S NAME	RANK	STAR NO.	UNIT
KUTA, Anthony W.	Sgt.	1811	610

AN EXTENSION OF 30 DAYS IS REQUESTED TO COMPLETE THIS COMPLAINT REGISTER INVESTIGATION FOR REASON(S) INDICATED BELOW:

☐ ACCUSED UNAVAILABLE FOR INTERVIEW (GIVE REASON AND EXPECTED DATE OF RETURN)

☐ COMPLAINANT/WITNESS UNAVAILABLE FOR INTERVIEW (GIVE NAME AND REASON)

DATE CERTIFIED LETTER SENT _____

☐ REPORTS, RECORDS, STATEMENTS, LABORATORY TESTS UNAVAILABLE (SPECIFY)

☒ OTHER (DESCRIBE) The reporting sergeant has learned that the complainant [redacted] is deceased and needs to verify this information with the M.E. office.

DATE CASE ASSIGNED	ELAPSED TIME OF INVESTIG.	NO. OF PRIOR REQUESTS	INVEST [redacted]
1 Aug 02	60 DAYS	1	

APPROVED - UNIT COMMANDING OFFICER	ATTACHMENT NO. 19	C.R. NO. 272791

CPD-44.114 (REV 5/92)

REQUEST FOR TIME EXTENSION - COMPLAINT REGISTER INVESTIGATION NO.: 272791

CHICAGO POLICE DEPARTMENT

DATE OF REQUEST: 1 Nov 02

TO: SUPERINTENDENT OF POLICE

ATTENTION:
- ☐ ADMINISTRATOR IN CHARGE, OFFICE OF PROFESSIONAL STANDARDS
- ☒ ASSISTANT DEPUTY SUPERINTENDENT, INTERNAL AFFAIRS DIVISION

FROM - INVESTIGATOR'S NAME	RANK	STAR NO.	UNIT
KUTA, Anthony W.	Sgt.	1811	610

AN EXTENSION OF 30 DAYS IS REQUESTED TO COMPLETE THIS COMPLAINT REGISTER INVESTIGATION FOR REASON(S) INDICATED BELOW:

- ☐ ACCUSED UNAVAILABLE FOR INTERVIEW (GIVE REASON AND EXPECTED DATE OF RETURN)
- ☐ COMPLAINANT/WITNESS UNAVAILABLE FOR INTERVIEW (GIVE NAME AND REASON)
- ☐ REPORTS, RECORDS, STATEMENTS, LABORATORY TESTS UNAVAILABLE (SPECIFY)

DATE CERTIFIED LETTER SENT .....

- ☒ OTHER (DESCRIBE) The reporting sergeant has learned that the alleged victim [redacted] is wanted on a warrant LDS#W02B4100. R/Sgt needs to reinterview.

DATE CASE ASSIGNED	ELAPSED TIME OF INVESTIG.	NO. OF PRIOR REQUESTS	INVE[redacted]
1 Aug 02	91 DAYS	2	
APPROVED - UNIT COMMANDING OFFICER		ATTACHMENT NO. 20	C.R. NO. 272791

CPD-44.114 (REV 5/92)

REQUEST FOR TIME EXTENSION - COMPLAINT REGISTER INVESTIGATION NO.: 272791

CHICAGO POLICE DEPARTMENT

DATE OF REQUEST: 1 Dec 02

TO: SUPERINTENDENT OF POLICE

ATTENTION: ☐ ADMINISTRATOR IN CHARGE, OFFICE OF PROFESSIONAL STANDARDS

☒ ASSISTANT DEPUTY SUPERINTENDENT, INTERNAL AFFAIRS DIVISION

FROM - INVESTIGATOR'S NAME	RANK	STAR NO.	UNIT
KUTA, Anthony W.	Sgt.	1811	610

AN EXTENSION OF 30 DAYS IS REQUESTED TO COMPLETE THIS COMPLAINT REGISTER INVESTIGATION FOR REASON(S) INDICATED BELOW:

☐ ACCUSED UNAVAILABLE FOR INTERVIEW (GIVE REASON AND EXPECTED DATE OF RETURN)

☐ COMPLAINANT/WITNESS UNAVAILABLE FOR INTERVIEW (GIVE NAME AND REASON)

DATE CERTIFIED LETTER SENT _____

☐ REPORTS, RECORDS, STATEMENTS, LABORATORY TESTS UNAVAILABLE (SPECIFY)

☒ OTHER (DESCRIBE) Alleged Victim [redacted] needs to be reinterviewed and is wanted on leads warrant LDS/W02B4100.

DATE CASE ASSIGNED	ELAPSED TIME OF INVESTIG.	NO. OF PRIOR REQUESTS	INVES[redacted]
1 Aug 02	121 DAYS	3	

APPROVED - UNIT COMMANDING OFFICER	ATTACHMENT NO. 21	C.R. NO. 272791

OPD-44.111 (REV 5/02)

REQUEST FOR TIME EXTENSION - COMPLAINT REGISTER INVESTIGATION NO.: 272791

CHICAGO POLICE DEPARTMENT

DATE OF REQUEST: 1 Jan 03

TO: SUPERINTENDENT OF POLICE

ATTENTION: ☐ ADMINISTRATOR IN CHARGE, OFFICE OF PROFESSIONAL STANDARDS

☒ ASSISTANT DEPUTY SUPERINTENDENT, INTERNAL AFFAIRS DIVISION

FROM - INVESTIGATOR'S NAME	RANK	STAR NO.	UNIT
KUTA, Anthony W.	Sgt.	1811	610

AN EXTENSION OF 30 DAYS IS REQUESTED TO COMPLETE THIS COMPLAINT REGISTER INVESTIGATION FOR REASON(S) INDICATED BELOW:

☐ ACCUSED UNAVAILABLE FOR INTERVIEW (GIVE REASON AND EXPECTED DATE OF RETURN)

☐ COMPLAINANT/WITNESS UNAVAILABLE FOR INTERVIEW (GIVE NAME AND REASON)

DATE CERTIFIED LETTER SENT .....

☐ REPORTS, RECORDS, STATEMENTS, LABORATORY TESTS UNAVAILABLE (SPECIFY)

☒ OTHER (DESCRIBE) Alleged victim [redacted] needs to be reinterviwed and is wanted on leads warrant LDS/W02B4100

DATE CASE ASSIGNED	ELAPSED TIME OF INVESTIG.	NO. OF PRIOR REQUESTS	INVES[redacted]
1 Aug 02	152 DAYS	4	

APPROVED - UNIT COMMANDING OFFICER | ATTACHMENT NO. 22 | C.R. NO. 272791

CPD-44.114 (REV 5/92)

REQUEST FOR TIME EXTENSION - COMPLAINT REGISTER INVESTIGATION NO.: 272791

CHICAGO POLICE DEPARTMENT

DATE OF REQUEST: 1 Feb 03

TO: SUPERINTENDENT OF POLICE

ATTENTION: ☐ ADMINISTRATOR IN CHARGE, OFFICE OF PROFESSIONAL STANDARDS

☒ ASSISTANT DEPUTY SUPERINTENDENT, INTERNAL AFFAIRS DIVISION

FROM - INVESTIGATOR'S NAME	RANK	STAR NO.	UNIT
KUTA, Anthony W.	Sgt.	1811	610

AN EXTENSION OF 30 DAYS IS REQUESTED TO COMPLETE THIS COMPLAINT REGISTER INVESTIGATION FOR REASON(S) INDICATED BELOW:

☐ ACCUSED UNAVAILABLE FOR INTERVIEW (GIVE REASON AND EXPECTED DATE OF RETURN)

☐ COMPLAINANT/WITNESS UNAVAILABLE FOR INTERVIEW (GIVE NAME AND REASON)

☐ REPORTS, RECORDS, STATEMENTS, LABORATORY TESTS UNAVAILABLE (SPECIFY) DATE CERTIFIED LETTER SENT

☒ OTHER (DESCRIBE) The alleged victim, [redacted] needs to be reinterviewed and is wanted on leads warrant LDS/W02B4100.

DATE CASE ASSIGNED	ELAPSED TIME OF INVESTIG.	NO. OF PRIOR REQUESTS	[redacted]
1 Aug 02	183 DAYS	5	

APPROVED - UNIT COMMANDING OFFICER | ATTACHMENT NO. 23 | C.R. NO 272791

CPD-44.114 (REV 6/92)

ATTACHMENT 2

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

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

PILLSBURY WINTHROP SHAW PITTMAN LLP,	)	
	)	Case No. 2017-CH-01114
Plaintiff,	)	
	)	
v.	)	Hon. Thomas Allen
	)	
CHICAGO POLICE DEPARTMENT,	)	
	)	
Defendant.	)	

AMENDED COMPLAINT

NOW COMES Plaintiff, PILLSBURY WINTHROP SHAW PITTMAN LLP, by its undersigned attorneys, LOEVY & LOEVY, and brings this suit to overturn Defendant CHICAGO POLICE DEPARTMENT's refusal, in willful violation of the Illinois Freedom of Information Act, to produce records related to allegations of misconduct against a discrete and manageable number of Chicago police officers. In support of its Complaint, PILLSBURY states as follows:

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act ("FOIA"). 5 ILCS 140/1.

2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of

government activity that affect the conduct of government and the lives of the people. 5 ILCS 140/1.

3. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/3.

4. Under FOIA Section 3(g), "[r]equests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information."

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5. Under FOIA Section 11(h), "except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way."

PARTIES

6. Plaintiff PILLSBURY is the requester in this case.

7. Defendant CPD is a public body located in Cook County, Illinois.

OCTOBER 25 REQUEST

8. On October 25, 2016, PILLSBURY requested information related to any Complaint Registers ("CRs") related to a list of 44 entries, that according to CPD, totaled 51 officers. In addition to the CRs themselves, PILLSBURY requested records showing (1) each officer's name, (2) star number, (3) date of appointment, (4) complaint category, (5) CR number, (6) incident date, (7) date the complaint was closed, (8) final finding of the CR investigation, and (9) any disciplinary action taken. A true and correct copy of the communication is attached as Exhibit A.

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9. On October 31, 2016, CPD requested a 5 day extension to respond. A true and correct copy of the communication is attached as Exhibit B.

10. On November 7, 2016, PILLSBURY spoke with a CPD FOIA Officer on the phone and granted an extension until November 14, 2016, to respond.

11. On November 15, 2016, one day after the extended deadline had passed, CPD provided records responsive to items 1-3 of the request (officers' names, star numbers and dates of appointment). In response to items 4-9 (complaint category, CR number, incident date, date complaint was closed, final finding of CR investigation and disciplinary actions taken), CPD produced the Employee Career Complaint History and withheld a portion of the responsive records claiming production was unduly burdensome (items 4-8 produced; part of item 9, disciplinary actions pre-2000 not produced). A true and correct copy of the communication is attached as Exhibit C.

12. On November 21, 2016, PILLSBURY narrowed its request to 40 officers. PILLSBURY further narrowed the request by seeking complete CRs for only 5 of the officers and seeking only "face sheets" for the remaining 35 officers. A true and correct copy of the communication is attached as Exhibit D.

13. On November 29, 2016, CPD responded to PILLSBURY that even just producing face sheets for the 35 officers and full CR files for the other 5 officers was unduly burdensome. A true and correct copy of the communication is attached as Exhibit E.

14. On November 29, 2016, PILLSBURY responded by further narrowing the request. PILLSBURY sought only face sheets for the 35 officers and asked for only the complaint histories and face sheets for the other 5 officers so it could review them and further narrow this portion of the request. A true and correct copy of the communication is attached as Exhibit F.

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15. On December 1, 2016, PILLSBURY spoke with CPD on the phone regarding PILLSBURY's November 29 communication. CPD maintained that even the further narrowed request was unduly burdensome.

16. On December 1, 2016, CPD also sent an email to PILLSBURY stating that it would produce the full CR logs for Officer Kevin Howley and the Employee Complaint History generated from PILLSBURY's second list of officers (the list of 40 officers total). Updated complaint histories and a key to the number system used in those histories were attached to the email. The email further stated that after producing this portion of responsive records PILLSBURY's request would "be deemed officially closed." A true and correct copy of the communication is attached as Exhibit G.

17. As of the date of this filing, CPD has not produced the full CRs for any of the five

officers, including Officer Kevin Howley.

18. In sum, CPD is claiming that there is not sufficient public interest in these records to justify the work required to produce complete CRs related to the five officers (Forberg, Foster, Clisham, Bartik and Howley), records regarding disciplinary actions taken against the 40 officers pre-2000 (part of item 9 from the original request), and face sheets for CRs related to the 40 officers. Most, if not all of which, is available electronically.

19. In fact, there is a tremendous public interest in police transparency and accountability.

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20. As the Police Accountability Task Force stated, "[g]oing back years, and continuing to the present day, CPD has missed opportunities to make accountability an organizational priority. Currently, neither the non-disciplinary interventions available nor the disciplinary system are functioning." Accountability Task Force, Recommendations for Reform, at 11 (attached as Exhibit H).

21. The United States Department of Justice Civil Rights Division "confirmed that CPD's accountability systems are broadly ineffective at deterring or detecting misconduct, and at holding officers accountable when they violate the law or CPD policy." United States Department of Justice Civil Rights Division and United States Attorney's Office Northern District of Illinois, Investigation of the Chicago Police Department, at 47 (attached as Exhibit I).

COUNT I

22. The above paragraphs are incorporated by reference.

23. CPD is a public body under FOIA.

24. The records sought in PILLSBURY's FOIA request are non-exempt public records of CPD.

25. CPD has willfully and intentionally violated FOIA by refusing to produce the requested records.

WHEREFORE, PILLSBURY asks that the Court:

i. in accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;

ii. declare that CPD has violated FOIA;

iii. order CPD to produce the requested records;

iv. enjoin CPD from withholding non-exempt public records under FOIA;

v. order CPD to pay civil penalties;

vi. award Plaintiff reasonable attorneys' fees and costs;

vii. award such other relief the Court considers appropriate.

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RESPECTFULLY SUBMITTED,

/s/ Matthew Topic

Attorneys for Plaintiff
PILLSBURY WINTHROP SHAW
PITTMAN LLP

Matthew Topic
Joshua Burday
LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900
foia@loevy.com
Atty. No. 41295

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COOK COUNTY, ILLINOIS
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CLERK DOROTHY BROWN

pillsbury

Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006 | tel 202.663.8000 | fax 202.663.8007

Brandon Clark
tel: 202.663.8128
brandon.clark@pillsburylaw.com

October 25, 2016

Via Email to foia@chicagopolice.org

Chicago Police Department
Attn: Freedom of Information Officer
Records Inquiry Section, Unit 163
3510 S. Michigan Ave
Chicago, IL 60653

Re: **FOIA Request for Complaint Registers Related to Specific Chicago Police Officers**

Dear FOIA Officer:

Under the terms of the Illinois Freedom of Information Act, I am requesting information related to any Complaint Registers (also known as "CRs") filed in relation to any of the below listed Chicago Police Officers. In addition to the Complaint Registers themselves, I am also requesting: (1) the officer's names (as appropriate), (2) the officer's star number (as appropriate), (3) the officer's date of appointment, (4) the complaint category, (5) the CR number, (6) the incident date, (7) the date the complaint was closed, (8) the final finding of the CR investigation, and (9) any disciplinary actions taken. As detailed in the recent Circuit Court of Cook County decision *Fraternal Order of Police, Chicago Lodge No. 7, et al v. City of Chicago, et al*, 2016 IL App (1st) 143884, *appeal denied*, --- N.E. 3d ---, Sept. 28, 2016 (Ill.) , this information is all subject to disclosure under the Freedom of Information Act.

Officers for which information is being requested:

1. Unidentified officer – Star # 509
2. Unidentified officer – Star # 2088
3. Unidentified officer – Star # 12487
4. Unidentified officer – Star # 19446
5. Unidentified officer – Star # 19456
6. Unidentified officer – Star # 20504
7. Unidentified officer – Star # 21004
8. Bartik, Robert – Star unknown
9. Castellanos, Judy – Star # 21195

10. Cervenka, Richard – Star # 1354
11. Clisham, John – Star # 20600
12. Davoren, first name unknown – Star # 19446
13. Dunn, first name unknown – Star # 416
14. Foley, Patrick – Star # 20143
15. Forberg, Brian – Star # 21249
16. Foster, John – Star # 20288
17. Girardi, Robert – Star # 20479
18. All CPD officers with the last name Gorman who were assigned to CPD Area 1 for any portion of 2001
19. Halloran, first name unknown – Star # 20453
20. Harnedy, William – Star # 12611
21. Howley, Kevin – Star unknown
22. Hoy, first name unknown – Star # 2667
23. All CPD officers with the first initial "E" last name "Kaup" who were assigned to CPD Area 1 for any portion of 2001
24. Kazmierczak, first name unknown – Star # 13464
25. Kerlin, Matthew – Star # 17797
26. All CPD officers with the first initial "D" last name "Kowalski" who were assigned to CPD Area 1 for any portion of 2001
27. Kurtovich, first name unknown – Star # 17945
28. McGlynn, Andrew – Star # 9814
29. McGovern, first name unknown – Star # 17323
30. McKendry, first name unknown – Star # 10599
31. O'Brien, first name unknown – Star # 20466
32. O'Donnell, Daniel – Star # 1927
33. All CPD officers named Olsen or Olson who were assigned to CPD Area 1 for any portion of 2001
34. All CPD lieutenants named Riley, Reiley, or Reilly who were assigned to or oversaw any portion of CPD Area 1 for any portion of 2001
35. Rolston, Leonard – Star # 20101
36. Shader, James – Star # 9609
37. Spellman, first name unknown – Star # 19002
38. Struck, Joseph – Star # 20857
39. Tenczа, James – Star # 9203
40. All officers named Tierney who were assigned to CPD Area 1 for any portion of 2001
41. Torres, first name unknown – Star # 4477
42. Tovar, Robert – Star # 12847
43. Trotman, first name unknown – Star # 15946

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44. Ziegenhorn, Maureen – Star # 365

I ask that you respond electronically, as provided for in Section 6(a) of the FOIA Act.

As provided by the Act, I expect that you will respond to this request within five working days. **Therefore, I expect to receive your response by Tuesday, November 1, 2016.**

As you are certainly aware, the General Assembly's enactment of FOIA reflects the significant public interest in the dissemination of these types of records. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 14369, issued July 1, 2011, at 2. Simply because a request requires a not-insignificant amount of time to process does not mean that it is unduly burdensome. *See Nat'l Ass'n of Criminal Def. Lawyers v. Chicago Police Dep't*, 399 Ill. App. 3d 1, 924 N.E.2d 564 (2010) (holding that "several weeks of full-time work by [CPD] personnel who need to possess a high level of knowledge and sophistication" to respond to a FOIA request was not sufficiently burdensome to outweigh the "vital importance" of the oversight of our criminal justice system). Rather, the test is whether the requesting party has sufficiently narrowed its request and whether the remaining burden on the agency nevertheless outweighs the public interest in the information. *See id. at* 15. Here, I have narrowed my request to only necessary records. Furthermore, of course, "Public records are presumed to be open and accessible under FOIA and the exemptions are to be read narrowly" under Illinois law. *Id.* at 11. However, if you believe this request may be unduly burdensome, please contact me to arrange the mandatory opportunity to confer regarding the request's proportions. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 10801, issued June 3, 2011, at 2.

Furthermore, should you choose to withhold all or part of the requested materials, please provide an index of such material, together with the specific justification for the denial of each item withheld. I would also ask that you supply the name and address of the official to whom I should address our appeal.

If you have any questions concerning this request, please call or email me using the contact information provided above. Thank you for your help in this matter.

Best regards,

Brandon Clark
Associate

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

Rahm Emanuel
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

October 31, 2016

Mr. Brandon Clark
Brandon.clark@pillsburylaw.com

RE: NOTICE OF RESPONSE TO FOIA REQUEST
FOIA FILE NO.: P053535

Dear Mr. Clark

This notice is in response to your request received by the Chicago Police Department on October 25, 2016 for records and information under the Freedom of Information Act (FOIA), 5 ILCS 140 *et seq.*, for the following:

"Complaint Registered Related to Specific Chicago Officers."

In order to determine the extent of responsive information, inquiry must be made within this office and relevant files must be searched. Your request may require the collection of a substantial number of specified records. Therefore, it is necessary to extend the time for response as permitted by 5 ILCS 140/3(e). A response will be mailed to you on or before November 8, 2016.

Sincerely,

Sarah Bown
Freedom of Information Act Officer
Chicago Police Department
Office of Legal Affairs, Unit 114
3510 S. Michigan Ave.
Chicago, IL 60653

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

Rahm Emanuel
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

November 14, 2016

VIA Email:
Mr. Brandon Clark
Bandon.clark@pillsburylaw.com

RE: NOTICE OF RESPONSE TO FOIA REQUEST
REQUEST DATE: October 26, 2016
FOIA FILE NO.: P053535

Dear Mr. Clark:

The Chicago Police Department (CPD) received your Freedom of Information Act ("FOIA") request for the following:

> *"I am requesting information related to any Complaint Registers (also known as "CRs") filed in relation to any of the below listed Chicago Police Officers. In addition to the Complaint Registers themselves, I am also requesting: (1) the officer's names (as appropriate), (2) the officer's star number (as appropriate), (3) the officer's date of appointment, (4) the complaint category, (5) the CR number, (6) the incident date, (7) the date the complaint was closed, (8) the final finding of the CR investigation, and (9) any disciplinary actions taken. As detailed in the recent Circuit Court of Cook County decision Fraternal Order of Police, Chicago Lodge No. 7, et al v. City of Chicago, et al, 2016 IL App (1st) 143884, appeal denied, --- N.E. 3d ---, Sept. 28, 2016 (Ill.), this information is all subject to disclosure under the Freedom of Information Act."*
>
> *Followed by a list of 44 Officer names and/or star numbers, some with complete names, some with incomplete names, others unidentified.*

And extension letter was mailed to you on October 31, 2016. You also kindly agreed to a further extension of November 14, 2016, to allow notification to the CPD Fraternal Order of Police of this CR information release.

Your request has been reviewed by the undersigned as well as the CPD Human Resources Department (HR) and the Bureau of Internal Affairs (BIA). ILCS 140/7(1)(a).

Regarding items 1-3 in your request (Officers' names, Officers' star numbers, and Officers' date of appointment), CPD has provided an attached list of 51 names with the corresponding requested information as a responsive record.

Regarding items 4-9 in your request (complaint category, CR number, incident date, date complaint was

closed, final finding of CR investigation, and disciplinary actions taken), CPD has provided the Employee Career Complaint History for the 51 officers listed as the responsive record to your request. This History lists the complaint category, the CR numbers, the incident date, the date the complaint was closed and the final finding of the investigation. The lists for CRs complaints from January 1, 2000 – November 1, 2016 also include the final penalty. A number of 600 means no disciplinary action was taken.

The FOIA provides in 5 ILCS 140/3(g) that requests for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body, there is no way to narrow the request and the burden on the public body outweighs the public interest in the information.

Please note that the number of CRs involved with this request totals 356. All records corresponding to an entire CR log number file consist of, on average, 20 to 500 or more pages. The FOIA indicates the review and redaction of CR files must be performed by individuals with the knowledge, experience, and familiarity with these types of police files:

> [R]equested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 of the Freedom of Information Act or should be revealed only with appropriate deletions." 5 ILCS 140/3(e)(v).

Once the records are released from the BIA office to the FOIA office, they would need to be reviewed in their entirety and redacted for (at a minimum) the following:

(1) Private information, such as home addresses, dates of birth, employee numbers, and social security numbers, which are exempt under 5 ILCS 140/7(1)(b);

(2) Identifying information concerning victims and witnesses, which are exempt under 5 ILCS 140/7(1)(d)(iv).

(3) Information the release of which would be an invasion of privacy which is exempt under 5 ILCS 140/7(1)(c);

(4) Predecisional material like "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions" since these investigation files contain drafts, notes and recommendations relating to the course of the investigation. 5 ILCS 140/7(1)(f).

(5) Files subject to a protective order, which are exempt under 5 ILCS 140/7(1)(a). To make this redaction/deletion, an attorney handling the related litigation would need to be contacted and the litigation files would need to be gathered and reviewed to determine if a protective order was issued by a Court in an underlying lawsuit prohibiting the release of such information. As a protective order is an order issued in accordance with federal or state law, 5 ILCS 140/7(1)(a) exempts records covered by such an order.

The CPD has reviewed and redacted these types of files in the past, and estimates it takes a minimum of 1 hour to properly redact 20 pages of these documents. The total number of pages of information to be reviewed and redacted corresponding to 356 CR log history records could amount to approximately 7120 pages minimum. Reviewing and redacting 7120 pages would entail over 350 hours of this office's manpower. Therefore, providing more than the CR History under your request's current parameters,

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would be onerous and unduly burdensome on the daily operations of CPD.

Therefore, if you seek more extensive log records, it is necessary that your FOIA request be sufficiently narrowed before a response can be provided. A CR file, for example, may contain numerous documents including a summary report, a digest and police reports. If you would like assistance in narrowing your request, please contact me and I will be happy to assist you. In assisting previous requestors, it has been determined that when a request for CR files is narrowed to only the face sheet, the request may possibly become more manageable. Also, limiting the list of individuals to be searched can help to narrow the request.

If you agree to narrow your request, you must submit a revised written request to my attention. CPD will take no further action or send you any further correspondence unless and until your current request is narrowed in writing. If we do not receive your narrowed request within fourteen (14) calendar days of the date of this letter, your current request will be denied.

In the event that we do not receive a narrowed request and your FOIA request is therefore denied, you have a right of review by the Illinois Attorney General's Public Access Counselor, who can be contacted at 500 S. Second St., Springfield, IL 62706 or by telephone at (217)558-0486. You may also seek judicial review of a denial under 5 ILCS 140/11 of FOIA

Sincerely,

Sally (Sarah) Bown
FOIA Officer
Chicago Police Department
Office of Legal Affairs, Unit 114
3510 S. Michigan Ave.
Chicago, IL 60653
312-745-5308

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

pillsbury

Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006 | tel 202.663.8000 | fax 202.663.8007

Brandon Clark
tel: 202.663.8128
brandon.clark@pillsburylaw.com

November 21, 2016

Via Email to Sarah.Bown@chicagopolice.org

Chicago Police Department
Attn: Freedom of Information Officer
Records Inquiry Section, Unit 163
3510 S. Michigan Ave
Chicago, IL 60653

Re: **FOIA Request for Complaint Registers Related to Specific Chicago Police Officers**

Dear Officer Bown:

Reference is made to your letters to me dated October 31 and November 14, 2016, both of which responded to my FOIA request dated October 25, 2016. Reference is also made to our telephone conversation on November 7, 2016, which was also related to my FOIA request.

In our communications we have discussed ways for your office to provide me the information I have requested, while avoiding the effort of reviewing and redacting all the hundreds of CRs that relate to my FOIA request. While I do not agree that it would unduly burdensome for your office to review, redact, and provide me all of the CRs that relate to my request,[1] as we have discussed before, I am willing to work with you to ease some of the burden on your office, while reserving my right to seek additional information if what is provided is insufficient for my purposes. Below, I have suggested a narrowing of my request that I hope will be acceptable to you. First, however, I address the information that you have already provided enclosed with your November 14, 2016 letter.

My previous request sought information related to 44 CPD officers, including their star numbers, dates of appointment, and the CRs filed against them. Certain of the officers about whom I requested information were fully identified, while others

[1] *See Nat'l Ass'n of Criminal Def. Lawyers v. Chicago Police Dep't*, 399 Ill. App. 3d 1, 924 N.E.2d 564 (2010) (holding that "several weeks of full-time work by [CPD] personnel who need to possess a high level of knowledge and sophistication" to respond to a FOIA request was not sufficiently burdensome to outweigh the "vital importance" of the oversight of our criminal justice system).

among my list were missing certain identifying information (e.g., part or all of their name, their star number). Because of missing identifying information, you provided me a list of 51 officers about whom you thought I was seeking information. After reviewing this list, I have excluded certain officers altogether and removed duplicate officers, so that the list of officers about whom I am now requesting information has been narrowed to 40 officers.

You also provided me with a list of CRs filed against many of the officers I requested in two lists, one for CRs before 2000, and the other for CRs since and including 2000. The lists were both over and under-inclusive, as some of the officers I requested information about were not included in either list, and other officers who I had not requested information about were among those included.

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I've assembled a table below that identifies the 40 officers I am requesting information about. The table also indicates if they were among either of the lists of CRs you provided previously. Finally, the table indicates for each officer whether I require the entire CR files related to that officer, or whether I will accept (at this time, at least) just the "face sheets" of CRs related to the officer. (Note, I have reordered my list to maintain alphabetical order now that all of the officers' names have been identified; therefore, the numbers associated with the officers listed below differ from the numbering of prior correspondence.)

	Officer Name	Star No.	Among Pre-2000 List	Among 2000-Present List	Requesting "Face Sheet" Only	Requesting Complete CRs
1	Bartik, Robert	4985/3078/907				X
2	Cap, Walter	12487			X	
3	Castellanos (Rolston), Judy	21195	X	X	X	
4	Cervenka Jr., Richard	1354			X	
5	Clisham Jr., John	20600	X			X
6	Davoren, James	19446	X	X	X	
7	Dunn, William	416	X	X	X	
8	Foley, Patrick	20143	X		X	
9	Forberg, Brian	21249	X	X		X
10	Foster, John	20288	X	X		X
11	Girardi, Robert	20479	X	X	X	
12	Gorman, Daniel	20275			X	

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	Officer Name	Star No.	Among Pre-2000 List	Among 2000-Present List	Requesting "Face Sheet" Only	Requesting Complete CRs
13	Halloran, John	20453	X	X	X	
14	Harnedy, William	12611	X	X	X	
15	Howley, Kevin	17478/20716				X
16	Hoy, Larry	2607			X	
17	Kaup Jr., Edwin	20504/771			X	
18	Kazmierczak, James	13464	X		X	
19	Kerlin, Matthew	17797	X	X	X	
20	Kowalski, David	21004			X	
21	Kurtovich, Steven	17945			X	
22	Malinkowski, Michael	2088			X	
23	McGlynn, Andrew	9814	X	X	X	
24	McGovern, Edward	17323			X	
25	McKendry, Brian	10599			X	
26	Mendez, Jose	509			X	
27	O'Brien, James	20466			X	
28	O'Donnell, Daniel	1927	X	X	X	
29	Olsen, Eric	19456[2]			X	
30	Riley, James	20250			X	
31	Rolston, Leonard	20101		X	X	
32	Shader, James	9609	X	X	X	
33	Spellman, John	19002			X	
34	Struck, Joseph	20857	X	X	X	
35	Tencza, James[3]	9203			X	

[2] Information provided enclosed with your November 14, 2016 suggested that Officer Olsen may have more than one Star number associated with him, but a second Star number was not provided. (See the "/" following Officer Olsen's Star number in the file P053535_HR List.pdf on line 33.)

	Officer Name	Star No.	Among Pre-2000 List	Among 2000-Present List	Requesting "Face Sheet" Only	Requesting Complete CRs
36	Tierney, Brian	20295			X	
37	Torres, Jose	4477			X	
38	Tovar, Robert	12847	X		X	
39	Trotman, Robert	15946			X	
40	Ziegenhorn, Maureen	365	X		X	

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I ask that you respond electronically, as provided for in Section 6(a) of the FOIA Act.

As provided by the Act, I would appreciate it if you would respond to this request within five working days; however, in light of the upcoming Thanksgiving holiday, I am prepared to grant you an extension until Friday, December 2, 2016, if you so require. In that event, I would ask that you immediately notify the officers identified above and their union of my request, as you've previously indicated to me is department policy, so that any production of information you are prepared to make on December 2, 2016 can be made without further delay.

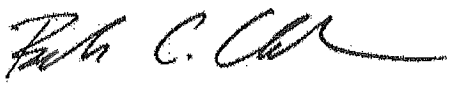
Should you choose to withhold all or part of the requested materials, please provide an index of such material, together with the specific justification for the denial of each item withheld. I would also ask that you supply the name and address of the official to whom I should address our appeal.

I hope this narrowing of my request will enable you to provide all the above requested information without further negotiations about the scope of information requested. However, if you would like to discuss ways by which you could fulfill my request in phases, if that would be of any help to you, or other means of easing the burden on your office, I am available to discuss these possibilities at your convenience.

[3] My October 25, 2016 letter requested information about Officer James Tencza, which you provided in the file P053535_HR List.pdf enclosed with your November 14, 2016 response; however, both the CR lists contained in the file P053535_Employee Complaint Histories.pdf include CRs related to David Tencza, not James Tencza.

If you have any questions concerning this request, please call or email me using the contact information provided above. Thank you for your help in this matter.

Best regards,



Brandon Clark
Associate

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

From: Bown, Sarah H. [mailto:Sarah.Bown@chicagopolice.org]
Sent: Tuesday, November 29, 2016 11:11 AM
To: Clark, Brandon
Subject: RE: CPD FOIA request

Mr. Clark,

I apologize but I am called out of the office for the rest of the day.

Here is the basic scoop that I'd like to talk with you about:

BIA (our Internal Affaird Department) who provides the CR Log files, informed me that, with the new list you submitted, there are 643 log numbers. Each Face sheet is 1-2 pages, so this would entail approximately 643-1286 pages of records.

This does not include the 5 officers for who you would like the full CR files.

This can be declared as burdensome due to the volume of records and the man-hours it would take to process them.

If I sent you the Complaint Histories that BIA has generated (which is in and of itself 71 pages) would you be willing to work with me to narrow your request?

Perhaps there is a particular penalty category you are interested in or a particular disciplinary outcome?

I very much want to work with you on this and provide you with what you are seeking. This is what I'd like to talk with you about.

Kindly,

Sally (Sarah) Bown
FOIA Officer
Chicago Police Department
Office of Legal Affairs, Unit 114
3510 S. Michigan Ave.
Chicago, IL 60653
312-745-5308

Exhibit E

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

From: Clark, Brandon
To: "Bown, Sarah H."
Bcc: Dulani, Jeetander T.
Subject: RE: CPD FOIA request
Date: Tuesday, November 29, 2016 5:14:53 PM
Attachments: Image001.png
Image002.png
Image003.png

Officer Bown ~

Thank you for letting me know you got called away for the rest of the day. I'm sorry we've had such trouble connecting over the phone to discuss my request, but your email provides enough information that I feel I can respond to your concerns and keep this process moving forward nevertheless.

I'm afraid I disagree that providing face sheets for CRs related to 35 officers is unduly burdensome. According to your estimates, the face sheets would amount to no more than 1286 pages, and at 20 pages per hour (from your November 14, 2016 letter) that corresponds to approximately 64 hours of work to redact them. Courts have declined to find much greater burdens to be unduly burdensome. For example, in *National Association of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1 (Ill. App. 1st Dist. 2010), the court ruled that "several weeks of full-time work by [CPD] personnel who need to possess a high level of knowledge and sophistication" was not unduly burdensome.

I also suspect that 64 hours will end up being a conservative estimate, since the actual number of pages is likely less than 1286, and (I presume) face sheets are more standardized and repetitive than other pages of CRs, so they should be able to be redacted at a greater rate than 20 pages per hour.

In any event, I would ask that you proceed with redacting and producing the face sheets related to the 35 officers. However, if it would be of any help to you, I am willing to discuss ways of phasing your response over some reasonable period of time in order to reduce the immediate burden on your office.

In relation to the five officers whose CRs I have requested in their entirety, I suggest that we might be able to further narrow my request if you begin by providing the complaint histories and face sheets for those CRs, which I will then review to see if I can further narrow this portion of my request.

I remain very appreciative of your efforts in relation to my request and believe we are nearing a resolution that will be satisfactory for both of us, but I feel that I cannot narrow my request in relation to the 35 officers any further and still get the critical information I require. Please let me know if what I've proposed is acceptable to you and, if so, we can then work out a schedule for your response that accommodates both our needs.

I also remain happy to discuss my request and your response over the phone at your convenience, if you feel that would be helpful.

Best,

Exhibit F

Brandon

Brandon C. Clark | Associate
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t 202.663.8128 | f 202.559.0844
brandon.clark@pillsburylaw.com | website bio
Washington

Gravel 2 Gavel

*Not admitted to practice law in the District of Columbia. Supervised by members of the District of Columbia Bar.

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

From: Bown, Sarah H.
To: Clark, Brandon
Cc: Woods, Kimberly D.
Subject: RE: CPD FOIA request
Date: Thursday, December 01, 2016 2:54:11 PM
Attachments: Image001.png
Image002.png
Image003.png

Dear Mr. Clark,

Thank you for taking your time to talk this afternoon regarding your FOIA request.

To confirm the outcome of the conversation, the Employee Complaint History generated from your second list of officers, 40 in total, which you submitted to us on November 21, 2016, will be emailed to you as a reference source.

Also, per your request, the full CR logs for Officer Kevin Howley will be ordered immediately and submitted to you after proper redactions and review.

After submittal of these CR logs to you, this FOIA request will be deemed officially closed.

Again, thank you for your time. Please feel free to contact me at any time should you have any questions.

With kind regards,

Sally (Sarah) Bown
FOIA Officer
Chicago Police Department
Office of Legal Affairs, Unit 114
3510 S. Michigan Ave.
Chicago, IL 60653
312-745-5308

Exhibit G

ATTACHMENT 3

Identify and describe all property or possible evidence recovered at the end of the Narrative in column form. Show exactly where found, when found, who found it and it's description (include Property Inventory numbers). If property taken was scribed for Operation Identification, indicate I.D. number at the end of Narrative. Offender's approximate description, if possible, should include name if known, nickname, sex, race code, age, height, weight, color eyes and hair, complexion, scars, marks, etc. If suspect is arrested, give name, sex, race code, age, C.B. or I.R. number, if known, and state "In Custody." All descriptions and statements in this entire report are approximations or summarizations unless indicated otherwise.

AREA 1 SUPPLEMENTARY REPORT

CHICAGO POLICE-FOR USE BY B.I.S. PERSONNEL ONLY

D-653519

Offense Classification / Last Report	IUCR Code	Offense Reclassification / DNA	Revised IUCR
Battery Agg. /Handgun	041A	DNA	

Address of Occurrence	Type of Location	Location Code	Date of Occurrence	Time of Occurrence	Beat of Occ	Beat Assigned
5600 S. Wood	Street	304	19 Oct 99	1240	715	5126

Victims	Victim's Name	Relation	Method Code	Method Assigned	Unit	Safe Method	If Residence / Where Occupants
2	Barker, Perry	24	400	FIELD	610	DNA	DNA

Offenders	Offender's Name	Relation	Num Arrested	Arrest Unit	Adults	Juveniles	Fire Related	Gang Related
2	(McIntosh , Norman)	24	0		0	0	No	No

Update Information *See Narrative For Updated Information 20226

Victim Verified [ ]	Offender Verified [ ]	Property Verified [ ]	Circumstances Verified [ ]
Victim Update [ ]	Offender Updated [X]	Property Updated [ ]	Circumstances Updated [ ]

STATUS								HOW CLEARED				
0 - Prog	1 - Sus	2 - Unf	3 - C/C	4 - C/O	5 - C/C/X	6 - C/O/X	7 - C/N/C	1- Arrest	2- Juv-Ct	3- Ref Pros	4- Comm Adj	5- Other Ex
[ ]	[X]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

THIS IS AN AREA 1 FIELD INVESTIGATION 1-SUSPENDED REPORT

DATE & TIME ASSIGNED: 19 Oct 99 @ 1315 Hrs.

VICTIM: Barker, Perry M/1/19 DOB 15 Oct 80
5313 S. Justine 2nd Floor
Ph. 1-773-471-5035
IR#1237921

ADDITIONAL VICTIMS: Smith, Marcus M/1/16 DOB 27 Dec 82
5534 S. Wood
SS# 343-72-7056
Ph. 1-773-778-6961
IR#1276030
Charmaine Smith - Mother

WANTED: #1 McIntosh, Norman M/1/21 DOB 19 Oct 78
706 E. 105th Place
SS#348-68-9556
IR# 1156035

#2 Unk M\1\ 15-20 5'6" - 5'9" Red Jacket, "New York", Blue Jeans, Braids, Med. Complexion

90.EXTRA COPIES REQ'D	91.DATE SUBMITTED	TIME	92.SUPERVISOR APPRV-STAR
	08 Nov 99	1001	Brannkad 9
93.REPORTING OFFICER--PRINT: T. Nolan — STAR: 20171	94.REPORTING OFFICER: D. McNally	STAR: 21135	SIGNATURE: [signature]
SIGNATURE: T. Nolan	SIGNATURE: D. McNally		DATE APPROVED: 10 Nov 99 — TIME: 1515

A/64

D-653519

PDFILE009206

A216

TO BE INTERVIEWED: GEE, Antoine M\1\17 IR# 1280464

EVIDENCE: Inv# 2214221 (1) Plastic vial containing bullet fragments

Inv# 2246638 (1) White long sleeve shirt w/ blood stains recovered from Marcus Smith

Inv# 2246695 (16) Computer generated photos from ICAM

INTERVIEWED: Smith, Marcus
Victim
Smith, Charmaine F/1/42 DOB 20 Jan 57
5534 S. Wood
Ph. 1-773-778-6961
Mother of Marcus Smith

THIS REPORT IS TO BE READ IN CONJUNCTION WITH ALL OTHER PREVIOUSLY SUBMITTED REPORTS.

INVESTIGATION: On 24 Oct 99 R/D spoke with Charmaine Smith, mother of Marcus Smith. Ms. Smith related the following in essence and not verbatim:

CHARMAINE SMITH..... stated that she had received her son's bloodstained shirt from Holy Cross Hospital on the 19 Oct 1999. Ms. Smith stated that she had not removed the shirt from the bag that the Hospital had placed it in. R/D recovered the bag from Ms. Smith and inventoried it under Inv# 2246638.

Additionally, BT. 9611 Evidence Technician W. Stec #3294 recovered (1) plastic vial containing bullet fragments from Holy Cross Hospital on 21 Oct 99. These fragments were recovered from Marcus Smith during surgery at Holy Cross Hospital. Marcus Smith was shown a computer generated photo array on 24 Oct 99 and identified Norman McIntosh as the person who shot him on 19 Oct 99.

On 29 Oct 99 Perry Barker viewed a computer generated photo array in Area 1 Violent Crimes. Perry Barker tentatively identified ANTOINE GEE IR# 1280464 Additionally, Perry Barker tentatively identified VERNON CLAY IR# 1180330. Barker noted that Gee/Clay had similar appearance and physical characteristics of the wanted offenders in this case, but would have to see them in person.

PREPARER-SIGN OR INITIAL P.B.N. APPROVAL-SIGN OR INITIAL ARS PDFILE009207

A court computer check revealed that the subject VERNON CLAY, had been in custody at the Cook County Jail on the date and time of occurrence .

R/D request this case be SUSPENDED pending the arrest of Norman McIntosh.

Det. T. Nolan #20171
Det. D. McNally #21135

PREPARER-SIGN OR INITIAL	APPROVAL-SIGN OR INITIAL
T. N. M.	ATR3

PDFILE009208

ATTACHMENT 4

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

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Respondent, v. KEVIN JACKSON, Defendant-Petitioner.	No. 01-CR-17492 The Honorable Evelyn B. Clay, Presiding Judge.

AFFIDAVIT OF QUINA DAVIS

I, Quina Davis, being duly sworn, do hereby depose and say:

1. I am over the age of 18 and am a resident of the State of Illinois and the City of Chicago. I have personal knowledge of the facts herein and, if called as a witness, could testify competently thereto.

2. I witnessed the shooting at the CITGO gas station on the corner of Garfield Boulevard and Damen Avenue on May 6, 2001, and I was involved in the police investigation that followed.

3. I did not testify before the grand jury and I was not called to testify at trial.

4. I was recently contacted by attorneys representing Mr. Kevin Jackson who asked me to speak with them about what I saw that night and I agreed. They met with me twice—first at the Einstein's Bagels where I work after my shift ended, and then at the hotel where I work while I was on break. They spoke with me for more than an hour in total. They explained to me that the most important thing about this statement is that it must be the absolute truth. The following is my memory of that night and of the police investigation that followed.

5. On the night of the shooting, I was celebrating my friend Coco's birthday with several girlfriends, including Brandi Grant and Shemika Mason.

6. We were all at my house when Manuel ("Manny") Stewart and Mario Brown pulled up. I do not remember why they showed up, but when they did, Brandi and I got in the car with them and asked them to take us to the CITGO.

7. I do not remember why Shemika chose to stay behind, but I remember she stayed at my house while Manny and Mario took Brandi and me to the CITGO.

8. When we got to the CITGO, Manny pulled up right in front of the door to the convenience store and Brandi and I started to get out of the car.

9. As I was getting out, I saw a man I knew as "Meechie" (Stanley Watson) coming out of the store.

10. I knew that Meechie was a Gangsters' Disciple and that the CITGO was in Vice Lord territory, so I knew it was dangerous for him to be there, because he might be targeted by Vice Lords for being in their territory. So, when I saw him, I immediately got back in the car, but Brandi was already out of the car and in the store.

11. Just as I got back into the car and closed the door, the shooting started and for some reason I jumped back out of the car and started running. I do not know why I did that, except that I was scared and panicked. When I got out of the car, I ran south across Garfield Boulevard.

12. While I was running away, I saw that Manny and Mario drove away right after the shooting started.

13. I also saw the shooter. As I was getting out of the car, he ran right by me. He was dark-skinned.

14. I recognized the shooter as someone from the neighborhood and it was certainly not Kevin Jackson.

15. Kevin was not at the CITGO at all that night. I grew up with Kevin Jackson and knew him well enough that I would have recognized him if he was the shooter, or was even at the CITGO.

16. I kept running until I realized that Brandi was still at the CITGO, at which point I turned around and went back.

17. When I got back to the CITGO Brandi came outside and we approached the car of the man who had been shot. I realized that he was not moving and I felt to see if he was breathing or had a pulse. When we realized he was dead, we went across Damen Avenue to the Marathon gas station to call the police. I also called my house and spoke to Shemika and told her that someone had just been shot at the CITGO.

18. As soon as we called the police, Brandi and I left the area and started walking to my home. We had reported the shooting and felt we had done all that was required of us. We did not want to be involved any further.

19. Just as we were arriving back at my house, the police rolled up on us. They took Brandi and me to the police station at 51st Street and Wentworth Avenue for questioning. We were put in separate interrogation rooms and we gave separate statements. Afterwards, the police dropped us back at my house and we stayed there together that night along with Shemika Mason.

20. Less than a week later, I was laying on the couch at my home, and Detective Foster came to my door. This was my first interaction with Detective Foster. He was there with

another officer whose name I do not know. The officers wanted to talk to me and put me in their squad car to talk.

21. They asked me about Stanley "Meechie" Watson and about the events on the night of the shooting in general. I spoke with them for a while and then they left.

22. Around a week later, the police came to my house to talk with me again. I had just gotten out of a bath and the police had to wait for me to get dressed. They said they just needed to ask me some questions about my statement and they wouldn't need me for long.

23. They took me to the police station at 51st Street and Wentworth Avenue again and kept me there for three days.

24. It was during this three-day interrogation that the police first mentioned Kevin Jackson. They insisted that he was the shooter. They also insisted that I was in a relationship with Kevin, that I had been flirting with Meechie at the CITGO, and that this made Kevin jealous and that was his motivation for the shooting. The police did not ask me questions about any of this—they just kept insisting that was the way it happened and pressured me to confirm their theory, no matter how many times I told them they were wrong.

25. This all happened on the first day they had me in custody. It made me very upset and I was crying and insisting that they were wrong. I even offered to take a lie-detector test, because I knew I was telling the truth. Since it was already late in the day when I offered this, they were not able to give me the test until the next day.

26. On the second day the police had me in custody, Detective Foster and his partner drove me to someplace on the West Side to take the lie-detector test. I don't remember if the detectives went into the room with me when I took the test, but I remember it was not Detective Foster or the other detective who gave me the test, but someone else.

27. I told the truth that Kevin Jackson had nothing to do with the shooting, but when it was over Detective Foster told me that I had lied and that I had failed the test.

28. On the drive back from the West Side to the 51st Street and Wentworth Avenue police station, Detective Foster and the other detective yelled at me, cursed at me, called me a liar, and made me feel threatened and scared.

29. When we got back to the police station, I was put into a holding cell that was next to Vernon Clay, who I knew from the neighborhood.

30. Vernon and I were able to talk through a hole or a vent in the wall between the cells. Vernon told me that the police thought he had something to do with the shooting. I never knew for sure, but because of this I thought that Vernon might have been the person who mentioned Kevin to the police. Vernon and Kevin knew each other from the neighborhood too.

31. I think it was a few hours after I was put in the cell, Detective Foster and the other detective came back for me and questioned me again. The questioning was like it had been before—they just wanted me to confirm their story about Kevin and I refused, because it was not true. After that they left me alone for a while.

32. On the third day I was in custody, I was questioned again, but this time it was not by Detective Foster and the other detective whose name I do not know. This time I spoke with the same detective I spoke with on the night of the shooting. I do not remember his name, but I remember he was an older man.

33. I was finally released sometime in the evening on the third day after the police first took me into custody.

34. The day I was released, Brandi came down to the station looking for me, and I think that might be why I was released.

35. I think the day I was released was the same day that Vernon went to the grand jury.

36. When they released me, the older officer who had questioned me on the night of the shooting and on my third day in custody drove me home.

37. Throughout my three days in custody, the police threatened me in several ways. They told me they would charge me as an accessory to murder, they told me that they would not let me go home again, and they told me my daughter could be taken away and that I would never see her again. I knew they did not have anything on me, because I had done nothing wrong. But it was still scary to have them threaten me like this and it upset me a lot.

38. After they let me go, the police continued to harass me. They came by my house at all hours of the day and night looking for me. I do not know if they wanted to question me or were just coming by to harass me, but they came so often that my mom made me move out to try to get them to stop coming by. I had to move out of my home with my one-year old daughter and essentially go into hiding at my sister's house to avoid their harassment.

39. After about a month of this, I could not take any more being on the run, and I went back home. I hoped that after such a long time the police would have moved on. But shortly after I got home, the police showed up and my daughter and I had to hide in the attic. While I was hiding there, I heard the officers who had come to my house looking for me cursing at my mother and demanding to know where I was.

40. While I was hiding in the attic I could see the alley behind my house. At some point while I was up there, I looked out and I saw the police stop Brandi and some other friends who were in the alley. I watched the police take Brandi into custody again. I think that it was

after she was picked up this time that Brandi signed a statement saying that Kevin was the shooter.

41. Around this time, someone suggested that I contact the police department's Office of Professional Standards ("OPS") and file a formal complaint about the way the police had treated me. Both my mom and I filed complaints.

42. After we filed our complaints, the police stopped harassing me, although I do not know whether that is because of the complaints or because others had already signed statements for the police.

43. In any event, this was the last I heard of Kevin's case for a while. The fact that I moved out of the neighborhood around this time may also have contributed to both the police leaving me alone and to me not hearing more about Kevin's case for such a long time.

44. Eventually, I was told that my testimony would not be needed during Kevin's trial. And, in fact, I did not testify at Kevin's trial, nor did I attend any of the court dates. After being told I was not needed at his trial, the next time I recall hearing anything about Kevin's case was when he was sentenced.

45. I refused to give a statement naming Kevin as the shooter because he was not the shooter. And unlike Brandi, Shemika and Vernon, who all had outstanding warrants against them during the timeframe of the investigation or had other serious things in their background, I did not have either a warrant against me or anything serious in my background, so the police were not able to threaten and intimidate me the way they did them.

46. 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, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that she he verily believes the same to be true.

Further Affiant sayeth not.

Dated this 31 day of March, 2017.

Affiant's Signature

Verification Upon Oath or Affirmation

State of Illinois, County of Cook.

Signed and sworn (or affirmed) to before me on 3/31/17 (date)

by Quina Davis (name of person making statement).

OFFICIAL SEAL
JOHN CONROY
NOTARY PUBLIC - STATE OF ILLINOIS
My Commission Expires Dec. 4, 2020

(Seal)

Signature of Notary Public

ATTACHMENT 5

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

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Respondent, v. KEVIN JACKSON, Defendant-Petitioner.	No. 01-CR-17492 The Honorable Evelyn B. Clay, Presiding Judge.

AFFIDAVIT OF MANUEL STEWART

I, Manuel Stewart, being duly sworn, do hereby depose and say:

1. I am over the age of 18 and am a resident of the State of Illinois and the City of Chicago. I have personal knowledge of the facts herein and, if called as a witness, could testify competently thereto.

2. Kevin Jackson is my cousin.

3. On the night of the shooting, I was with Mario Brown, Quina Davis, and Brandi Grant when we stopped at the CITGO gas station at the corner of Garfield Boulevard and Damen Avenue.

4. When we got there, I parked right in front of the store and Mario and I waited in the car. Quina and Brandi went inside. I saw a man I knew as "Meechie" in the store as well.

5. Shortly after we parked, the shooting started. I saw a dark black man, who I knew as Rick Party, shooting and I immediately hit the gas and drove away west on Garfield Boulevard. My car ran out of gas a short distance away, so I got my gas can out of my car, and walked back to the CITGO. I do not remember what Mario did at this point.

M. S

6. By the time I got there, the police were already there. I quickly filled up my gas can, paid, and left.

7. After getting gas, I drove to Quina's house, and saw the police were there, so I left and went home.

8. When I got home, I went to my room downstairs, which was next to my cousin Kevin's, and I noticed his door was closed. I think he had gone to bed earlier that night before I left.

9. A couple weeks later, the police picked up Mario and Kevin while they were sitting in Kevin's and my car. Then, a few weeks after that, police picked-up Kevin and me, and took us into custody for questioning.

10. When I was taken in by police they held me and did not even speak with me for about 24 hours.

11. When the police did start talking to me, it was the same officers who brought me in, and they said they had witnesses who named Kevin as the shooter.

12. They wanted me to tell them that Kevin was the shooter and that I saw him do it.

13. I do not remember how, but they knew my girlfriend was pregnant at the time and they told me I would never see my baby if I did not say Kevin did it.

14. I still told the police that I knew it was Rick Party who actually did the shooting, but they ignored me and said it was Kevin.

15. The police also showed me a signed statement that they said Kevin had made accusing me of being the shooter.

M. S

16. Eventually, I signed a statement the police wrote saying that I saw Kevin commit the shooting. I signed it, even though I knew it was not true, because I was scared of the threats the police made.

17. The same officers that questioned and threatened me took me to testify before a grand jury. I think they waited for me outside the grand jury while I testified.

18. After I testified the police told me I did a "good job" and then took me back to the police station and released me. I was held by the police for about 48 hours in all.

19. At Kevin's trial I told the truth when I testified that the statement I signed for the police was false and that I only signed it because the police threatened me.

20. I feel bad about signing the statement and about my testimony before the grand jury, because I know for certain that Kevin was not the shooter.

21. I only signed the statement and testified the way I did to the grand jury because the police threatened me and I was scared.

M.S

22. 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, 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.

Further Affiant sayeth not.

Dated this 4 day of 4, 2017.

Manuel Stewart
Affiant's Signature

Verification Upon Oath or Affirmation

State of Illinois, County of Cook.

Signed and sworn (or affirmed) to before me on April 4, 2017 (date) by MANUEL STEWART (name of person making statement).

OFFICIAL SEAL
JOHN CONROY
NOTARY PUBLIC - STATE OF ILLINOIS
My Commission Expires Dec. 4, 2020

(Seal)

John Conroy
Signature of Notary Public

ATTACHMENT 6

STATEMENT Pag 3 of 5

DATE: 5/7/03 TIME: 4:15 pm LOCATION: Internal Affairs Office

OFFICIALS: Mary L. Clements TITLE: Investigator

Sheila A. Lacy Investigator

I, Manuel Stewart, understand that the above-listed officials are members of the Cook County Public Defender's Office. I viewed their identification cards and received business cards from them. I wish to give the following statement of my own free will and as a result of NO promise of reward, threats, coercion or pressure from anyone.

SIGNATURE: Manuel Stewart DATE: May 7, 2003

States that he immediately drove off with his brother as the passenger. Manny states that his car ran out of gas on 55th and Hoyne. Manny states that he got his gas can and walked to the gas station. Manny states that his brother Mario went to his girlfriend's home. Manny states that he saw Qianna & Brandi ~~talking~~ run across the street then came back to talk to the police. Manuel Stewart MC Manuel Stewart Police and he did not approach. Manny states he paid $3 for gas and left. Manny states he later went to Qianna's home and saw the Detectives take her and Brandi.

(USE CONTINUATION SHEET IF NECESSARY)

SIGNED: Manuel Stewart DATE: 5/7/03

WITNESS: [signature]; Sheila A. Lacy #405 ;

A234

STATEMENT

Pg. 4 of 5

DATE: May 7, 2003 TIME: 4:15 pm LOCATION: Internal Affairs

OFFICIALS: Mary Clements TITLE: Investigator

Sheila A. Lacy #408 Investigator

I, Manuel Stewart, understand that the above-listed officials are members of the Cook County Public Defender's Office. I viewed their identification cards and received business cards from them. I wish to give the following statement of my own free will and as a result of NO promise of reward, threats, coercion or pressure from anyone.

SIGNATURE: Manuel Stewart DATE: 5-7-03

Manny states that the police picked his brother Mario and cousin Kevin up. MC ~~and that~~ M.S ~~ea~~ ~~month~~ ~~he~~ ~~lab~~ but released them. Manny states that a month later he was arrested with his cousin. Manny states that his girlfriend Veronica was pregnant with twins at that time. Manny states that he told the police it was Rick Party M.S MC who did the shooting. Manny states that he took a lie detector test. Manny states that the police told him he was lying and failed the test. Manny states that M.S MC the police told him he knew that Kevin

(USE CONTINUATION SHEET IF NECESSARY)

SIGNED: Manuel Stewart DATE: 5-7-03

WITNESS: [signature] Sheila #408 ;

A235

Pg. 5 of 5

STATEMENT CONTINUATION SHEET

PAGE 5 OF 5

STATEMENT OF Manuel Stewart

had done the shooting and if he didn't say so he would be charged. Manny states that he knows his cousin was not the shooter, that his cousin Kevin was at home. Manny states he was scared and that his girlfriend was pregnant and he didn't want to get locked up for something he didn't do. Manny states that he knows his cousins has been charged with something he did not do but at the time he was only concerned about himself and he's sorry for that.

The above statement is true. I gave this statement of my own free will. No one promised me anything in exchange for this statement. No one threatened me and no one forced me to make this statement.

Signed Manuel Stewart Date 5/7/03

Witness [signature] Date 5/7/03

Shaded #405 07May03

A236

ATTACHMENT 7

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

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Respondent, v. KEVIN JACKSON, Defendant-Petitioner.	)	No. 01-CR-17492 The Honorable Evelyn B. Clay, Presiding Judge.

AFFIDAVIT OF BRANDI GRANT

I, Brandi Grant, being duly sworn, do hereby depose and say:

1. I am over the age of 18 and am a resident of the State of Illinois and the City of Chicago. I have personal knowledge of the facts herein and, if called as a witness, could testify competently thereto.

2. I witnessed the shooting at the CITGO gas station on the corner of Garfield Boulevard and Damen Avenue on May 6, 2001, I was involved in the police investigation that followed, and I testified both before the grand jury and at trial.

3. I was recently contacted by attorneys representing Mr. Kevin Jackson who asked me to speak with them about what I saw that night and I agreed. They came to my home and explained to me that the most important thing about this statement is that it must be the absolute truth. The following is my memory of that night and of the police investigation that followed.

4. On the night of shooting I was out with my friends Quina Davis, Manuel ("Manny") Stewart, and Mario Brown. Manny and Mario are cousins.

5. We were in Manny's car and went to the CITGO. When we pulled up in front of the store, I got out of the car and went inside. As I was getting out of the car, I saw a guy I knew as "Meechie", whose name was Stanley Watson.

6. I knew Meechie to be a Gangster's Disciple, and because the CITGO station was in Vice Lord territory, I realized it was dangerous for Meechie to be there, because he might be targeted there by Vice Lords.

7. While I was inside the CITGO, I looked out the window and saw a man running across Damen from the direction of a Marathon gas station across the street and I saw he had a gun in his hand.

8. I recognized this man from the neighborhood and it was not Kevin Jackson. The shooter's skin was darker than Kevin's, the shooter's hair was braided and Kevin's was not, and the shooter was skinnier than Kevin.

9. When I saw that he had a gun in his hand, I dropped to the floor of the CITGO and stayed there until after the shooting had stopped.

10. From where I was on the floor of the CITGO, I could see through the glass door of the store and I could see the shooter's shoes run by. From the direction he was going, it appeared to me that he was running to the North and then around the back of the CITGO in the direction of Seeley Avenue, where I knew Meechie lived. I assumed the shooter was chasing Meechie.

11. I did not go back outside the store until I heard Quina screaming, which seemed to me like it was several minutes later. When I went outside, she was near the man in the front seat of the car who had been shot. She thought he was dead, so we called the police. I do not

remember where we called the police from. But after we did, we started walking to Quina's house, because we did not want to be involved any further.

12. I don't remember what happened to Manny or Mario or their car after the shooting, but I am certain that Quina and I walked home from the CITGO.

13. The police found us at Quina's house and picked us up for questioning. They took us to the police station at 51st and Wentworth.

14. Sometime after that night, within a couple of weeks I think, I found out that the police were harassing Quina. They were coming to her house looking for her so often that she had to go into hiding.

15. Sometime later, the police picked me up again for more questioning. I was taken back to the police station at 51st and Wentworth and held for multiple days.

16. When I was taken in, I was a few months pregnant.

17. When I was taken in, the police did not ask me questions. Instead, they kept telling me that Kevin Jackson was the guy that did the shooting. They told me that they knew he had done it. And they showed me three signed statements from others saying he had done it. I do not know if the statements were real or not, but I know Kevin was not the shooter.

18. But the police kept holding me, telling me Kevin did it, and telling me that if I did not sign a statement too, that they would charge me as an accessory.

19. They told me that if I did not sign a statement, I would have my baby in jail and then they would take my baby away from me.

20. I held out for as long as I could, and I told the police they were wrong for as long as I could, but eventually I gave in. I signed a statement that the police had written for me.

21. After I signed their statement, the police escorted me to the grand jury. They told me that I had to tell the grand jury the same thing that my statement said or I would not be allowed to go.

22. While I was in the grand jury, the police who had escorted me there, waited outside for me.

23. After I testified, at the grand jury, the police let me go.

24. When I was called to testify at Kevin's trial, I told the truth. I told the jury that Kevin was not the shooter.

25. Kevin was not even out with us that night – he was not at the CITGO.

26. I saw the shooter clearly and I would have recognized Kevin—we grew up around one another and I knew him on sight.

27. I only signed the police's statement because they were threatening me, and I was scared, and they told me if I signed it I could go home. And those are the same reasons for why I testified the way I did before the grand jury.

28. I regret signing the statement and testifying at the grand jury, because I know Kevin was not the shooter.

29. 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, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that she verily believes the same to be true.

Further Affiant sayeth not.

Dated this 04 day of April, 2017.

Brandi Grant
Affiant's Signature

Verification Upon Oath or Affirmation

State of Illinois, County of Cook.

Signed and sworn (or affirmed) to before me on 4/2/17 (date)

by BRANDI GRANT (name of person making statement).

OFFICIAL SEAL
JOHN CONROY
NOTARY PUBLIC - STATE OF ILLINOIS
My Commission Expires Dec. 4, 2020

(Seal)

John Conroy
Signature of Notary Public

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

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff-Respondent,	)	
	)	No. 01-CR-17492
v.	)	
	)	The Honorable Evelyn B. Clay,
KEVIN JACKSON,	)	Presiding Judge.
	)	
Defendant-Petitioner.	)	

VERIFICATION

I, Brandon C. Clark, a member of the Illinois Bar, do hereby depose and say:

1. I am the Attorney for Petitioner in the above-captioned action;

2. I have consulted with Petitioner, and drafted and read the foregoing Omnibus Motion for Leave to File a Successive Petition for Relief under the Illinois Post-Conviction Hearing Act (725 ILCS 5/122-1), Petition for Relief under that Act, and Memorandum of Points and Authorities in Support of Both Motions ("Petition");

3. The factual contents of the Petition are true and correct to the best of my knowledge.

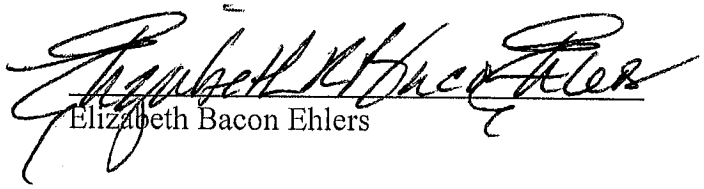
Dated this 8th day of May, 2017.

Brandon C. Clark (IL Bar No. 6317966)

CERTIFICATE OF SERVICE

I hereby certifiy that on this 25th day of May, 2017, a true and correct copy of the foregoing Omnibus Motion for Leave to File a Successive Petition for Relief Under the Illinois Post-Conviction Hearing Act (725 ILCS 5/122-1), Petition for Relief Under that Act, and Memorandum of Points and Authorities in Support of Both Motions was hand delivered to:

Cook County State's Attorney Office
Attn: Post-Conviction Unit (Room 11-C-50)
2650 S. California Avenue
Chicago, Illinois 60608.



Elizabeth Bacon Ehlers

APPENDIX 2

Certified Report of Disposition (11/1/05) CCCR 0002

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

PEOPLE OF THE STATE OF ILLINOIS

v.

Kevin Jackson

Case No. 01CR17492-01

CERTIFIED REPORT OF DISPOSITION

The following disposition was rendered before the Honorable Judge Evelyn B. Clay on June15, 2017. The Leave to File Successive Post-Conviction is Denied.

I hereby certify that the foregoing has been entered of record on the above captioned case.

Date: June 19, 2017

Dorothy Brown, Clerk of the Circuit Court

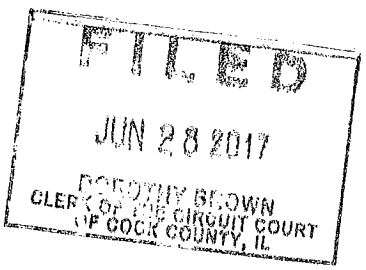
DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX 3

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

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Petitioner-Appellant.	)))))))))	Circuit Court No. 01-CR-17492 The Honorable Evelyn B. Clay, Presiding Judge.

NOTICE OF APPEAL



An appeal is taken from the order described below.

1. **Court to which appeal is taken:**

   First District Appellate Court

2. **Name and address of appellant:**

   Name: Kevin Jackson (IDOC No. K83188)

   Address: 2500 Rt. 99 South, Mount Sterling, IL 62353

   Email: n/a

3. **Name of appellant's attorney on appeal and address to which notices shall be sent:**

   Name: Brandon Clark (ARDC No. 6317966)

   Address: Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street NW,

   Washington, DC 20009

   Email: Brandon.Clark@Pillsburylaw.com

4. **Date of order:**

   June 15, 2017

5. **Offense of which convicted:**

   Murder and aggravated battery with a firearm

6. **Sentence:**

   45 years (murder) and 6 years (aggravated battery) to run concurrently

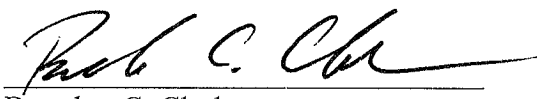
7. **If appeal is not from a conviction, nature of order appealed from:**

   Denial of leave to file a successive petition for relief under the Illinois Post-Conviction Act

8. **If the appeal is from a judgment of a circuit court holding unconstitutional a statute of the United States or of this state, a copy of the court's findings made in compliance with Rule 18 shall be appended to the notice of appeal:**

   Not applicable.

Date: June 26, 2017



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IL Attorney No. 6317966

Counsel for Kevin Jackson

APPENDIX 4

E-FILED
Transaction ID: 1-17-1773
File Date: 12/22/2017 4:39 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-17-1773

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Petitioner-Appellant.	)	Appeal from Cook County Circuit Court No. 01-CR-17492 Honorable Evelyn B. Clay, Presiding Post-Conviction Proceeding Appellant In Custody Date of Ruling Appealed June 15, 2017 Notice of Appeal Filed June 28, 2017

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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COUNSEL FOR PETITIONER-APPELLANT

ORAL ARGUMENT REQUESTED

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II. NATURE OF THE CASE

Petitioner Kevin Jackson brought this action seeking leave to file a second petition for relief under the Illinois Post-Conviction Hearing Act on the basis of both Actual Innocence and Cause-and-Prejudice. The circuit court ruled that Petitioner's motion for leave ("Motion") was insufficient and entered judgment, from which this appeal is taken, denying Petitioner leave to file a successive petition.

No issue is raised concerning the charging instrument; however, an issue is raised concerning the sufficiency of Petitioner's post-conviction pleadings.

III. ISSUES PRESENTED FOR REVIEW

Whether the circuit court committed reversible error when it denied Petitioner's Motion, after improperly resolving factual issues and ruling that Petitioner's supporting documents were insufficient to support his claims of Actual Innocence and Cause-and-Prejudice. These documents included:

(1) dozens of records maintained by the Chicago Police Department describing allegations of misconduct by key officers who investigated Petitioner, including the officers who testified against him at his trial;

(2) media reports detailing similar misconduct by these same officers;

(3) Chicago Police Department records describing allegations of witness coercion by these same officers in connection with the investigation of Petitioner;

(4) records of several civil lawsuits filed against these same officers seeking relief from similar misconduct;

(5) affidavits of witnesses accusing these same officers of coercing statements that incriminated Petitioner;

(6) trial transcript excerpts demonstrating that Petitioner's conviction was based on the perceived character of these same officers.

IV. STANDARD OF REVIEW

The standard of review for deciding whether a circuit court has committed reversible error in denying a motion for leave to file a successive petition for relief under the Illinois Post-Conviction Hearing Act is *de novo*. *People v. Jones*, 2016 IL App (1st) 123371, ¶¶ 69-76. The standard is *de novo* whether the motion for leave is based on a claim of Actual Innocence or of Cause-and-Prejudice. *Id.*

V. JURISDICTIONAL STATEMENT

Petitioner Kevin Jackson appeals the circuit court's denial of his motion for leave to file a successive petition for relief under the Illinois Post-Conviction Hearing Act. The judgment being appealed was entered on June 15, 2017, and notice of appeal was timely filed on June 28, 2017. (C521, C523.[1]) Jurisdiction therefore lies in this Court pursuant to Article VI, Section 6 of the Illinois Constitution and Supreme Court Rule 651(a).

VI. STATEMENT OF FACTS

A. Overview

Following a shooting in 2001 in Chicago's Back of the Yards neighborhood, which left one person dead and another injured, the Chicago Police Department launched an investigation led primarily by seven Area One detectives ("The Seven") who share a notable history of serious misconduct. (Suppl. R. C12-13.) Their investigation eventually led to the arrest and conviction of Petitioner. (Suppl. R. C9, 11.) The Seven (Detectives Brian Forberg, John Foster, John

[1] (C) and (Suppl. R.) refer to the common law record and the supplemental common law record of this appeal. (RP.) refers to the report of proceedings of this appeal.

Clisham, Edwin Kaup Jr., David Kowalski, Robert Bartik, and Kevin Howley) were primarily responsible for the direction and outcome of the investigation. (Suppl. R. C13.) Detectives Forberg and Foster were the lead detectives on the case and were responsible for its overall direction; Detectives Clisham, Kaup, and Kowalski were responsible for interviewing several witnesses; Detectives Bartik and Howley conducted polygraph examinations of multiple witnesses; and, Detectives Forberg, Clisham and Howley testified at Petitioner's trial. (Suppl. R. C13.)

Police records and the supporting documents submitted with Petitioner's Motion indicate that the investigation conducted by The Seven depended primarily on coercive interrogations and polygraph examinations to manufacture certain statements which served as the only evidence used to convict Petitioner. (Suppl. R. C24-29, 151-191, 220-243.)

At trial, the eyewitnesses identified and interrogated by The Seven consistently testified that Petitioner was not present at the crime scene, was not the shooter, and that they had been coerced individually to say otherwise. (Suppl. R. C34-38; *see also* RP. R397-451, 454-526, 528-555, 556-600, 606-610, 653-655.) The State responded by introducing prior inconsistent statements of the witnesses, which the witnesses testified were the result of coercion. (Suppl. R. C34-38; *see also* RP. R397-451, 454-526, 528-555, 556-600, 606-610, 653-655.) Three of The Seven and two Assistant State's Attorneys also testified in an attempt to rebut the eyewitnesses' testimony. (Suppl. R. C10, 38-39; *see also* RP. R655-58, 692-742, R745-70, 771-95, 795-837, 837-86.)

The prosecution offered neither forensic evidence connecting Petitioner to the shooting, nor forensic evidence placing petitioner at the scene of the crime. (Suppl. R. C9.) The prosecution also called Michael Watson, a surviving victim, to testify and asked if Petitioner was

the man who shot him; he unequivocally responded: **"I never seen that young man before."** (Suppl. R. C38; *see also* RP. R621-22.) When pressed further, he reiterated, "**[H]e don't look nothing like the guy … who shot me…."** (RP. R621-22.)

During deliberations, the jury asked the court what constitutes a hung jury. (RP. R1019.) The court then instructed the jury to continue its deliberations, and it eventually it convicted Petitioner of homicide and aggravated discharge of a firearm, and imposed a sentence of 45 years. (C39-42, 93; Suppl. R. C41-42; RP. R1026.)

At the time of Petitioner's trial, the defense did not possess any of the new evidence of police misconduct submitted with Petitioner's Motion. As such, the defense could not impeach the credibility of the police officers who testified. (Suppl. R. C11.) Indeed, much of the new evidence offered by Petitioner reflects precisely the same type of misconduct by the same officers–in short, overt witness and suspect coercion. (Suppl. R. C12-19, 58-75, 192-215.)

The claims Petitioner raised in his Motion challenge both the authenticity of the evidence gathered against him during the police investigation and the validity and sufficiency of the evidence presented against him at trial. The relevant facts of both the investigation and trial are presented below, followed by an account of the evidence presented by Petitioner's Motion.

B. Police Investigation

1. The Shooting

Michael Watson and Ernest Jenkins were shot at approximately 1:30 a.m. on the morning of May 6, 2001, while at a CITGO gasoline station and convenience store located on the northwest corner of Garfield Boulevard (55th Street) and Damen Avenue in Chicago's Back of the Yards neighborhood. (Suppl. R. C12.) Michael Watson survived, but Ernest Jenkins died later that morning at Cook County Hospital from multiple gunshot wounds. (Suppl. R. C12.) Police later discovered a third victim, Michael Watson's nephew, Stanley Watson, was present at

the time of the shooting, but was not injured in the shooting. (Suppl. R. C12.) He fled the scene before police arrived. (Suppl. R. C12.)

2. The Initial Investigation

After taking statements from individuals at the scene of the shooting, The Seven had no leads until they received anonymous information that a third victim, Stanley Watson, had also been present. (Suppl. R. C19-20.) Police interviewed Stanley Watson multiple times, but he never gave police a signed statement, or testified before the grand jury or at trial, or identified Petitioner as the shooter. (Suppl. R. C23, 26-27, 29.)

Before interviewing Stanley Watson,[2] police interviewed Michael Watson a second time. (Suppl. R. C20.) During this second interview, Michael Watson told police of a "box-style Chevy" with tan doors and primer in which he claimed to have seen his shooter—a month prior to the shooting, outside a liquor store. (Suppl. R. C20.) A little more than a week later, based on Michael Watson's description of this car, police took Petitioner and his cousin, Mario Brown, into custody for questioning after finding them in a car matching this description. (Suppl. R. C20-21.) Both men were released after this questioning.

Police then questioned Vernon Clay, who was a neighborhood "usual suspect."[3] (Suppl. R. C21, 216-19.) The police claimed that Vernon Clay had been at the scene of the shooting, but Mr. Clay testified otherwise and there was no other information to suggest that he was present at the scene. (Suppl. R. C21, 34-35; RP. R457.)

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[2] Stanley Watson was initially identified by only his street name, "Meechie." (Suppl. R. C222).

[3] Petitioner presented evidence that in addition to his involvement in Petitioner's case, Mr. Clay was suspected in the shooting death of Perry Barker in October 1999, until the investigating officers in that case realized he had already been in Cook County jail at the time of that shooting. (C488-90.)

Notably, the police's own handwritten notes[4] of their interview of Vernon Clay name several other individuals who were reportedly at the scene of the crime, but all of those names are absent from the later typed summary of the investigation (the "Case Supplemental Report"), except for the name "Norman." There is no indication in the police record that the detectives ever followed up on any of these possible witnesses or suspects, except (again) for "Norman". (Suppl. R. C21-23.) The police followed-up on the reference to "Norman" by including the photograph of Norman McIntosh, another neighborhood "usual suspect,"[5] in a photo array shown to Michael Watson. (Suppl. R. C22-23.) Mr. Watson was also shown photo arrays including Petitioner and his cousin, Mario Brown (Suppl. R. C20). Mr. Watson did not identify any of those individuals as the person who shot him. (Suppl. R. C20, 23.)

A little more than a week after the interrogation of Vernon Clay, police interviewed Stanley Watson, the third victim, at his home. (Suppl. R. C26-27.) Stanley Watson, like his uncle, Michael Watson, was shown photo arrays including Norman McIntosh, Petitioner, and his cousin, Mario Brown. (Suppl. R. C23, 29.) Stanley Watson also failed to identify any of those individuals as the person that shot him. In fact, during the interview, Stanley Watson described the physical appearance of the shooter as "thin," with "skinny braids," and "dark skin"—a description that is completely at odds with Petitioner's actual physical features and build.[6]

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[4] These were contained in the investigation's General Progress Reports, or "GPRs."

[5] Norman McIntosh seems to have also been a neighborhood "usual suspect" along with Vernon Clay. (Suppl. R. C21-22.) The police records Petitioner submitted indicate that Mr. McIntosh and Mr. Clary were both suspected of the Perry Barker shooting in October 1999. (Suppl. R. C216-19.) Moreover, Mr. McIntosh was later convicted of a third homicide, of which he was exonerated in 2016, and which led Petitioner to discover that Mssrs. Clay and McIntosh were frequently suspected of wrongdoing by Area One detectives. (Suppl. R. C21.)

[6] Notably, Mr. Watson's description comports with the description given at the scene of the shooting on the night it occurred by a Dr. Widdell and/or his girlfriend Sheila (or Lisa), whose statements were taken at the outset of the investigation, but who do not appear to have been interviewed again during the course of the investigation. (Suppl. R. C26-27.) Their description was that the shooter had a "dark complex[ion]," "short hair," and was "thin." (Suppl. R. C26-27.) The victim Michael Watson also gave a similar description at trial and specifically stated that Petitioner did not match that description (RP. R621-22), which still remains true today.

(Suppl. R. C26-27.) Stanley Watson was not contacted again by police, and he did not testify before the grand jury or at trial. (Suppl. R. C29.)

3. The Police Resort to Coercive Interrogations

The Seven brought Vernon Clay back in for further interrogation on June 11, 2001. (Suppl. R. C24, 26.) He was held for most of the next three days, including for all of his birthday. (Suppl. R. C24.) The Seven followed a similar coercive approach with Shemika Mason and Quina Davis. And while The Seven succeeded in coercing false statements from both Mr. Clay and Shemika Mason, their intimidation was insufficient to coerce a similar statement from Quina Davis, in part because she had no pending charges, was not pregnant, and was not vulnerable in other ways so as to provide the police with similar leverage over her. (Suppl. R. C25-26.)

After being detained, Mr. Clay was denied access to a phone or legal counsel for more than 33 hours (a day and a half) while he was questioned about the shooting. (Suppl. R. C24.) Police claimed that in his 32nd hour of detention, in the early morning hours of June 13, 2001, he finally gave a statement incriminating Petitioner. (Suppl. R. C24.) However, at trial Mr. Clay denied ever having made such a statement. (Suppl. R. C24.) Later, he was detained once again before being transported to the grand jury. (Suppl. R. C35; R480-87.) According to Mr. Clay, members of The Seven threatened him to ensure he testified falsely to the grand jury and then waited for him outside the grand jury room to ensure that he did so. (Suppl. R. C35; RP. R480-87.)

While they were interrogating Mr. Clay, members of The Seven also took Shemika Mason into custody. (Suppl. R. C26.) She was taken from the porch outside her home directly to Area One headquarters where she was pressured to name Petitioner as the shooter, but she refused. (Suppl. R. C26.) Only after she was threatened with an outstanding warrant for her

arrest did she relent and sign a statement incriminating Petitioner, which she did in the early morning hours of June 13, 2001. (Suppl. R. C26.) Having made her statement, she was allowed to go home—despite the outstanding warrant that had been used as leverage against her. (Suppl. R. C37; RP. R535, 554-555.)

During the same timeframe, police also detained Quina Davis and held her for all, or part of, three successive days during which she was interrogated and polygraph tested. (Suppl. R. C25, 220-28.) Police made clear that they wanted her to give a statement naming Petitioner as the shooter, but she never did. (Suppl. R. C25, 22-28.) According to Ms. Davis, she was able to continue telling the truth of Petitioner's innocence because, unlike the others coerced by The Seven, she had no outstanding warrants or other pending or potential charges with which to threaten her. (Suppl. R. C25, 227.) Members of The Seven nevertheless continued to harass her long after she was released from their custody, and in an attempt to end their harassment, Ms. Davis's mother took the extraordinary step of filing an official complaint with the police department detailing their abuses. (Suppl. R. C151-91, 226-27.) While it seems to have caused The Seven to leave Ms. Davis alone, their intimidating tactics and harassment nevertheless left her unwilling to be involved with the investigation any further. (Suppl. R. C226-27.) She never gave a signed statement to police, or to Petitioner's defense, and she was called to testify before the grand jury or at trial. (Suppl. R. C25, 227.)

At this point, Petitioner and his cousin, Mr. Stewart, were found and arrested. (Suppl. R. C27.)[7] Members of The Seven interrogated them both, threatened them both with being charged with the crime, and told them both that each had already been incriminated by the other. (Suppl.

[7] Police records also suggest that they were looking for Petitioner's cousin, Mario Brown, but simply gave up looking for him when they had difficulty finding him. (Suppl. R. C27.)

R. C27-29, 229-37.) Early in this process Petitioner invoked his right to counsel and from then on The Seven doubled down and focused their efforts on Mr. Stewart. (Suppl. R. C27.)

In addition to being told (falsely) that Petitioner had made a statement incriminating Mr. Stewart, he was also shown a forgery of such a statement. (Suppl. R. C27, 231.) Mr. Stewart was also told that if he were charged with the crime he would be convicted and would never see the twin babies his girlfriend was pregnant with at the time. (Suppl. R. C28-29, 231, 237.) He was also subjected to a polygraph examination, which he was told he failed. (Suppl. R. C27.) During his polygraph examination he told police of a "Rickie" who he identified as the shooter.[8] (Suppl. R. C27, 231, 236.) Eventually, convinced that Petitioner had accused him of the crime, that police did not believe him, and that he would never know his unborn children if he did not incriminate Petitioner as The Seven clearly wanted, Mr. Stewart succumbed to The Seven's coercion and gave a statement naming Petitioner as the shooter. (Suppl. R. C28, 232, 236-37.) He was then escorted to the grand jury by members of The Seven who stood by outside and ensured he repeated his false statements to the grand jury; after testifying, members of The Seven hold him he had done a "good job." (Suppl. R. C38, 232; RP. R585-87, 607-08.)

At around the same time The Seven were interrogating and coercing Petitioner and Mr. Stewart, they also detained and interrogated Brandi Grant, who was then three months pregnant. (Suppl. R. C29-30, 35-36, 238-43.) As they had done with Petitioner and Mr. Stewart, The Seven threatened to charge Ms. Grant with the shooting. (Suppl. R. C29, 36, 241.) They told her that if they did, she would have her baby behind bars and that the child would be taken away

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[8] Much later, after Petitioner's conviction, and during prior post-conviction proceedings, Rickie McShane was identified as a suspect in the shooting for which Petitioner was convicted. (*See e.g*, C169.) Rickie McShane matches the physical description given by Stanley Watson and the other witnesses who described a thin, dark-skinned shooter with short hair.

from her. (Suppl. R. C29, 26, 241.) And they showed her what they claimed were three signed statements from other witnesses naming Petitioner the shooter. (Suppl. R. C29, 36, 241.) Eventually, under immense pressure and desperately wanting to go home, she relented and gave a statement incriminating Petitioner. (Suppl. R. C29-30, 36, 241-42.) She was then held overnight before being escorted to the grand jury by members of The Seven. (Suppl. R. C30, 36, 242.) They told her that if she did not repeat her false statements to the grand jury, then she would not be released. (Suppl. R. C242.) And, as was successful with Mr. Stewart, they waited outside the grand jury for her. (Suppl. R. C30, 36, 242.)

At trial, Mr. Clay, Ms. Mason, Ms. Grant, and Mr. Stewart all testified that their statements were false and were the product of coercion by one or more of The Seven. (Suppl. R. C34-38.) Each testified that Petitioner was not the shooter, that Petitioner was not at the scene of the crime, and that their statements to the contrary were false and coerced. (Suppl. R. C34-38; *see also* RP. R397-451, 454-526, 528-600, 606-10, 653-55.) In contrast, their coerced statements to police and the grand jury were riddled with fundamental inconsistencies, including who was present when the shooting occurred, whether they had walked or driven to the CITGO, whether they had arrived at the CITGO together or individually, the motive for the shooting, and even the direction the shooter fled. (Suppl. R. C30-33.)

C. The Trial

At trial, the State submitted no physical or forensic evidence linking Petitioner to the crime, or even to the crime scene. (Suppl. R. C9.) Rather, the only probative evidence introduced by the State was testimony—much of which directly contradicted the State's case. (Suppl. R. C34-38; RP. R397-451, 454-526, 528-600, 606-10, 621-22, 653-55.)

The State called everyone who signed a statement naming Petitioner the shooter: Vernon Clay, Shemika Mason, Brandi Grant, and Manuel Stewart. (Suppl. R. C34-38.) On direct

examination, each witness repudiated his or her statement and testified instead that it was the product of coercion. (Suppl. R. C34-38.) And Manuel Stewart repeated the claim he made before he was coerced into a signing a false statement—namely, that a neighborhood gang member he knew as "Rick Party" was the real shooter. (RP. R562-64.) But in each instance, the State then read into evidence the witness' coerced statements to the police, or to the grand jury, or both, as prior inconsistent statements. (Suppl. R. C34-38; see *also* RP. R397-451, 454-526, 528-600, 606-10, 621-22, 653-55.)

The State also called one of the surviving victims, Michael Watson, who testified that he saw the shooter well enough to testify that he was in fact <u>*not*</u> Petitioner. (Suppl. R. C38; RP. R621-22.)

> Specifically, he was asked: "Was it this guy here [referring to Petitioner] that shot you?"
>
> And he answered: "I never seen that young man before."
>
> ***
>
> The State continued by asking: "Was this fellow here (indicating [to Petitioner]) in the lineups that the police showed you?"
>
> To which Michael Watson responded: "No. If he was, I didn't identify him as the person who shot me 'cause he don't look nothing like the guy … who shot me…."

(Suppl. R. C38; RP. R621-22.)

To counter all of this, the State then called the forensic investigator who processed the scene, two Assistant State's Attorneys who were present for some of the witnesses' coerced false statements, and three of The Seven: Detectives Forberg, Clisham, and Howley. (Suppl. R. C38-39; RP. R655-88, 692-742, 745-886.)

The forensic investigator recalled the scene of the crime, including from which direction the shots had been fired, and what shells were recovered, but offered no testimony or evidence linking Petitioner to the crime in any way. (Suppl. R. C9; RP. R659-88.)

The first State's Attorney called was present at the end of the police interrogations of some of the witnesses and assisted in memorializing their coerced and false statements. (Suppl. R. C26, 29-30; RP. R795-837.) She primarily testified in an attempt to rebut the witnesses' claims of coercion during their interrogations. (RP. R795-837.) But she herself was only present at the end of the interrogations. (*See e.g.,* RP. R797-99.) The other State's Attorney called to testify had presented the State's case to the grand jury and testified primarily to attempt to rebut the witnesses' claims of coercion in relation to the grand jury proceedings. (RP. R837-886.) But she was not outside the grand jury room to witness members of the Seven's comments to these exhausted witnesses before and after their respective testimonies.

Similarly, the testimony of the members of The Seven dealt primarily with their assessment of the State's eyewitnesses, who had testified about their coercion, and who the detectives opined were untrustworthy, afraid of Petitioner, and more-or-less criminals themselves. (Suppl. R. C38-39; RP. R655-58, 692-742, 745-95.)

At the trial's close, the State's attorney praised the efforts of The Seven, specifically stating that the identification of Petitioner was the result of "good police work." (Suppl. R. C39-41; RP. R970-993.) Further, the State explicitly juxtaposed the members of The Seven who testified, describing them as praise-worthy civil servants doing a difficult but necessary job, with the State's eye witnesses about whom it pointedly claimed in a remarkably toxic statement:

> "I'm confident that none of you like them. I'm confident that none of you would want them as your friends or your next-door neighbors."

(Suppl. R. C39-40; RP. R945.)

The State continued, going so far as to accuse the eye witnesses of being habitual liars when it claimed that the "truth is not the first thing that comes to their [the State's own eyewitnesses'] lips." (RP. R989.)

The jury convicted Petitioner despite the glaring shortcomings of the State's case. But it did so without knowing about the evidence of the pattern and practice of misconduct of The Seven that Petitioner was subsequently made aware of and provided in his Motion.

D. Prior Post-Trial Proceedings

Following the verdict, Petitioner unsuccessfully moved for a new trial and for resentencing, filed a direct appeal, and filed an initial post-conviction petition for relief under the Illinois Post-Conviction Hearing Act *pro se*, which was denied on May 25, 2007. (C47, C94, C99, C146, C228.) Petitioner timely filed notice of appeal of that denial on June 12, 2007, and the Office of the State Appellate Defender was appointed to represent him on appeal. (C232.) This Court affirmed the denial of that petition on April 29, 2009. ((Suppl. R. C42; *see also U.S. ex rel. Jackson v. Hardy*, No. 09-C-7774, 2011 WL 1357310, *1 n1 (N.D. Ill. April 11, 2011).)

Petitioner then filed a petition, *pro se*, under the federal *habeas corpus* statute, 28 U.S.C. § 2254(d), but was denied relief. (Suppl. R. C42; *see also id.*) Next, Petitioner, again *pro se*, sought and was denied relief from his conviction under Section 2-1401 of the Illinois Code of Civil Procedure. (C274-279.)

E. Petitioner's Instant Motion Raising Actual Innocence and Cause-and-Prejudice Claims

In May 2017, Petitioner filed his Motion in the Cook County Criminal Court. (Suppl. R. C4.) Petitioner's Motion generally laid out the foregoing facts about his case, which were supported by: documentation of investigations into numerous allegations of misconduct by The Seven in the form of Complaint Registers ("CRs")[9]; records of civil lawsuits involving The

[9] Complaint Registers, or CRs, are the records of investigations into allegations of misconduct filed against Chicago Police Department ("CPD") officers. (Suppl. R. C12-13.) Prior to the establishment of the Independent

Seven; media reports describing misconduct by The Seven; and recent affidavits from three eyewitnesses (one of whom did not testify at trial). (Suppl. R. C4-243.) Each of these is summarized below.

Petitioner's Motion was summarily denied by Judge Evelyn Clay of the Circuit Court of Cook County, Criminal Division, on June 15, 2017. (C521.)

1. Evidence of Misconduct by The Seven

Petitioner's Motion identified 150 known allegations of misconduct involving one, or more, of The Seven that has been reported to either CPD or IPRA, and which has then been investigated and documented in a CR. (Suppl. R. C13-19, 58-75, 151-91.) The alleged misconduct identified by Petitioner's Motion ranges from improper arrest and interrogation procedures, to the use of excessive force, to the falsification of police records, to verbal abuse of witnesses and suspects, to off-duty altercations, to a variety of other very serious misconduct. (Suppl. R. C13-19, 58-75, 151-91.) Moreover, one CR alleges witness coercion by the Seven during the investigation of Petitioner.[10] (Suppl. R. C14, 151-91.)

Many of the CRs detailed similar misconduct. (Suppl. R. C14.) The following are just two examples. *First*, in 2002, Detectives Kaup, Kowalski, and others improperly arrested and physically assaulted a suspect, denied him an attorney, and coerced him into a video-taped confession related to the death of his stepdaughter. (Suppl. R. C14.) *Second*, in April 2012, Detective Brian Forberg was accused of using unnecessary physical contact to coerce a

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Police Review Authority ("IPRA"), these investigations, and the CRs recording them, were handled by CPD itself. Since the establishment of IPRA, these investigations have been conducted, and the associated CRs have been maintained, by IPRA.

[10] The CR was filed in August 2001 by the mother of eyewitness Quina Davis, but the police department did not complete its investigation until February 2003, and the final report was not reviewed and approved until October 2003—after Petitioner's trial was completed. (Suppl. R. C154-55.)

complainant who alleged he "spat on her, pulled her hair, blew smoke in her face, and grabbed her purse from around her neck while she was being questioned." (Suppl. R. C14-15.)

Petitioner also asked the circuit court to take judicial notice of the substantial body of evidence of police misconduct that has been introduced in the numerous other Post-Conviction Hearing Act proceedings that have led to exonerations in the years since Petitioner's conviction. (Suppl. R. C15-19, 46.) In particular, Petitioner drew the circuit court's attention to the fact that The Seven have been named in several civil suits, that their misconduct has been noted in relation to exonerations, and that they have been singled out by the Chicago Tribune and other media outlets for their misconduct. (Suppl. R. C15-19.) Their conduct has resulted in at least $5 million in settlements paid to their victims.[11] (Suppl. R. C15.) Several of the more shocking and recent examples of civil lawsuits involving misconduct of The Seven—some of which bear a striking resemblance to Petitioner's allegations—are described below.

First, Detectives Brian Forberg and John Foster were among the officers accused of misconduct in *Patterson v. City of Chicago*. (Suppl. R. C15-16.) The plaintiff therein was convicted of a homicide he did not commit and was incarcerated for more than eight years as a result. (Suppl. R. C15-16.) After establishing his innocence and being exonerated, he brought a civil suit against the police department and the individual officers responsible for his conviction. (Suppl. R. C15-16.) He accused police of procuring false witness statements and identifications; coercing a false statement from one witness by interrogating her over three days during which she was denied food, water, or a place to sleep; burying substantial evidence suggesting another person had committed the crime; and concealing a laboratory report that would have proven his

[11] Petitioner's Motion incorrectly calculated, based on the settlements cited, the value as "at least $4 million." (Suppl. R. C15.)

innocence. (Suppl. R. C15-16.) The matter was eventually settled out of court and the plaintiff was paid $3.4 million dollars, although the police department admitted no wrongdoing. (Suppl. R. C15-16.)

Second, Detective Brian Forberg was one of two officers whose actions led to a lengthy lawsuit brought by three plaintiffs alleging police misconduct. (Suppl. R. C16.) In relation to the City of Chicago's motion for summary judgment, the parties stipulated to facts establishing troubling misconduct by police. (Suppl. R. C16.) They agreed that the police's main suspect was interrogated for 63 hours but never admitted to shooting the victim. (Suppl. R. C16.) They further agreed that one witness was held in a windowless room, denied bathroom breaks, and eventually resorted to urinating in a corner of the interrogation room before she finally made a statement incriminating the police's favored suspect. (Suppl. R. C16.) They also agreed that a second witness was interrogated for 27 hours before also relenting and making a statement incriminating the police's favored suspect. (Suppl. R. C16.) The court's opinion also references polygraph examination improprieties, but does not give specifics. (Suppl. R. C16.)

Third, Detective Kevin Howley was the polygraph operator involved in a lawsuit that the City of Chicago eventually settled for $1 million dollars after it was established that over the course of a 50-hour interrogation, he coerced a young, mentally disabled suspect into falsely confessing that he had killed his mother. (Suppl. R. C16-17.) The suspect was eventually released when DNA evidence exonerated him, but not before he spent 17 months in jail. (Suppl. R. C16-17.) An expert who evaluated the procedures employed by Detective Howley filed a report with the court concluding that "the primary motivation for conducting this examination was to use a failure on the polygraph as a tool to extract a confession." (Suppl. R. C16-17.)

Fourth, Detective Robert Bartik was the polygraph operator whose conduct was at the heart of *McGee v. City of Chicago*,[12] in which the plaintiff was awarded $1.3 million for malicious prosecution and intentional infliction of emotional distress. (Suppl. R. C17-18.) Detective Bartik was also found personally liable for $110,000 for his role in coercing a false confession, which caused the plaintiff to be incarcerated for three years awaiting trial. (Suppl. R. C17-18.) Although the award was later overturned due to a juror's outside research, the City of Chicago did eventually settle the case for nearly $900,000. (Suppl. R. C17-18.) While testifying, Detective Bartik stated he had obtained more than 100 confessions during the "pre-test interview" that typically precedes a polygraph examination. (Suppl. R. C17-18.) The Chicago Tribune reported that experts considered this "extraordinary" given that "the pre-test is not a time to try to get confessions; it's when the examiner explains how the polygraph works, gets consent and reviews the questions." (Suppl. R. C17-18.)

The preceding examples are just a few of the most disturbing allegations of misconduct that are detailed in Petitioner's supporting documents against The Seven—that were not available to Petitioner at trial or for his first post-conviction petition.

2. Eyewitness Affidavits

Petitioner also submitted recent affidavits from Quina Davis, Brandi Grant, and Manuel Stewart. (Suppl. R. C220-43.) All three witnessed the shooting, all three were coerced by members of The Seven, and all three still unequivocally state that Petitioner was *not* the shooter, and was *not* present when the shooting occurred. (Suppl. R. C220-43.)

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[12] Officer Bartik's involvement in the *McGee* case, and the allegations of misconduct leveled against him in that case, was among the reasons that a panel of this Court overturned the denial of leave to file a successive post-conviction petition in *People v. Jones*, 2016 IL App (1st) 123371, ¶¶ 93, 106.

Quina Davis, unlike Brandi Grant and Manuel Stewart, did not give The Seven a statement incriminating Petitioner, and she did not testify before either the grand jury or at his trial. (Suppl. R. C25, 220-28.) Moreover, her affidavit makes clear that she was driven into hiding by the intimidation and harassment of members of The Seven, which rendered her unavailable to the defense. (Suppl. R. C227.) Even after The Seven stopped harassing her (only after her mother filed a formal complaint with CPD and she moved out of the neighborhood), Ms. Davis remained unavailable to the defense, by virtue of the fact that she had left the neighborhood. (Suppl. R. C227.) She also relates that she too was threatened by members of The Seven with losing custody of her child as an interrogation tactic. (Suppl. R. C226.) Moreover, her affidavit discloses that her mother filed a formal complaint against members of The Seven for precisely the type of misconduct Petitioner alleges—namely, the attempted coercion of and very real harassment of Ms. Davis. (Suppl. R. C227.)

Brandi Grant's affidavit is consistent with her trial testimony in that she maintains Petitioner was neither the shooter nor was he even present when the shooting occurred. (Suppl. R. C35-36, 238-43.) However her affidavit provides more detail than her trial testimony. For example, her affidavit describes the shooter and how his physical appearance differed from Petitioner's—the shooter's skin was darker, his hair was different, and he was skinnier than Petitioner.[13] (Suppl. R. C240.) Also, she states that she recognized the shooter from the neighborhood. (C513.) Further, she relates that she knew that police were harassing Quina Davis, which was never brought up at the trial because Ms. Davis did not testify. (Suppl. R. C241.)

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[13] Ms. Davis' description comports with the description of the shooter given to police on the night of the shooting, and by Stanley Watson, and matches the physical description of Rickie McShane, who was identified as the shooter by Manuel Stewart.

Manuel Stewart's affidavit is also generally consistent with his trial testimony. (Suppl. R. C37-38, 229-33.) And it too provides new details of his treatment by The Seven. For example, Mr. Stewart relates that, after he was brought in, he was held for 24 hours before his interrogation began, and that, when he was escorted to the grand jury, the officers who escorted him waited outside to ensure he repeated his coerced statements to the grand jury. Following these statements, the same officers then told him he had done a "good job." (Suppl. R. C229-33.)

VII. ARGUMENT

In order to deny Petitioner Kevin Jackson's Motion, the circuit court had to, and did, disregard the great weight of binding precedent. This binding precedent has been developed over several decades to reinforce Illinois' well-established public policy that criminal defendants are entitled to review of their conviction if they can substantiate a claim that it was based on an unconstitutional deprivation of their rights. *People v. Pitsonbarger*, 205 Ill. 2d 444, 455 (2002); *People v. Joseph,* 113 Ill. 2d 36, 50-51 (1986) (noting the Post-Conviction Hearing Act effectuates the General Assembly's policy of protecting prisoners). The trial court's hasty and groundless ruling has compounded the prejudice to Petitioner by further delaying his more than fifteen year old quest for justice.

A. Statement of the Relevant Law

The Post-Conviction Hearing Act, 725 ILCS 5/122 (West 2016), provides a vehicle by which criminal defendants whose constitutional rights were violated at trial may vindicate those rights. *People v. Edwards*, 2012 IL 111711, ¶ 21; *see also People v. Washington*, 171 Ill. 2d 475, 487-88 (1996) (acknowledging that wrongful conviction of and incarceration of an innocent person is actionable as a violation of constitutionally protected due process rights). While the Post-Conviction Hearing Act typically only allows for a single petition, the Illinois legislature

and courts have identified two well-established exceptions to the general rule. *People v. Smith*, 2014 IL 115946, ¶¶ 24, 30.

The first exception to the one-petition rule is for claims of Actual Innocence. *People v. Ortiz*, 235 Ill. 2d 319, 336 (2009) (recognizing Actual Innocence as an independent exception to the one-petition rule); *see also People v. Whirl*, 2015 IL App (1st) 111483, ¶ 75 (same). An Actual Innocence claim requires the petitioner to present the court with (1) newly discovered evidence that could not have been discovered previously, that is (2) material and not merely cumulative, and (3) is of such conclusive nature that it would probably change the result on retrial. *People v. Smith*, 2014 IL 115946, ¶¶ 32, 34; *People v. Adams*, 2013 IL App (1st) 111081, ¶¶ 30-31.

The second exception to the one-petition rule requires a petitioner to make a showing of Cause-and-Prejudice. 725 ILCS 5/122-1(f) (West 2016); *Smith*, 2014 IL 115946, ¶¶ 24 (noting legislature's adoption of judicially created Cause-and-Prejudice exception). Under the Cause-and-Prejudice exception, a petitioner must establish: (1) cause for failing to submit the claim in a prior post-conviction petition, and (2) that the "claim not raised in [the] initial post-conviction petition 'so infected the entire trial that the resulting conviction or sentence violates due process.'" *Smith*, 2014 IL 115946, ¶ 37 (quoting *Pitsonbarger*, 205 Ill. 2d 444, 464 (2002).

Although the Actual Innocence and the Cause-and-Prejudice exceptions are independent of one another, "it is difficult, if not impossible, to imagine a scenario where a meritorious [actual innocence] claim could not meet the cause-and-prejudice test." *People v. Ortiz*, 235 Ill. 2d 319, 332 (2009) (alteration in original).

B. Standards of Review

The issue before the Court implicates three levels of review. First, the standard of review of the circuit court's decision to deny Petitioner's Motion. Second, the appropriate standard by

which to evaluate Petitioner's Motion. Third, the standard for reviewing the petition itself. Each of these is discussed in the following subsections.

1. Standard of Review Applicable to Circuit Court's Judgment

The standard of review for deciding whether a trial court has committed reversible error in denying a motion for leave to file a successive petition for relief under the Post-Conviction Hearing Act is *de novo*. *People v. Jones*, 2016 IL App (1st) 123371, ¶¶ 69-76. The standard is *de novo* regardless of whether the motion for leave is based on a claim of Actual Innocence or of Cause-and-Prejudice. *Id.* ¶ 76.

2. Standards of Review of Petitioner's Motion

Whether a motion for leave to file a successive petition under the Post-Conviction Hearing Act is based on a claim of Actual Innocence or of Cause-and-Prejudice, the burden is on the petitioner to obtain leave of the circuit court by "submit[ting] enough in the way of documentation [supporting his or her claims] to allow a circuit court to make that determination." *Smith*, 2014 IL 115946, ¶ 30 (citing *Edwards*, 2012 IL 111711, ¶ 24).

To satisfy this burden, a petitioner's motion for leave, along with its supporting documentation, must *exceed* the "frivolous or patently without merit" standard of first-stage proceedings under the Post-Conviction Hearing Act, *Smith*, 2014 IL 115946, ¶ 35, but it does *not* need to meet the "substantial showing of a constitutional violation" standard applied at second-stage proceedings, *Jones*, 2016 IL App (1st) 123371, ¶¶ 58, 60. *See also Smith*, 2014 IL 115946, ¶¶ 28-29 (expressing concern that subjecting a motion for leave to too high a standard of review will render subsequent stages of proceedings superfluous).

Whether a motion for leave is based on an Actual Innocence claim or a Cause-and-Prejudice claim, the court is presented at this stage with a "purely legal question." *Jones*, 2016 IL App (1st) 123371, ¶ 71. And the question is whether a petitioner's motion and "supporting

documentation *raises the probability* that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence." *Edwards*, 2012 IL 111711, ¶ 24 (emphasis added, internal quotation marks omitted); *see also People v. Bailey*, 2017 IL 121450, ¶ 24 ("the cause and prejudice determination is a question of law to be decided on the pleadings and supporting documentation submitted to the court").

Furthermore, whether a motion for leave is based on Actual Innocence or Cause-and-Prejudice, leave should be liberally granted. *Edwards*, 2012 IL 111711, ¶ 24 ("leave of the court should be denied *only where it is clear* … that, as a matter of law, the petitioner cannot set forth a colorable claim of actual innocence"); *Smith*, 2014 IL 115946, ¶ 35 (extending the same standard to Cause-and-Prejudice claims).

Finally, at this stage, although the court is to consider both a petitioner's claims and the supporting documentation submitted with a petitioner's motion, the court is not to engage in fact-finding, to make credibility determinations, to decide what weight to give to evidence or to testimony, or to resolve conflicts between evidence, all of which are explicitly reserved for third-stage proceedings. *Whirl*, 2015 IL App (1st) 111483, ¶ 74; *People v. Domagala*, 2013 IL App (1st) 113688, ¶¶ 34, 46.

3. Standard of Review of Petition for Relief under the Illinois Post-Conviction Hearing Act

Once leave is granted, a petition is normally docketed for second-stage proceedings under the Post-Conviction Hearing Act. *Jones*, 2016 IL App (1st) 123371, ¶ 118. At the second-stage of proceedings, it is the petitioner's burden to make a "substantial showing of [a] constitutional violation." *Id.* ¶ 58. However, even at this second-stage, the court is still *not* to resolve evidentiary questions. *Whirl*, 2015 IL App (1st) 111483, ¶ 74; *Domagala*, 2013 IL App (1st) 113688, ¶ 34. Rather, the court is to treat "all well-pleaded facts that are not positively rebutted

by the original trial record as true." *Domagala*, 2013 IL App (1st) 113688, ¶ 35 (quoting *People v. Coleman*, 183 Ill. 2d 366 (1998)). Therefore, if a petitioner alleges facts that, if they were to be proven at an evidentiary hearing, would amount to a violation of the petitioner's constitutional rights, then the petitioner's case must be advanced to third-stage proceedings, *i.e.*, an evidentiary hearing. *Domagala*, 2013 IL App (1st) 113688, ¶ 35.

C. The Circuit Court Committed Several Reversible Errors when it Denied Petitioner's Motion

The circuit court committed several critical and reversible errors in denying Petitioner's Motion. *First*, the circuit court's ruling clearly and impermissibly resolved factual issues raised by Petitioner's Motion and supporting documentation. *Second*, the circuit court misapplied the standard of review for Petitioner's claim of Actual Innocence. *Third*, the circuit court failed to consider whether Petitioner's motion met the standard of review for a claim of Cause-and-Prejudice. For all these reasons, the circuit court's ruling must be overturned.

1. The Circuit Court Committed Reversible Error by Improperly Considering the Admissibility of Evidence, Prematurely Resolving Conflicts Among the Evidence, and Unilaterally Making Credibility Determinations in Denying Petitioner's Motion

In reaching its decision, the circuit court focused on the admissibility of Petitioner's supporting documentation, made credibility determinations, decided the weight to give to testimony and evidence, and resolved conflicts between evidence, all of which are impermissible on a motion for leave to file a successive petition. *Domagala*, 2013 IL App (1st) 113688, ¶¶ 35, 46; *Whirl*, 2015 IL App (1st) 111483, ¶ 74. Accordingly, its denial must be reversed.

In ruling on Petitioner's Motion, the circuit court stated that it must consider the "quality" of the supporting documentation submitted with his motion. (RP. R1254.) Although the circuit court did not state so explicitly, when put in context it is apparent that in considering the "quality" of Petitioner's evidence, the circuit court's ruling undoubtedly resolved numerous

evidentiary issues against Petitioner. The circuit court's stated reasons for denying leave were that the supporting documents submitted by Petitioner contained mere allegations of misconduct by The Seven that would not be admissible at trial, and that most of the allegations in the CRs, in particular, were found to be unsubstantiated by CPD and IPRA. (RP. R1253-56.) The circuit court's ruling on these bases was improper for four reasons.

First, the circuit court was simply incorrect. This Court has previously held that allegations of past misconduct by police officers *are* admissible if offered to show an officer's intent, plan, motive, or course of conduct, or if offered to impeach an officer who testifies on the basis of bias, interest, or motive to testify falsely. *People v. Porter-Boens*, 2013 IL App (1st) 111074, ¶ 11. Under this rubric, the allegations of misconduct contained in Petitioner's supporting documentation would be admissible.

Second, whether or not supporting documentation would be admissible at trial is of no consequence in deciding a motion for leave to file a successive petition. *Jones*, 2016 IL App (1st) 123371, ¶ 92 ("admissibility is not the standard in postconviction proceedings … [t]he question is whether the documentation could lead … to admissible evidence at a future retrial").

Third, the circuit court's focus on the fact that the allegations contained in most of the CRs submitted by Petitioner had not been sustained suggests that the court was determining what weight to give the evidence, which is impermissible under binding precedent. *Whirl,* 2015 IL App (1st) 111483, ¶ 74 (evidentiary questions are not yet to be resolved at second-stage proceedings); *see also Domagala*, 2013 IL App (1st) 113688, ¶¶ 35, 46 (same). Moreover, it suggests that the circuit court further exceeded its authority at this stage by resolving numerous clear conflicts in the evidence before it; for example, the court noted that authorities originally determined the allegations of misconduct in many of the CRs were unfounded, but Petitioner

submitted evidence that these dispositions were inherently untrustworthy. Specifically, Petitioner cited the recent report by the U.S. Department of Justice that identified systemic defects in the internal investigation of misconduct allegations by the Chicago Police Department, and that specifically stated that the reason CPD found misconduct in only 2% of its investigation was because of "serious investigative flaws" and a pervasive "code of silence" among officers. (Suppl. R. C14.) By premising its ruling on the fact that most of the CRs submitted by Petitioner were not sustained, the circuit court clearly resolved—impermissibly—multiple fundamental conflicts in the evidence before it instead of limiting itself to the proper analysis at this stage.

Fourth, implicit in the circuit court's ruling is an impermissible credibility determination, in that it credited the testimony of the police officers and State's Attorneys who testified at trial over Petitioner's supporting documents. *See Coleman*, 183 Ill. 2d 366, 390-91 (1998) ("[F]actual and credibility determinations will be made at the evidentiary stage of the post-conviction proceedings, and not at the dismissal stage.").

While the circuit court's ire was leveled primarily at the CRs Petitioner submitted, the circuit court was also notably dismissive of the records Petitioner submitted of other courts' proceedings involving misconduct by The Seven. (RP. R1254-58.) For the same reasons that it was improper for the circuit court to decide any evidentiary issues related to the CRs, it was entirely improper for it to resolve evidentiary issues related to these court records at this stage of the proceedings. Each lawsuit cited by Petitioner contains facts consistent with his allegations, and each could eventually lead to admissible evidence that would "raise the probability" of a different result on retrial. *Edwards*, 2012 IL 111711, ¶ 24. Therefore, even if the decisions themselves would not have been admissible, as the circuit court seemed to suggest, they could nonetheless have led to admissible evidence—for example, Petitioner could have subpoenaed

suspects and witnesses involved in those other cases to testify about their own mistreatment by The Seven.

Similarly, the circuit court was clearly—and inappropriately at this stage—preoccupied with the truthfulness of the affidavits Petitioner submitted. The circuit court specifically claimed that Manuel Stewart's affidavit was not credible because of his "bias" as Petitioner's cousin. (RP. R1260.). The circuit court further found the affidavit of Quina Davis to be of questionable credibility because she had allegedly failed the polygraph examination administered by The Seven. (RP. R159.)

Again, the Illinois Supreme Court has clearly stated that factual issues are not to be resolved until third-stage proceedings. *See, e.g.*, *Coleman*, 183 Ill. 2d at 385; *Domagala*, 2013 IL 113688, ¶¶ 35, 46. The case of *Jones*, 2016 IL App (1st) 123371, is instructive on this point.

In *Jones*, which also involved one of The Seven (Detective Bartik), the defendant was convicted of murder on the basis of a confession—notably, the only evidence presented at his trial connecting him to the crime. *Id.* ¶¶ 1-2. The defendant claimed the confession had been coerced and sought leave to file a successive post-conviction petition under the Post-Conviction Hearing Act. His motion for leave to file a successive petition was supported by an affidavit from a previously unknown eyewitness and a newspaper report about similar misconduct by Detective Bartik. *Id.* ¶12. His petition was dismissed by the circuit court and the defendant appealed. *Id.* ¶13. A panel of this Court reversed that decision and remanded for further proceedings under the Post-Conviction Hearing Act. *Id.* ¶¶ 110-11, 116.

On appeal, this Court held that in addition to considering the defendant's petition and supporting documents, it could also take judicial notice of other publicly available records, and

noted that the evidence it could consider did *not* need to be admissible under the Illinois Rules of Evidence. *Id.* ¶¶ 84, 92.

This court then noted a number of cases in the public record containing similar allegations of misconduct by Detective Bartik, including *McGee v. City of Chicago*, *People v. Cook*, *People v. Daniels*, *Murphy v. Atchison*, *Lanza v. City of Chicago*, *People v. Harris*, as well as several Chicago Tribune articles about Detective Bartik's misconduct. *See, Jones*, 2016 IL App (1st) 123371, ¶¶ 93, 106, n14 – n16, n18, n21. The court also noted, and relied upon, a rash of recent decisions overturning circuit court denials of leave to file successive petitions when presented with similar allegations of police misconduct supported by similar documentation, including *People v. Ortiz*, *People v. Tyler*, *People v. McGee*, and *People v. Almodovar*. *Id.* ¶¶ 102-03.

Precisely the same result is warranted here. As this Court has made clear in *Jones* and many of its other recent cases, the circuit court should have granted Petitioner's Motion. Because the circuit court ignored the proper standard of reviewing a motion for leave to file a successive petition and impermissibly resolved evidentiary issues in denying Petitioner's Motion, its ruling must be reversed.

2. The Circuit Court Committed Reversible Error by Misapplying Petitioner's Appropriate Standards of Review in Denying Petitioner's Motion

The denial of Petitioner's motion should also be reversed because the circuit court misapplied the proper standard for reviewing Petitioner's Actual Innocence claim. Furthermore, its ruling on the Actual Innocence claim demonstrates that the circuit court failed to engage in the proper analysis of Petitioner's Cause-and-Prejudice claim.

a. The Circuit Court Committed Reversible Error by Ignoring or Incorrectly Applying Binding Precedent Regarding What Constitutes "New," "Material," "Non-Cumulative," and

"Conclusive" Evidence when Evaluating Petitioner's Claim of Actual Innocence

In support of his Motion, Petitioner submitted voluminous evidence of a pattern and practice of misconduct by the detectives responsible for the investigation that led to his incarceration. Taken together, this evidence "*raise[s] the probability* that it is more likely than not that no reasonable juror would have convicted [Petitioner] in light of the new evidence," *Edwards,* 2012 IL 111711, ¶ 33. Indeed, the evidence is new, material, non-cumulative, and conclusive of Petitioner's actual innocence, as described below.

(i) All of the Supporting Documentation Supporting the Motion is New Evidence that Did Not Exist at the Time of Trial or Prior Post-Conviction Petition, Could Not Have Been Discovered Through Due Diligence Previously, or Has Taken on New Meaning in Light of Subsequent Events

Petitioner submitted voluminous evidence of misconduct by The Seven and affidavits of eye witnesses stating that Petitioner was not the shooter, all of which is "new evidence" for the purposes of post-conviction proceedings.

(1st) The Documentation Supporting this Motion that Did Not Exist at the Time of Petitioner's First Post-Conviction Petition is New Evidence By Definition

A significant portion of the supporting documentation submitted by Petitioner did not exist at the time of his first post-conviction petition, including nearly 40 CRs lodged against members of The Seven, all of the civil lawsuits alleging misconduct by The Seven, the findings of the U.S. Department of Justice related to systemic flaws in the investigation of police misconduct in Chicago, and the recent comments made by the Cook County State's Attorney about the role of police misconduct in the majority of exonerations in Cook County, which she identified as the "wrongful conviction capital of the U.S." (Suppl. R. C55.) Simply put, all of

this evidence is, by definition, new. *Tyler*, 2015 IL App (1st) 123470, ¶ 162 ("The evidence of misconduct occurring after [year of trial] did not exist at the time of the trial, so those cases are new evidence.").

(2nd) Even the CRs that Existed at the Time of Petitioner's First Post-Conviction Petition Are New Evidence Because They Could Not Have Been Discovered Previously Through the Exercise of Due Diligence and Because Events Since Then Have Given them New Meaning

While many of the CRs submitted by Petitioner with his Motion existed at the time of his first post-conviction petition, they should be treated as new evidence, for the following two reasons:

First, courts including the Illinois supreme court have routinely held that it is unusually difficult for defense attorneys to discover evidence of police misconduct (because of the sensitive nature of police records, the scale of the criminal justice system, and the efforts taken by police to conceal such evidence), and therefore fundamental fairness requires that such records be considered new for the purposes of an Actual Innocence claim even if they existed prior to a petitioner's trial or first post-conviction petition. *See, e.g.*, *Patterson*, 192 Ill. 2d 93, 109 (2000); *Reyes*, 369 Ill. App. 3d 1, 20 (2006); *Whirl*, 2015 IL App (1st) 111483, ¶ 100.

It should not be lost in this analysis that Petitioner has actually encountered great resistance to obtaining CRs alleging misconduct by The Seven. In fact, Petitioner was forced to take the extraordinary step of filing a lawsuit against CPD over its refusal to comply with its obligations under the Illinois Freedom of Information Act, which caused Petitioner to be unable to submit the full volume of CRs filed against The Seven with his Motion.

Second, events occurring after a conviction or a previous post-conviction petition may cast evidence in a significantly new light, and thereby transform it into "new" evidence. *See*

Patterson, 192 Ill. 2d at 115 ("Even incidents that are remote in time can become relevant … if the party presenting the evidence can present evidence of other incidents that occurred in the interim."); *see also Whirl*, 2015 IL App (1st) 111483, ¶ 100. This is exactly what has happened here.

The CRs filed against The Seven prior to Petitioner's first post-conviction petition take on new meaning and significance when viewed in the context of the following:

(1) nearly 40 CRs have been filed since then that allege misconduct of some sort by one or more of The Seven;

(2) numerous civil lawsuits have come to light since then that name one or more of The Seven and allege very similar misconduct—including one that resulted in an adverse ruling for the detectives (*McGee*, 2012 IL App (1st) 111084), several that have been settled for large sums of money (*Patterson v. City of Chicago*, No. 1:11-cv-7052 (N.D. Ill.), *Corethian Dion Bell v. Chicago Police Department*, 2002-L-8857 (Cook County Circuit Court)[14]), and one in which the parties notably stipulated to facts describing egregious misconduct that was eerily similar to that alleged by Petitioner (*Bridewell v. Eberle*, No. 08-C-4947, 2012 WL 2458548 (N.D. Ill. June 27, 2012));

(3) recent revelations about the prevalence of police misconduct in exonerations in Cook County[15]; and,

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[14] Although not cited in Petitioner's motion by name, it was discussed in detail, but without names, on pages 8 and 9 of Petitioner's motion.

[15] Specifically, comments made by Cook County State's Attorney Kim Foxx about the prevalence of police misconduct in exonerations over the past 28 years—during which time Cook County has led the nation in exonerations. (Suppl. R. C55.)

(4) recent findings by the U.S. Department of Justice regarding systemic failures by CPD and IPRA to properly investigate allegations of misconduct by CPD officers.[16]

Petitioner's experience with The Seven, and his conviction—derived entirely from their misconduct—is strikingly similar to that of many other defendants, whose evidence was cast in a new light by subsequent events. *See, e.g.*, *Almodovar*, 2013 IL (1st) 101476; *Whirl*, 2015 IL (1st) 111483; *Jones*, 2016 IL (1st) 123371; *Tyler*, 2015 IL App (1st) 123470; *Reyes*, 369 Ill. App. 3d 1 (1st Dist. 2006).

In *Reyes*, the defendant was convicted solely on the basis of witness testimony. 369 Ill. App. 3d at 2-5. Prior to the trial, at a suppression hearing, and again at the trial itself, there was testimony alleging that the lead detective had coerced the suspect and witnesses in the case. *Id.* at 5-9. Later, after the defendant was convicted, he brought a post-conviction petition alleging actual innocence and the primary evidence supporting his petition was evidence of prior similar misconduct by the lead detective in his case. *Id.* at 9-11. The trial court dismissed the defendant's petition after finding that this evidence, some of which pre-dated the defendant's trial, was insufficient support for his claim. *Id.* at 12, 15-16. But a panel of this Court reversed the decision. This Court found the evidence to be both compelling and new. *Id.* at 15-19, 21 ("*any* allegation that [the lead detective] coerced a person to provide evidence is relevant to whether defendants in the case at bar were similarly coerced."). The Court recognized that the mass of later allegations of misconduct against this particular detective made these allegations

[16] The report issued by the U.S. Department of Justice outlined both systemic misconduct by CPD and a systemic failure to investigate and address the misconduct. (Suppl. R. C14.) The report calls into serious question the quality of the investigations that led to so many of these CRs relied upon by Petitioner to be dispositioned as unfounded. (Suppl. R. C14).

more credible than they would have been previously. Accordingly, the evidence was functionally new.

As in *Reyes*, and in the many other cases decided by this Court, Petitioner's evidence has been cast in a new light by subsequent events. That in turn gives the entire body of the CRs he submitted new and different clarity, relevance, and meaning to the assessment of the integrity of his conviction; in sum, the CRs are now new evidence.

(3rd) The Eyewitness Affidavits Constitute New Evidence Because They Provide Substantial Information and a New Source Never Put Before the Jury

The affidavit of Ms. Davis is new evidence because Ms. Davis was previously unavailable to Petitioner. Moreover, Ms. Davis' affidavit provides critical context for the affidavits of Ms. Grant and Mr. Stewart, casting them in a new light and transforming them into new evidence.

Because of the intimidation, harassment and rough treatment Ms. Davis suffered at the hands of The Seven in the aftermath of the shooting, she first went into hiding, and later moved out of the neighborhood. (Suppl. R. C226-27.) Therefore, entirely due to the conduct of The Seven, her testimony and affidavit were previously wholly unavailable to Petitioner. *Ortiz*, 235 Ill. 2d at 333-34 (witness who moved away after crime was unavailable to petitioner previously); *see also People v. White*, 2014 IL App (1st) 130007, ¶ 22 (affidavit of participant in crime was considered new evidence, because the affiant did not previously agree to provide said affidavit). It is nothing less than an aberration of justice to tolerate police misconduct so egregious that it caused a significant eyewitness to flee her home, and yet consider that same witness "available" to an accused, incarcerated defendant. Such tolerance creates the perfect opportunity for the State to obtain impressive but false conviction rates simply by scaring actual witnesses away

from the process. Moreover, and to state the obvious, Ms. Davis' affidavit is from a new source. *Coleman*, 2013 IL 113307, ¶ 103. Therefore, Ms. Davis' affidavit is new evidence.

Ms. Davis' affidavit also renders new the other two affidavits now submitted by Petitioner, because it corroborates and contextualizes their statements (both at trial and in their affidavits), therefore changing the way their testimony must be understood. *See Patterson*, 192 Ill. 2d at 115 (holding that subsequent events can give new meaning to previously known information). For example, Ms. Davis independently recalls that The Seven threatened her with the loss of her child, and told her that others had already identified Petitioner as the shooter (whether or not that was true) in an effort to convince her to simply give in and name Petitioner the shooter. In these ways, her treatment at the hands of The Seven mirrored that of Ms. Grant and Mr. Stewart; Ms. Davis' affidavit, therefore, lends their trial testimony and affidavits greater credibility. Moreover, the similarities between Ms. Grant's and Mr. Stewart's allegations of coercion by The Seven, in both their trial testimony and their affidavits—for example, the allegation in both Ms. Grant's and Mr. Stewart's affidavits that they were threatened with being charged for the shooting themselves—are rendered all the more credible by the overall similarities between Ms. Davis', Ms. Grant's and Mr. Stewart's affidavits.

Ms. Davis' affidavit, therefore, by contextualizing and corroborating the other affidavits Petitioner submitted with his Motion, places them in a new light, under which they are substantially more credible and probative of Petitioner's innocence. Therefore, they also constitute new evidence.

(4th) Any Supporting Documentation Not Otherwise Held to be New Should Nevertheless be Treated as New Evidence Because "Fundamental Fairness" Requires a More Relaxed Standard in Compelling Cases of Actual Innocence Such as This

To the extent that the Court finds that any of Petitioner's supporting documentation is not new evidence for the purposes of his Actual Innocence claim, fundamental fairness requires that the "newness" element of the Actual Innocence standard be relaxed because Petitioner's Motion presents a compelling claim of Actual Innocence. *See, e.g.*, *Whirl*, 2015 IL App (1st) 111483, ¶ 100 (holding that even though most recent evidence submitted with petition was from four years prior to defendant's trial, it was nevertheless "new" evidence); *Coleman*, 2013 IL 113307, ¶ 102 (holding that affidavits from individuals known about at the time of the trial and that simply corroborated trial testimony were new evidence); *Reyes*, 369 Ill. App. 3d at 18-20 (2006) (holding that allegations of police misconduct that predated the defendants' trial were new evidence even though defense counsel had inquired about them at the time of the trial).

The Circuit Court erred when it ignored the above precedent and ruled that none of the supporting documentation submitted by Petitioner was new evidence. Dismissing Petitioner's motion for that reason was reversible error.

(ii) All the Supporting Documentation Petitioner Submitted with His Motion is Material and Non-Cumulative Because it is Relevant and Probative to Petitioner's Claim of Innocence and it Adds to What the Jury Heard At Trial

(1st) The Supporting Documentation is Material Because it Calls into Question the Credibility and Integrity of the Only Witnesses Who Claim that Petitioner Was Actually The Shooter

The supporting documentation that Petitioner submitted with his Motion: (1) undermines the credibility and integrity of The Seven, (2) undermines the credibility and integrity of the investigation that led to Petitioner's incarceration, or (3) does both. All of Petitioner's supporting documentation is, therefore, *per se* material.

The numerous CRs, civil lawsuits, and media reports submitted by Petitioner, which detail allegations of coercive interrogations, improper polygraph procedures, arrest misconduct, falsification of police reports, and other serious misconduct, altogether call into question the credibility and integrity of The Seven. Such information is *always* material to a post-conviction petition. *See, e.g.*, *Tyler*, 2015 IL App (1st) 123470, ¶ 186 ("Even one incident of similar misconduct by the same detectives can be sufficient to show intent, plan, motive, and could impeach the officers' credibility."); *Reyes*, 369 Ill. App. 3d 1, 21 (2006) ("*any* allegation that [the detective] coerced a person to provide evidence is relevant to whether defendants in the case at bar were similarly coerced" (emphasis added).)

Furthermore, Petitioner submitted evidence of misconduct specific to the investigation that led to his arrest and conviction. Namely, Petitioner submitted a CR, filed by the mother of eyewitness Quina Davis, that alleged members of The Seven harassed and attempted to coerce Ms. Davis in relation to the investigation that led to Petitioner's incarceration. Ms. Davis' mother filed her complaint contemporaneous to the investigation of Petitioner, but because Ms. Davis made herself unavailable to either the prosecution or the defense (first by going into hiding to avoid The Seven, and later by moving out of the neighborhood), these allegations did not come to light until recently. This CR provides independent corroboration of Petitioner's claims.

Petitioner also submitted affidavits of witnesses who claim they were coerced during the investigation, and police records that suggest The Seven were far more focused on the neighborhood's purported "usual suspects," than actually looking for *bona fide* leads to solve the crime that occurred. All of this bears directly on the credibility and integrity of the ultimate conclusion of the investigation. Furthermore, it contradicts the State's assertion at trial that The

Seven were credible witnesses who were being unfairly treated by the defense and whose investigation was "good police work." (Suppl. R. C40-41.)

Because all the evidence submitted by Petitioner tends to undermine the credibility and integrity of The Seven and of their investigation, it is information that could affect a jury's weighing of the evidence. It is all, therefore, highly material. And the circuit court's ruling to the contrary was clearly in error. To the extent that error was the basis for the circuit court denying Petitioner's Motion, it was reversible error.

(2nd) The Supporting Documentation is Non-Cumulative Because it Provides Corroboration and Context to the Unsupported Accusations of Misconduct by The Seven Made at Trial

Petitioner's supporting documentation is not cumulative because it is probative of his innocence: it adds critical and corroborative context for the eyewitness testimony describing police coercion provided at trial, *Ortiz*, 235 Ill. 2d at 335-36, and challenges the credibility of those State witnesses who testified at trial, *Coleman*, 2013 IL 113307, ¶ 103.

In *Coleman*, the defendant claimed to have had no involvement in the brutal home invasion, robbery, and sexual assault for which he was incarcerated. 2013 IL 113307, ¶¶ 4, 45. Several attackers were involved, and police apprehended two of them at the home, but the rest escaped. *Id.* ¶ 4. At trial, police claimed that the defendant had been identified through a "cold search" of their database, *id.* ¶ 34, but during post-conviction proceedings the same officer testified that he had relied on department intelligence to identify "possible suspects," *id.* ¶108. Police also were accused of threatening interrogations of at least one of the suspected attackers. *Id.* ¶ 32. At the defendant's trial, the State offered no forensic evidence, but called the victims, the purported accomplice, and police to testify. *Id.* ¶ 6. The defendant testified on his behalf, called alibi witnesses, and called one of the attackers who had been apprehended at the scene and

who had previously pled guilty. *Id.* ¶¶ 35-42. The other attackers, some of whom were known or suspected by the defendant at the time of the defendant's trial, were unwilling to risk testifying and incriminating themselves. *Id.* ¶ 102. More than 15 years after the attack, however, these same attackers were willing to provide affidavits and testimony on behalf of the petitioner, since they were no longer under threat of prosecution themselves. *Id.* ¶¶ 102. The *Coleman* court held that their affidavits were non-cumulative because they added compelling information to what was heard by the jury in the way of corroborating testimony suggesting the defendant's innocence. *Id.* ¶ 103. This was so even though their testimony merely corroborated the previously uncorroborated trial testimony of the one attacker who had testified on behalf of the defendant at trial. *Id.* ¶ 103. The court reasoned that "[t]he uncorroborated testimony of one of the men does not render the testimony of five of them merely cumulative." *Id.* Further, the court was persuaded by the fact that their testimony "also offered significant details that were missing [from the] account" of the attacker who testified at trial. *Id.*

As in *Coleman*, Petitioner submitted evidence that corroborates the previously uncorroborated trial testimony of the State's eyewitnesses. For example, the trial testimony regarding witness coercion is corroborated by Quina Davis' affidavit and by the numerous independent allegations of similar misconduct by The Seven memoralized in the CRs, civil cases, and media reports submitted by Petitioner.

Perhaps most importantly, the evidence, as described above, raises questions about the credibility and integrity of the State's testifying witnesses, which is never cumulative. *People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 62 (evidence of prior similar misconduct "significantly shifts the balance of credibility" against a testifying police officer).

The circuit court did not explicitly rule whether the CRs were non-cumulative, but to the extent that the circuit court's ruling implied that they were cumulative, that was clearly error, because the CRs call into question the credibility and integrity of The Seven and their investigation, and provide essential context to the eyewitnesses' recantations at trial. To the extent that error was the basis for the circuit court denying Petitioner's Motion, that error was reversible error.

Regarding the affidavits submitted by Petitioner, however, the circuit court clearly did rule that they were cumulative, which was—again—reversible error. Petitioner submitted one affidavit from an individual who did not testify at trial (Quina Davis), and affidavits from two individuals who did testify at trial (Brandi Grant and Manuel Stewart). Each of these affidavits add to what was adduced at trial, and therefore is non-cumulative. *Coleman*, 2013 IL 113307, ¶ 103.

Ms. Davis did not testify to the grand jury, she did not testify at trial, and she was not available to either side during the investigation or trial of Petitioner. As Ms. Davis states in her affidavit, she quite literally went into hiding for a time during the investigation in order to avoid further harassment by The Seven, and then moved out of the neighborhood. (Suppl. R. C226-27.) Had her testimony been available, it would have called into question the credibility of The Seven, as her affidavit makes clear. And unlike the other witnesses who were coerced into making incriminating statements about Petitioner, Ms. Davis never did so, and she did not have a significant history of prior contact with the police. (Suppl. R. C202-203.) Therefore, her testimony that Petitioner was *not* the shooter would have been uncontroverted and highly credible. Moreover, the fact that her mother had actually reported the misconduct would undoubtedly have been part of her testimony, which would have lent further credibility to her

claims of coercion. Therefore, her affidavit would have greatly added to the evidence before the jury, and thus, is non-cumulative.

In *Coleman*, 2013 IL 113307, ¶ 103, as described above, the Illinois Supreme Court ruled that evidence that challenges the credibility of those who testified at trial is non-cumulative even when their credibility had been challenged at the trial, so long as it is from a new source or if it adds significant details. Ms. Davis's affidavit clearly satisfies both criteria. She did not testify at trial, therefore her affidavit is evidence from a new source. And her affidavit adds new significant detail to what the jury heard. Specifically, that she was forced into hiding by the misconduct of The Seven, that her mother reported this misconduct to CPD, and that she alone (among all the eyewitnesses) was uniquely able to withstand the coercion of The Seven because she did not have any outstanding warrants or other potential or pending charges against her. Therefore, her affidavit is non-cumulative and the circuit court's ruling to the contrary is reversible error.

The affidavits of Ms. Grant and Mr. Stewart are also non-cumulative because they provide additional detail to their trial testimony, and therefore, add to what the jury heard at trial. *Coleman*, 2013 IL 113307, ¶ 96 ("Noncumulative means the evidence adds to what the jury heard."). Furthermore, to the extent that their affidavits are contextualized by that of Ms. Davis' affidavit, the court may take them into consideration. *See Whirl*, 2015 IL App (1st) 111483, ¶ 85 (recognizing that to some "extent the trial court is allowed to consider the old evidence with the new in determining whether the outcome … would likely have been different").

Mr. Stewart's affidavit, for example, provides new contextual information about his interrogation, including that after he was brought in he was held for 24 hours before The Seven even began interrogating him. He also stated that one of the interrogation tactics employed by

The Seven was showing him a forged statement purporting to be signed by Petitioner identifying Mr. Stewart as the shooter. Mr. Stewart also relates that members of The Seven waited for him outside the grand jury room and told him he did a "good job" after he repeated his false statements about Petitioner to the grand jury.

Ms. Grant's affidavit also provides new information, most importantly corroboration of the treatment of Ms. Davis by The Seven. This information was not before the jury, and likely would not have been admissible to the jury, because Ms. Davis did not testify for reasons described above, so Ms. Grant's testimony regarding The Seven driving her into hiding would not have been relevant. But it is highly relevant to whether The Seven were engaged in misconduct related to investigating Petitioner, and therefore, it is non-cumulative. *Mitchell*, 2012 IL App (1st) 100907, ¶ 62 (evidence of misconduct "significantly shifts the balance of credibility" against a testifying police officer).

For all the foregoing reasons, the circuit court's ruling that the affidavits submitted by Petitioner were cumulative was in error because they materially add to the evidence that was before the jury at Petitioner's trial. To the extent that error was the basis for the circuit court denying Petitioner's Motion, that error was reversible error.

(iii) All The Supporting Documentation is Conclusive Because it Provides Independent Corroboration of Coercion and Other Serious Misconduct by the only Witnesses Who Testified That Petitioner Was The Shooter

Petitioner's supporting documentation provides independent corroboration of Petitioner's claim that The Seven coerced witnesses in order to manufacture the evidence used to convict him—in fact, it demonstrates that members of The Seven have done exactly that in other cases. Moreover, Petitioner's supporting documentation provides new testimony from a witness who withstood the coercion of The Seven, who claims Petitioner was not the shooter, and who

corroborates the testimony of others who claim that their incriminating statements about Petitioner were the product of coercion. This evidence sharply "raise[s] the probability" that a jury would find that the investigation led by The Seven relied on coerced statements and manufactured evidence, which makes it more likely that "no reasonable juror would have convicted [Petitioner] in light of the new evidence." *Edwards*, 2012 IL 111711, ¶ 33. Therefore, Petitioner's supporting documentation is "conclusive" under the Actual Innocence rubric.

Recalling *Coleman*, that court made clear that "[p]robability, not certainty, is the key as the trial court in effect predicts what another jury would likely do, considering all the evidence, both new and old, again." 2013 IL 113307, ¶ 97. *Coleman* also suggests that "conclusiveness" should be evaluated on a sliding-scale adjusted for how strong the evidence was against the defendant at trial. *Id.* ¶ 109 (In ordering a new trial, the court specifically noted: "The State's evidence … was far from overwhelming. There was no forensic evidence to link defendant to the attack, and the State offered three identifications, all of which were significantly impeached.").

Coleman also makes clear that at no point during Post-Conviction Hearing Act proceedings is it appropriate for a court to require a petitioner to prove beyond a reasonable doubt that he is not guilty; otherwise, "the remedy would be an acquittal, not a new trial." 2013 IL 113307, ¶ 97. The circuit court here seems to have expected Petitioner to do just that.

Here, the circuit court ruled that Petitioner's supporting documents failed to establish his claims *with certainty* and dismissed his Motion on this improper basis. When Petitioner argued that his supporting documents could lead to evidence that would provide greater certainty, the court responded that this was "[e]ntirely too nebulous." (RP. R1258.) But this ruling clearly violates the "probability" standard provided by *Coleman*.

Had the circuit court considered Petitioner's Motion through the appropriate lens of "probability" it would certainly have held that Petitioner's supporting documentation was conclusive. On the one side of the balance, the State offered no forensic evidence linking Petitioner to the crime for which he has now been incarcerated for nearly seventeen years, and none of the State's eyewitnesses identified Petitioner as the shooter at trial—in fact, when asked whether Petitioner was the man who shot him, one of the surviving victims stated, **"I never seen that young man before."** (Suppl. R. C38.) Instead, the State improperly argued that the jury should simply ignore the eyewitnesses' testimony, because they were not credible[17]. (Suppl. R. C40-41.) The State then argued that its other witnesses, including members of The Seven, should be credited instead.

Had Petitioner introduced at trial the evidence of a pattern and practice of gross misconduct by The Seven that he submitted with his motion, the result would very likely have been different. *United States v. Agurs*, 427 U.S. 97, 113 ("[i]f the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt")[18]; *see also People v. Serrano*, 2016 IL App (1st) 133493, ¶ 41 ("The corroboration of the new evidence and its consistency on key details, properly construed, is compelling.").

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[17] Besides being an indefensible position in light of what Petitioner's supporting documentation now shows to have been the truth, this was also highly improper. *See, e.g.*, *People v. Lee*, 229 Ill. App. 3d 254, 260 (1992); *see also People v. Moss*, 205 Ill. 2d 139, 171 (2001) ("comments denigrating defendant's witnesses must be strongly condemned"); *People v. Hope*, 116 Ill. 2d 265, 278 (1986) (failure to instruct jury that this was improper only amplifies the error).

[18] The parties and trial court noted that the jury had difficulty reaching consensus with the evidence it was presented—as indicated by shouting heard from the jury room during deliberations and the jury's question about what constitutes a "hung jury"—but after encouragement from the court, did eventually reach a verdict. (RP. R1019-22.)

Once again, the case of *Jones*, 2016 IL App (1st) 123371, is instructive on this issue. Recalling briefly the situation in *Jones*, the only evidence connecting the defendant in *Jones* to the crime he was convicted of was his own confession. *Jones*, 2016 IL App (1st) 123371, ¶ 2. He alleged that the confession had been coerced from him by one of The Seven, Robert Bartik, and he consistently claimed that he was innocent—before trial, during trial, and after trial. *Id.* Eventually he moved the circuit court for leave to file a successive post-conviction petition claiming actual innocence and attaching to his motion an affidavit of a witness to the crime and a newspaper clipping about another case in which Officer Bartik was accused of misconduct. *Id.* ¶ 12. The circuit court denied the defendant leave and the defendant appealed the decision. *Id.* ¶ 13. In a very specific ruling, the appellate court stated that it found that the defendant's petition sufficiently raised the probability of a new result on retrial because:

> (1) the only evidence linking the 19-year old defendant to the crime was his own confession; (2) the circumstances of the initial confession were odd; (3) some details of the confession did not match the physical evidence recovered at the crime scene; (4) the one and only known eyewitness to the crime, other than the shooter, exonerates defendant; … and (7) recent information supports defendant's claim that his confession was physically coerced.

Id. ¶ 110. As such, a panel of this Court reversed and remanded the *Jones* case for further proceedings under the Post-Conviction Hearing Act. *Id.* ¶ 118.

To state the obvious, in Petitioner's case, it is not his own confession that was coerced, but the statements of several eyewitnesses. Petitioner has *never* admitted any guilt, except for this small variation, the *Jones* case and Petitioner's are strikingly similar, even down to some of the participants, including Officer Bartik and other Area One detectives. Therefore, the circuit court should have followed the guidance of *Jones* and granted Petitioner's Motion. Its decision not to was reversible error.

b. The Circuit Court Committed Reversible Error by Failing to Evaluate the Merits of Petitioner's Motion Under the Cause-and-Prejudice Exception

Petitioner's Motion also satisfies the Cause-and-Prejudice test.[19] Yet, the circuit court failed to address Petitioner's Cause-and-Prejudice claim at all, yet another reversible error. Because the circuit court denied Petitioner's Motion without fully evaluating it, its decision denying the Motion must be reversed.

The preceding argument regarding Petitioner's claim of Actual Innocence, including how the documents submitted support that claim, is fully adopted herein.

(i) Petitioners Established Cause for Not Raising His Claims Previously by Demonstrating His Reliance on Newly Discovered Evidence

To establish "cause" Petitioner must "show some objective factor external to the defense impeded his ability to raise the claim in the initial postconviction proceeding." *Coleman*, 2013 IL 113307, ¶ 82 (citing *Pitsonbarger*, 205 Ill. 2d at 460). Because the supporting documents Petitioner relies on for his claims are newly discovered, he has by definition established cause. The strikingly analogous case of *Almodovar*, 2013 IL App (1st) 101476, is instructive in this analysis.

In *Almodovar* the defendant was convicted of murder and lesser charges in relation to a 1994 drive-by shooting. *Id.* ¶ 2. After many years of fighting his conviction, the defendant filed a motion for leave to file a successive post-conviction petition, based on newly discovered evidence of misconduct by the lead detective on his investigation, who also testified against him

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[19] While it is only necessary for Petitioner's Motion to satisfy one of the grounds for leave, his satisfies both. *Ortiz*, 235 Ill. 3d at 330 (when a petitioner "sets forth a claim of actual innocence in a successive postconviction petition, the [petitioner] is excused from showing cause and prejudice"). This is so even though "it is difficult, if not impossible, to imagine a scenario where a meritorious [actual innocence] claim would not meet the cause-and-prejudice test." *Id.* ¶ 332 (partially quoting and adopting State's reply brief).

at trial. *Id.* ¶ 3. The defendant alleged that the detective manipulated witnesses to falsely identify the defendant, and the defendant supported his allegations by citation to a single other court proceeding containing similar allegations against the detective, and a single newspaper article describing misconduct by the detective. *Id.* ¶ 4, 54. Further similarities between *Almodovar* and Petitioner's case are that the State's evidence against the defendant in *Almodovar* was similarly "tenuous," in that there was no physical evidence linking the defendant to the crime and there was testimony introduced at trial questioning the methods of the lead detective. *Id.* ¶ 79.

Faced with these allegations and the comparatively scant supporting documentation from the defendant, the *Almodovar* court held that the defendant had shown cause for not raising his claim of misconduct previously because he could not "properly challenge the credibility of [the detective's trial] testimony without evidence of his pattern and practice of misconduct in other cases." *Id.* ¶ 63 (reciting and accepting defendant's argument). The result here should be no different. By not only failing to reach this conclusion, but also failing to even consider Petitioner's Motion under the Cause-and-Prejudice rubric, the circuit court committed reversible error.

(ii) Petitioner's Motion Showed He was Prejudiced by not Raising His Claims Previously by Establishing that His Conviction Rested on the Jury's Credibility Determination in Favor of Members of The Seven Who Testified at Trial and Who Share a Troubling History of Misconduct

To establish "prejudice," Petitioner must "show the claimed constitutional error so infected his trial that the resulting conviction violated due process." *Coleman*, 2013 IL 113307, ¶ 82 (citing *Pitsonbarger*, 205 Ill. 2d at 464). Petitioner's inability to demonstrate that The Seven shared a pattern and practice of misconduct, when members of The Seven were among the

only witnesses to provide in-court testimony incriminating Petitioner, was a violation of due process. Again, *Almodovar*, 2013 IL App (1st) 101476 is instructive in this analysis.

In *Almodovar*, the defense had already questioned the detective's tactics at trial, but the court nevertheless ruled that the defendant had been prejudiced, because:

> [T]he credibility of [the detective] is directly at issue with regard to the crucial question of how he procured the evidence that led to defendant's conviction. New evidence that attacks his credibility on that crucial question would be highly material, and, correspondingly, the lack of such evidence would significantly impede defendant's ability to raise his claim of abuse.

Id. ¶ 68.

As in *Almodovar*, the fact that Petitioner did not have the evidence of the pattern and practice of misconduct by The Seven that he submitted with his Motion at either his trial or at the time of his previous post-conviction petition is, by itself, sufficient to establish that he has been prejudiced.

By not only failing to reach this conclusion, but also failing to even consider Petitioner's Motion under the Cause-and-Prejudice rubric, the circuit court committed reversible error.

D. Petitioner's Case Should Be Docketed for a Third-Stage Evidentiary Hearing Upon Remand to the Circuit Court to Avoid Wasting Judicial Resources Because His Motion Has Already Made a "Substantial Showing" of a Constitutional Violation

Were Petitioner's case to be remanded for second-stage proceedings, it would be his burden to make a "substantial showing of [a] constitutional violation." *Jones*, 2016 IL App (1st) 123371, ¶ 58. However, he would not yet need to definitively prove such a violation, because at second-state proceedings, the court is not to engage in fact finding, to draw credibility determinations, or to resolve evidentiary conflicts. *Whirl*, 2015 IL App (1st) 111483, ¶ 74; *Domagala*, 2013 IL 113688, ¶¶ 34, 46. Rather, unless Petitioner's claims are "affirmatively refuted by the record, they are taken as true." *Domagala*, 2013 IL 113688, ¶ 35. Also at second-

stage proceedings, counsel would typically be appointed (which is unnecessary in this instance), and the State would normally become involved in the proceedings (which in this instance, it already is). *Domagala*, 2013 IL 113688, ¶ 33.

Petitioner has alleged that he is an innocent man who is wrongfully imprisoned because of gross misconduct by the police who investigated him, who falsely testified against him at trial, and who intimidated—effectively—the only eyewitnesses who could aver to his innocence. He has presented the Court with substantial evidentiary support for his allegations, none of which is positively rebutted by the original trial record. He has, therefore, already made a substantial showing of a constitutional violation. *People v. Washington*, 171 Ill. 2d 475, 487-99 (1996) (incarceration of an innocent person is a violation of the Illinois Constitution).

Furthermore, Petitioner is already represented by counsel and the State is already involved in these proceedings. Therefore, any second-stage proceedings in this dispute would be duplicative, inefficient, and therefore, wasteful of judicial resources. *See Smith*, 2014 IL 115946, ¶¶ 28-29 (expressing concern that no stage of proceedings under the Post-Conviction Hearing Act should be rendered superfluous).

Therefore, based on Petitioner's allegations and supporting documentation, and in order to preserve judicial resources, the Court should remand Petitioner's case for third-stage proceedings.

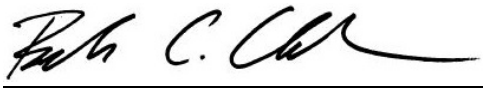
VIII. CONCLUSION

For all the foregoing reasons, Petitioner requests that the Court reverse the circuit court's decision and grant him leave to file a successive petition for relief under the Post-Conviction Hearing Act. Furthermore, Petitioner requests that the Court rule that Petitioner has established the required showing to proceed directly to third-stage proceedings under the Post-Conviction

Hearing Act. Finally, Petitioner asks the Court to vacate his conviction, order a new trial, release him from the custody of the Illinois Department of Corrections pending the outcome of the new trial, and grant him such further relief as the Court deems appropriate.

Date: December 22, 2017

Respectfully submitted,



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IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

No. 1-17-1773

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Petitioner-Appellant.	)	Appeal from Cook County Circuit Court No. 01-CR-17492 Honorable Evelyn B. Clay, Presiding Post-Conviction Proceeding Appellant In Custody Date of Ruling Appealed June 15, 2017 Notice of Appeal Filed June 28, 2017

NOTICE OF FILING

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PLEASE TAKE NOTICE that on the 22nd day of December 2017, I filed electronically Petitioner-Appellant's Brief and Argument in the above captioned matter with the Clerk of the Appellate Court of the State of Illinois, First Judicial District, a copy of which is hereby served upon you.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December 2017, a true and correct copy of Petitioner-Appellant's Brief and Argument, filed in the above-captioned matter, and its attendant Notice of Filing were sent via the Court's electronic filing system to:

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IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

No. 1-17-1773

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from Cook County
Plaintiff-Appellee,	)	Circuit Court No. 01-CR-17492
	)	
	)	Honorable Evelyn B. Clay, Presiding
v.	)	
	)	Post-Conviction Proceeding
	)	Appellant In Custody
KEVIN JACKSON,	)	
	)	Date of Ruling Appealed
Petitioner-Appellant.	)	June 15, 2017
	)	
	)	Notice of Appeal Filed
	)	June 28, 2017

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) 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 48 pages.

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APPENDIX 5

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Respondent-Appellee,

vs.

KEVIN JACKSON,

Petitioner-Appellant.

Appeal from the Circuit Court of Cook County, Criminal Division,
Honorable Evelyn Clay, Judge Presiding.

BRIEF AND ARGUMENT FOR RESPONDENT-APPELLEE

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Respondent-Appellee,

vs.

KEVIN JACKSON,

Petitioner-Appellant.

POINTS AND AUTHORITIES

THE CIRCUIT COURT PROPERLY DENIED LEAVE TO FILE A SUCCESSIVE PETITION BECAUSE PETITIONER FAILED TO PRESENT EITHER A COLORABLE CLAIM OF ACTUAL INNOCENCE OR SATISFY THE CAUSE AND PREJUDICE TEST. THE DOCUMENTATION PETITIONER SUBMITTED LARGELY CONSISTED OF UNFOUNDED AND UNSUSTAINED COMPLAINTS AGAINST POLICE OFFICERS AND THREE AFFIDAVITS WHICH WERE NEITHER NEW, NOR MATERIAL AND NOT CUMULATIVE, NOR LIKELY TO CHANGE THE RESULT ON RETRIAL 12

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ISSUE PRESENTED FOR REVIEW

Whether the circuit court properly denied leave to file a successive post-conviction petition because petitioner failed to present either a colorable claim of actual innocence or satisfy the cause and prejudice test, where the documentation petitioner submitted largely consisted of unfounded and unsustained complaints against police officers and three affidavits which were neither new, nor material and not cumulative, nor likely to change the result on retrial.

STATEMENT OF FACTS

Petitioner, Kevin Jackson, was charged with shooting two men at a gas station near the corner of Damen Ave. and 55th Street in Chicago on May 6, 2001, killing Earnest Jenkins and shooting Michael Watson in the leg. (C.R. 115-16) Four witnesses gave signed handwritten statements relating the events of the shooting and identifying petitioner as the shooter: Brandy Butler[1], Vernon Clay, Manuel Stewart, and Shemika Mason. (C.R. 116) Butler, Clay, and Grant also testified before the grand jury, where they confirmed the accuracy and veracity of their handwritten statements and again identified petitioner as the shooter. (C.R. 116-17) On the night after the shooting, Mason had gathered along with Butler at the home of Quiana Davis; petitioner, a Vice Lord gangmember, came over, instructed them not to talk to the police, and questioned them about what they told police the night of the shooting. (R. 810-12) Clay told a detective he was afraid of the danger he would face if the Vice Lords found out he was cooperating with the police. (C.R. 134) Clay

[1]Brandy Butler is also known as Brandy Grant. (R. 397)

also believed petitioner had threatened him when petitioner told Clay not to talk to the police. (C.R. 134) Stewart was petitioner's cousin and a fellow Vice Lord. (R. 785) At trial, all four witnesses "flipped," not identifying petitioner as the shooter. (C.R. 117) At the conclusion of the trial, the jury convicted petitioner of first-degree murder and aggravated battery with a firearm. (C.R. 115) The Honorable Judge Evelyn Clay sentenced petitioner to concurrent terms of 45 years (which included a 25-year enhancement because petitioner personally discharged a firearm causing death) and 6 years. (C.R. 115)

On direct appeal, this Court affirmed petitioner's conviction. (C.R. 115-140) A Petition for Leave to Appeal (PLA) was denied by the Illinois Supreme Court. People v. Jackson, 221 Ill.2d 655 (2006). Petitioner mailed a *pro se* post-conviction petition on March 6, 2007. (C.R. 141, 146) Judge Clay summarily dismissed this petition. (C.R. 212-27) This Court affirmed the dismissal of the first post-conviction petition on April 29, 2009. People v. Jackson, No. 07-1680 Rule 23 Order (1st Dist. April 29, 2009). Again, a PLA was denied by the Illinois Supreme Court. People v. Jackson, 233 Ill.2d 578 (2009). Petitioner filed a petition for federal habeas corpus relief, which the district court denied. United States ex rel. Jackson v. Hardy, No. 09 C 7774, 2011 U.S. Dist. LEXIS 38848 (N.D. Ill. Apr. 11, 2011). On March 4, 2014, petitioner mailed a "MOTION TO VACATE CONVICTION/SENTENCE AS VOID", which Judge Clay interpreted as a petition for relief from judgment under 735 ILCS 5/2-1401 and denied. (C.R. 237-39, 274-79) On May 25, 2017, counsel filed a motion for leave to file a successive post-conviction petition on petitioner's behalf. (C.R. 291-341) After argument by petitioner's counsel on June 15, 2017,

Judge Clay denied leave to file a successive post-conviction petition. (R. 1238-61) Petitioner now appeals the denial of leave to file a successive post-conviction petition.

The following facts were set forth in this Court's order on direct appeal.[2] At approximately 1:30 a.m. on May 6, 2001, Jenkins was fatally shot, and Michael Watson (Michael) was shot in the leg. The shootings occurred at the Citgo gas station (the gas station), located near the intersection of West 55th Street and South Damen Avenue. Jenkins had stopped his car at the gas station, and Michael exited the car to pump gas. Stanley "Meechie" Watson (Meechie) also exited the car to pay for the gas. (C.R. 116)

Michael Watson and the following four occurrence witnesses testified at trial: Brandy Butler, Vernon Clay, Manuel Stewart, and Shemika Mason. Prior handwritten statements by Butler, Clay, Stewart, and Mason were published in the record, and all identified petitioner as the shooter. Each witness' statement indicated that the witness was treated well by the police and not threatened or promised anything for his or her testimony. All the statements were reviewed and signed. In their grand jury testimony, Butler, Clay, and Stewart confirmed the accuracy and veracity of their handwritten statements, and again identified petitioner as the shooter. However, at trial, none of the five witnesses identified petitioner as the shooter. (C.R. 116-17)

At trial, Michael Watson testified that he warned Meechie, a Gangster Disciple, that the gas station was on the turf of the Vice Lords gang. He stated that the Gangster Disciples and Vice Lords do not get along and if one gang member goes on another gang's turf, the

[2] They were also adopted by the federal district court in its order denying petitioner's habeas corpus petition. United States ex rel. Jackson v. Hardy, No. 09 C 7774, 2011 U.S. Dist. LEXIS 38848, fn.1 (N.D. Ill. Apr. 11, 2011).

rival gang will hurt him. Meechie, however, would not listen and walked to the gas station to pay for the gas. When Michael exited the car to pump the gas, Jenkins was alone in the car. (C.R. 117)

Meechie suddenly warned Michael that a Vice Lord was coming their way from about 120 feet away. Michael then was shot in the leg. Michael later described the shooter as African American, small, thin, and weighing about 120 pounds. (C.R. 117)

Michael never had seen the shooter before and was unable to identify petitioner as the shooter at a lineup or at trial. He testified that petitioner "don't look nothing like the guy." However, Michael identified petitioner's car as the one in which the shooter was sitting prior to the shooting. (C.R. 117)

In her handwritten statement to police and Assistant State's Attorney (ASA) Daly and in her grand jury testimony, Butler stated that she came to the gas station that night with petitioner and three other companions (Quiana Davis, Stewart, and Mario Brown). Butler identified petitioner as a member of the Conservative Vice Lords street gang and Meechie as a member of the Gangster Disciples street gang. She saw petitioner fire a gun at Meechie. (C.R. 118)

At trial, Butler testified that she could not see the shooter and petitioner was not at the scene. She admitted that she saw Meechie at the gas station. Butler testified that she was pregnant at the time, afraid of the police, and not treated well. She also stated that Detectives Foster and Forberg coerced her into implicating petitioner as the shooter by threatening her and not allowing her to leave the police station until she signed her statement. After signing

her statement, the detectives drove her to the courthouse to testify before the grand jury. Butler testified that she was told what to say before the grand jury. (C.R. 118)

After the shooting, Clay told Detective Forberg that he was at the gas station with Davis, Butler, and Mason during the shooting. Clay initially implicated Norman Macintosh, a fellow Vice Lord, in the shooting. However, when re-interviewed, Clay did not remember implicating Macintosh. He then implicated petitioner as the shooter and said that petitioner came to the gas station with Davis and Stewart. At the gas station, Clay saw Meechie, who he knew as a Gangster Disciple, and Davis whispering and hugging. Meechie asked Davis on a date, but she told him that petitioner was her boyfriend. Meechie also made an inappropriate sexual gesture toward Davis. Petitioner then shot at Meechie, who was situated on the passenger side of Jenkins' car. Clay next saw petitioner running from the scene with a gun in his hand. (C.R. 118-19)

Clay explained to Detective Forberg that he wanted to stay at the police station overnight because he was fearful that petitioner and other fellow Vice Lords would learn that he was cooperating with the police, and he would be "in some kind of danger." This fear also resulted from petitioner speaking with Clay shortly after the shooting, telling Clay not to talk to the police. Clay believed this to be a threat. (C.R. 119)

Clay gave a statement to ASA Hennelly, in which he corroborated what he told Detective Forberg. He admitted being a member of the Vice Lords and stated that he witnessed petitioner shooting at Meechie and into the car. (C.R. 119-20)

At trial, Clay testified that he was sleeping at home at the time of the shooting. He said that he did not see petitioner at the site of the shooting and did not know anything about

the shooting until Detective Forberg told him about it after bringing him into the police station. Clay denied telling the police that "Norman" was the shooter, petitioner was at the gas station, and petitioner ran from the gas station with a gun in his hand. (C.R. 120)

Clay testified that Detective Forberg kept him in a room at the police station for an entire day and in custody for a total of three days. He claimed that the police threatened him with imprisonment and said "it was gonna cost [him]" if he did not testify. Clay said that the police told him that they would inform everybody on the street that he cooperated with the police and identified petitioner as the shooter. (C.R. 120)

Clay denied giving a statement to Detective Forberg and ASA Hennelly and denied initialing the statement on page three and signing the statement on page four. Clay admitted that the signature on page five of the statement was his, but claimed that he had not read the document and was under the impression that this was a document he needed to sign to get his property returned. He also denied that his signature was on the back of petitioner's photograph. (C.R. 120-21)

Clay testified that police officers picked him up on June 28, 2001, and drove him to the courthouse to testify before the grand jury. He claimed that a police officer told him to say "yes" to every question, and if he did not, he "would never see the streets again." He denied telling Detective Forberg that he was withholding information due to fear of retaliation by petitioner or the Vice Lords. He also denied that petitioner confronted him after the shooting. (C.R. 121)

After the shooting, Detective Howley interviewed Stewart, who initially told him that petitioner was the shooter. Stewart acknowledged that he falsely identified the shooter as

"Rick Party" because he was protecting petitioner. Stewart later told Detective Clisham that petitioner went to the gas station with him on the night of the shooting. Stewart was driving the car that petitioner and he owned. He acknowledged that petitioner and he were both Vice Lords. Petitioner shot in the direction of Meechie, a member of the rival Gangster Disciples, and into a parked car. He gave the same account of the events in a statement recorded by ASA Hennelly in which he incriminated petitioner in the shooting. (C.R. 121-22)

At trial, Stewart denied that the gas station was the territory of one particular gang. Instead, he said that members of various gangs frequented that establishment. He admitted lying to Detective Clisham when he told him that petitioner accompanied him to the gas station because he was afraid of the police threat of charging him with the murder. He testified instead that only [Mario] Brown, Butler, Davis, and he went to the gas station to purchase cigars to "roll marijuana with." At the gas station, Stewart saw Davis talking to Meechie. Stewart heard gunshots and drove away from the gas station with Brown. Stewart saw the shooter, who was not petitioner, but another member of the Conservative Vice Lords, known to him as "Rick Party." He denied telling Detective Forberg and Detective Howley about the shooting, and stated that he lied when he implicated petitioner in his statement. He lied to the grand jury when he implicated petitioner in the shooting. (C.R. 122)

Mason gave a statement to ASA Daly in which she identified petitioner as the shooter. She stated that Meechie was unarmed. She also knew that Stewart and petitioner were Vice Lords. (C.R. 122)

At trial, Mason testified that she was not at the gas station during the shooting. Instead, she received a call from Davis saying that somebody had been shot at the gas station.

Mason then met Davis and Butler at the gas station, but did not see petitioner. Mason acknowledged talking to the police all night and meeting with ASA Daly to write out her statement. She testified that the police were "telling [her] what they wanted [her] to say." The police promised per that if she cooperated, they would "take care of [her outstanding] warrant." She claimed to sign the statement because she did not want to go to jail for the outstanding warrant. Mason denied telling police that she went with Davis and Butler to purchase cigars and saw petitioner at the gas station talking to Meechie. She also denied telling ASA Daly about petitioner's gang membership, Meechie and Davis' conversation, and petitioner's shooting at Meechie. She further denied that petitioner instructed Butler, Davis, and her after the shooting not to talk to the police. (C.R. 123)

Forensic Investigator Tovar testified that he found six 9 millimeter cartridge cases near Jenkins' car at the gas station. He recovered a fired bullet from the floor of the car. (C.R. 122-23)

Dr. Adrienne Segovia testified that the bullet that killed Jenkins traversed the victim's body from left to right. She concluded that Jenkins was killed by multiple gunshots. (C.R. 123)

The jury found petitioner guilty of first degree murder and aggravated battery with a firearm. (C.R. 123)

On direct appeal, petitioner contended that: (1) the People failed to prove beyond a reasonable doubt that he participated in the offenses; (2) the prosecutor's statements during closing argument were improper and sufficiently prejudicial to deprive him of a fair trial; (3) the trial court erred in allowing the substantive admission of witnesses' grand jury testimony

and other previous oral statements as prior inconsistent statements; and (4) the subsection of the statute authorizing the enhanced sentence (730 ILCS 5/5-8-1(a) (1)(d) (iii) (West 2002)) was unconstitutional because it was contrary to the public interest and it violated the rule against double enhancement. (C.R. 115-16) This Court affirmed petitioner's conviction and sentence. (C.R. 124-40) With respect to the sufficiency of the evidence, this Court observed:

> The evidence here sufficiently establishes that defendant was the shooter. Initially, we note that the witnesses' prior inconsistent statements were properly admitted. In their prior handwritten statements, Butler, Clay, Mason, and Stewart all identified defendant as the shooter. Butler, Clay, and Stewart also identified defendant as the shooter before the grand jury. At trial, Michael identified defendant's car as the vehicle the shooter was in at the gas station. Furthermore, the State presented physical evidence of the bullet's trajectory and the location of recovered cartridge casings, thereby corroborating the accounts of Butler, Mason, and Stewart. (C.R. 130)

This Court also found that "the prior statements describe a consistent account of the events at the gas station and after the shooting", and presumed that the jury took into account the witnesses' claims of coercion in determining the witnesses' credibility. (C.R. 130-31)

In his first post-conviction petition, petitioner alleged that (1) his trial counsel was ineffective for failing to call Quiana Davis, Mario Brown, and Stanley "Meechie" Watson as witnesses at trial; (2) his trial counsel was ineffective for failing to request a jury instruction addressing the credibility of the witnesses' inconsistent statements to police and before the grand jury: (3) his trial counsel was ineffective for failing to investigate or subpoena Shemika Mason's outstanding warrant to corroborate her testimony; (4) his trial counsel was ineffective for failing to investigate and present the jury with evidence that Rick "Party" McShane was the shooter: and (5) his appellate counsel was ineffective for failing to argue

on direct appeal that trial counsel failed to request a credibility instruction. People v. Jackson, No. 07-1680, p.10, Rule 23 Order (1st Dist. April 29, 2009). The circuit court summarily dismissed the petition as frivolous and patently without merit, and this Court affirmed on appeal. Id. at pp. 11-20.

In his federal habeas petition, petitioner alleged that: (1) his conviction was based on prior inconsistent statements by witnesses that recanted their previous testimony at trial; (2) his trial counsel was ineffective because that attorney failed to investigate an alternative suspect; (3) his appellate counsel was ineffective because that lawyer did not argue his trial counsel was ineffective for not investigating the alternative suspect; and (4) the state courts applied an unduly harsh pleading standard to his first state collateral attack on his conviction. United States ex rel. Jackson v. Hardy, No. 09 C 7774, 2011 U.S. Dist. LEXIS 38848, at *1-2 (N.D. Ill. Apr. 11, 2011). The district court denied the habeas petition. Id. at *2-36.

In petitioner's "MOTION TO VACATE CONVICTION/SENTENCE AS VOID," which the circuit court treated as a petition for relief from judgment under 735 ILCS 5/2-1401, petitioner alleged that: (1) the implementation of 730 ILCS 5/5-8-1(a)(1)(d)(iii) was a violation of petitioner's 5th, 6th, and 14th amendment rights; (2) the evidence at trial was insufficient to convict petitioner beyond a reasonable doubt; and (3) petitioner received ineffective assistance of counsel when counsel failed to object to the constructive amendment of his indictment. (C.R. 237-39, 274-75) The circuit court denied the petition (C.R. 274-79), and petitioner did not appeal.

In his motion for leave to file a successive post-conviction petition, petitioner alleged (1) newly discovered evidence of actual innocence in the form of a purported pattern of

misconduct by the detectives who conducted the investigation and (2) cause and prejudice in that evidence of the purported pattern of misconduct by the detectives was unavailable at the time of trial and at the time petitioner filed his first post-conviction petition and that his inability to impeach the detectives who testified infected the whole trial. (C.R. 330-37) After argument by petitioner's counsel on June 15, 2017, the circuit court observed that it had reviewed the petition and exhibits and that most—90-95%—of the complaints against the detectives were unfounded or not sustained, and the few that were involved infractions like taking office supplies. (R. 1253) Petitioner could not have used any of that material in a first trial or retrial, and thus, it could not change the result at trial. (R. 1253-54) The credibility of witnesses, whether police or civilian, is in issue in every trial, and mere allegations cannot be used for impeachment. (R. 1256-57) In response to counsel's argument that, even if the allegations against the officers were inadmissible, investigation into them might have led to useful information, the court pointed out that counsel's contention was mere speculation. (R. 1258-59) In addition, the court noted that the affidavits petitioner attached from Quiana Davis, Manuel Stewart, and Brandy Grant did not constitute newly discovered evidence and would not change the result of trial. (R. 1259-60) The court then denied petitioner's motion for leave to file a successive petition. (R. 1261)

ARGUMENT

THE CIRCUIT COURT PROPERLY DENIED LEAVE TO FILE A SUCCESSIVE PETITION BECAUSE PETITIONER FAILED TO PRESENT EITHER A COLORABLE CLAIM OF ACTUAL INNOCENCE OR SATISFY THE CAUSE AND PREJUDICE TEST. THE DOCUMENTATION PETITIONER SUBMITTED LARGELY CONSISTED OF UNFOUNDED AND UNSUSTAINED COMPLAINTS AGAINST POLICE OFFICERS AND THREE AFFIDAVITS WHICH WERE NEITHER NEW, NOR MATERIAL AND NOT CUMULATIVE, NOR LIKELY TO CHANGE THE RESULT ON RETRIAL.[3]

The circuit court properly denied leave to file petitioner's successive post-conviction petition. Petitioner's proffered evidence failed to support a colorable claim of actual innocence or satisfy the cause and prejudice test. Judge Clay reviewed the petition and exhibits, and most of the complaints against the detectives were unfounded or not sustained, and the few that were involved infractions such as taking office supplies. (R. 1253) Further, Judge Clay noted that the affidavits from Manuel Stewart, and Brandy Grant—who both testified at trial—and Quiana Davis did not constitute newly discovered evidence and would not change the result of trial. Therefore, the circuit court properly denied leave to file the successive petition, and this Court should affirm.

The Post-Conviction Hearing Act is a legislative creation that permits incarcerated defendants to collaterally attack their conviction by asserting that they suffered a substantial violation of their constitutional rights at trial. People v. Bailey, 2017 IL 121450, ¶17. An

[3] Petitioner's Brief is not in compliance with Supreme Court Rule 342 as petitioner has not included in his brief "an appendix, a table of contents to the appendix, the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge or by any administrative agency or its officers, any pleadings or other materials from the record that are the basis of the appeal or pertinent to it, the notice of appeal, and a complete table of contents, with page references, of the record on appeal." Ill. Sup. Ct. Rule 342.

action seeking post-conviction relief is a collateral proceeding, not an appeal from the earlier judgment, and its scope is limited to constitutional issues that were not, and could not have been, previously adjudicated. People v. Petrenko, 237 Ill. 2d 490, 499 (2010). Any claims that could have been raised on direct appeal but were not are considered procedurally defaulted and any claims that were actually litigated are barred by the doctrines of *res judicata* and collateral estoppel. Id. at 499; People v. Tenner, 206 Ill.2d 381, 396 (2002).

In addition, the Act specifically provides that any claim not presented in an original or amended petition is waived. 725 ILCS 5/122-3. As the Supreme Court has recognized, this waiver is not akin to the procedural default which may be excused by the judiciary. People v. Pitsonbarger, 205 Ill. 2d 444, 458 (2002). Instead, this express requirement of the Act reflects the legislative intention to generally provide but a single opportunity to bring a collateral challenge. People v. Flores, 153 Ill. 2d 264, 273 (1992).

Although the Act allows for the filing of a successive post-conviction petition in limited circumstances, it requires the petitioner to satisfy additional procedural hurdles before the successive claims may be considered. 725 ILCS 5/122-1(f). These procedural hurdles have been deemed "immense" and "are lowered in very limited circumstances, where fundamental fairness so requires." Tenner, 206 Ill.2d at 392. The limitations on successive filings are designed, in part, to protect the People's legitimate interest in the finality of criminal litigation and to preserve its scarce and already strained judicial resources for those cases which are most deserving. People v. Flores, 153 Ill.2d at 274. It is well settled that successive post-conviction actions are disfavored by Illinois courts. People v. Smith, 2014 IL 115946, ¶31.

The Illinois Supreme Court has provided two bases upon which the bar against successive proceedings will be relaxed. People v. Edwards, 2012 IL 111711, ¶22. Under the "fundamental miscarriage of justice" exception, a petitioner must show actual innocence. People v. Edwards, 2012 IL 111711, ¶23. The other basis for relaxing the bar is when a petitioner can establish "cause and prejudice" for the failure to raise the claim earlier. Id. See also People v. Brown, 2017 IL App (1st) 150132, ¶36 (the bar against successive post-conviction proceedings should be relaxed when (1) a petitioner can establish "cause and prejudice" for the failure to raise the claim earlier or (2) he can show actual innocence under the "fundamental miscarriage of justice" exception).

New evidence that goes to discredit the reliability of the evidence introduced at trial does not qualify as evidence of actual innocence. Hobley, 182 Ill.2d at 444; Orange, 195 Ill.2d at 460. "[T]he issue is not whether the evidence at trial was insufficient to convict [the defendant] beyond a reasonable doubt. The appellate court rejected that challenge on direct appeal." People v. Washington, 171 Ill.2d 475, 479 (1996). Rather, the focus of a free-standing claim of actual evidence is whether the new evidence would totally vindicate or exonerate the defendant. People v. Anderson, 401 Ill.App.3d 134, 140 (1st Dist. 2010); People v. Collier, 387 Ill.App.3d 630, 637-38 (1st Dist. 2008).

The evidence of actual innocence must be (1) newly discovered, (2) not discoverable earlier through the exercise of due diligence, (3) material and not merely cumulative, and (4) of such conclusive character that it would probably change the result on retrial. People v. Sanders, 2016 IL 118123, ¶24. Petitioner must first demonstrate that the evidence is new, and he bears the burden of "showing no lack of due diligence on his or her part" in

discovering it. People v. Snow, 2012 IL App (4th) 110415, ¶21; People v. Barnslater, 373 Ill.App.3d 512, 525 (1st. Dist. 2007). "An unbroken line of precedent holds that evidence is not newly discovered when it presents facts already known to a defendant at or prior to trial, though the source of those facts may have been unknown, unavailable or uncooperative." People v. Jones, 399 Ill. App. 3d 341, 364 (1st Dist. 2010) (collecting cases). Therefore, a witness' recantation of previous testimony generally will not qualify as newly discovered evidence if the defendant knew the witness had perjured himself or herself. A limited exception to this rule exists if the defendant can demonstrate that other evidence of the lying could not have been discovered before trial with due diligence. Snow 2012 IL App (4th) 110415, ¶23 *citing* Barnslater, 373 Ill. App. 3d at 525. In addition, if the evidence was available at a prior post-trial proceeding, it does not qualify as newly discovered. Snow, 2012 IL App (4th) 110415, ¶21.

Material evidence is relevant and probative of the defendant's innocence. People v. Jones, 2017 IL App (1st) 123371, ¶43. Evidence is considered cumulative when it "adds nothing to what was already before the jury." Id. at 333. However, testimony that adds to what was before the fact-finder or creates new questions in the mind of the trier of fact is not cumulative. People v. Ortiz, 235 Ill.2d 319, 336 (2009); People v. Williams, 392 Ill.App.3d 359, (1st Dist. 2009).

If the proffered evidence is found to be "newly discovered," material, and not cumulative, the court must determine whether it is of such conclusive nature that it would probably change the result on retrial. This determination is the most important factor in the equation. People v. Edwards, 2012 IL 111711, ¶40. The Edwards court found that to meet

this standard the defendant must provide "new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." Edwards, 2012 IL 111711, ¶32, *quoting* Schlup v. Delo, 513 U.S. 298, 324 (1995). The proffered evidence must exonerate the defendant, not simply impeach or contradict testimony given at trial. People v. Collier, 387 Ill.App.3d 630, 637 (1st Dist. 2008). However, where the evidence is both exonerating and contradicts the State's evidence at trial, it is capable of producing a different outcome at trial. Ortiz, 235 Ill. 2d at 336-37.

It is the petitioner's burden to obtain leave before further proceedings on his claims can follow. Smith, 2014 IL 115946, ¶30. Petitioner must also submit enough in the way of documentation to allow a circuit court to make that determination. Id. at ¶32. Leave of court to file a successive post-conviction petition should be denied when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings. Id. at ¶35. The denial of a petitioner's motion for leave to file a successive post-conviction petition is reviewed *de novo*. People v. Bailey, 2017 IL 121450, ¶13.

Prior allegations of police misconduct may be deemed relevant to impeach an officer on the issues of bias, interest or motive to testify falsely; however, to be admissible, the evidence must not be too remote or uncertain, and must raise an inference that the witness had something to gain or lose by his testimony. People v. Cacini, 2015 IL App (1st) 130135, ¶66. When determining whether evidence of prior allegations of police misconduct are admissible, the question of relevancy is a determination to be made by the trial court after a

consideration of the temporal proximity of the past misconduct, whether there is a repetition of similar misconduct, and the similarity of the past misconduct to the conduct at issue in the case before the court. People v. Porter-Boens, 2013 IL App (1st) 111074, ¶17, citing People v. Patterson, 192 Ill.2d 93, 140-45 (2000). Our supreme court has specifically "declined to find evidence of prior police brutality to be relevant when *** the allegation *** occurred three years before the case at bar." Porter-Boens, 2013 IL App (1st) 111074, ¶19, citing People v. Patterson, 192 Ill.2d at 115. See also Cacini, 2015 IL App (1st) 130135, ¶70 (trial court did not abuse its discretion in finding officers' complaint files, which were remote as they were more than three years old, were not discoverable or admissible). Further, mere evidence of a civil suit against an officer charging some breach of duty unrelated to the defendant's case is not admissible to impeach the officer; moreover, mere allegations of misconduct, without evidence the officer was disciplined, are not admissible as impeachment and do not raise an inference of bias or motive to testify falsely. Cacini, 2015 IL App (1st) 130135, ¶66. See also Porter-Boens, 2013 IL App (1st) 111074, ¶20; People v. Nelson, 235 Ill.2d 386, 422 (2009)(the defendant did not identify any disciplinary actions taken against officers by the police department; therefore, the trial court did not abuse its discretion in granting a motion *in limine* precluding examination about a prior complaint).

If prior complaints of police misconduct are not relevant, they are not even discoverable. See People v. Coleman, 206 Ill.2d 261, 269, 278-83, 286-87 (2002)(circuit court properly denied post-conviction motions for discovery regarding officer's alleged misconduct—eight complaints against the officer: five of which were not sustained and three of which were completely unfounded); Porter-Boens, 2013 IL App (1st) 111074, ¶¶7-24 (trial

court's ruling quashing defendant's subpoena for officer's records was proper because they were immaterial).

A. Scrutiny Of Petitioner's Documentation Reveals There Is No Evidence Against The Four Police Detectives Who Had Anything To Do With Obtaining The Inculpatory Evidence Against Petitioner That Could Possibly Support A Claim Of Actual Innocence.

Petitioner ominously but erroneously refers throughout his brief to the police detectives who obtained much of the evidence against him as "The Seven." In fact, there were only four detectives who interviewed and obtained pre-trial statements from the four witnesses who inculpated petitioner. This fact is borne out not only by the record, but by petitioner's own documentation. In petitioner's motion for leave to file a successive petition, he noted the responsibility of three of "The Seven" detectives—Dets. Kaup, Kowalski, and Bartik—merely concerned interviewing Quiana Davis, who did not testify or give any evidence against petitioner. (C.R. 302-3) On the other hand, there were four witnesses who gave pre-trial statements implicating petitioner—Brandy Butler, Vernon Clay, Manuel Stewart, and Shemika Mason—and four detectives who interviewed them or who were present for their statements: Dets. Forberg, Foster, Clisham, and Howley. (R. 535, 565, 572, 656-58, 726, 784, 809, 817, 821) Notably, Dets. Forberg and Foster interviewed other individuals—Mario Brown, Michael Watson, Stanley Watson, and petitioner—who did not give pre-trial statements implicating petitioner. (R. 701, 703, 705-6, 717-18, 752)

A review of petitioner's documentation concerning Dets. Forberg, Foster, Clisham, and Howley reveals the complete absence of any evidence that could support a claim of actual innocence. The complaints of police misconduct were entirely irrelevant, and thus, not

even discoverable through the subpoena process, as they were almost all unfounded or unsustained, remote in time, and not similar to the complaints in this case. Moreover, the civil suits petitioner refers to either did not involve these detectives or did not ultimately result in a finding that they had committed misconduct.

First, with respect to complaints against Det. Brian Forberg, only one of 35 complaints from 5/19/1996-5/3/2014 was sustained. (Supp.C.R. (10/30/17) 60-61) Only 16 of these complaints concerned events within three years either way of the 2001 murder in this case, and none of those complaints were sustained. (Supp.C.R. (10/30/17) 60-61) None of the 16 complaints were for "coercion of a witness or suspect," and the only sustained complaint was for "gang affiliation" and occurred on 5/1/14. (Supp.C.R. (10/30/17) 60-61)

Second, with respect to complaints against Det. John Foster, only three of 65 complaints from 2/19/1993-8/13/2013 were sustained. (Supp.C.R. (10/30/17) 59-60) Only 14 of these complaints concerned events within three years either way of the murder in this case, and none of those complaints were sustained. (Supp.C.R. (10/30/17) 59-60) None of the 14 complaints were for coercion of a witness or suspect, and the only sustained complaints concerned "sexual harassment" on 2/3/1998; "association with felon" on 8/23/2006; and "excessive force--use of firearm off duty--no injury to miscellaneous" on 2/18/2013. (Supp.C.R. (10/30/17) 59-60)

Third, with respect to complaints against Det. John Clisham, all 10 complaints were either "not sustained" or "unfounded." (Supp.C.R. (10/30/17) 61) Only 2 of these complaints concerned events within three years either way of the murder in this case, and of

course, none of those complaints were sustained. (Supp.C.R. (10/30/17) 61) None of these complaints were for coercion of a witness or suspect. (Supp.C.R. (10/30/17) 61)

Fourth, with respect to the two complaints against Det. Kevin Howley, neither complaint was sustained, neither concerned events within three years either way of the murder in this case, and neither concerned coercion of a witness or suspect. (Supp.C.R. (10/30/17) 62)[4]

These irrelevant complaints fail the threshold of discoverability, let alone admissibility, given that the vast majority were unfounded or not sustained, remote in time, and none were similar to the alleged police misconduct in this case. See supra Porter-Boens, 2013 IL App (1st) 111074, ¶¶7-24; Patterson, 192 Ill.2d 93, 140-45; Cacini, 2015 IL App (1st) 130135, ¶¶66, 70; Nelson, 235 Ill.2d 386, 422; Coleman, 206 Ill.2d 261, 269, 278-83, 286-87.

Although petitioner discusses purported physical abuse by detectives in other cases, (Pet. Br. 14), it is critical to note that none of the witnesses alleged physical abuse by any of the detectives in this case. The four witnesses claimed that they were coerced either by threats of imprisonment or by promises regarding other cases: Brandy Butler testified she was threatened with being charged with the murder since she was at the scene (R. 420); Vernon Clay testified that he gave no statement to the police at the station, and that when the police spoke to him on the day he testified before the grand jury, they mentioned his other cases and told him if he testified as to what happened he "could see the streets" and would

[4] A review of the complaints against the other three officers named by petitioner—Dets. Kaup, Kowalski, and Bartik—similarly reveals the absence of any evidence that could support a claim of actual innocence. (Supp.C.R. (10/30/17) 61-62)

not "have to worry about it" but it would cost him if he did the wrong thing (R. 486-89); Shemika Mason testified that the police told her if she went along with what they wanted her to say they would take care of her warrant (R. 535); Manny Stewart testified that the police threatened to lock him up for the crime. (R. 568-69) The unrelated complaints in other cases referred to by petitioner are in no way similar to the purported police misconduct alleged to have occurred in this case, and thus, they fail the Patterson test. See People v. Johnson, 2011 IL App (1st) 092817, ¶¶78, 80 (in post-conviction case, claims in other cases were not "strikingly similar," citing Patterson, 192 Ill. 2d at 145, to the type of police misconduct alleged to have occurred in the defendant's case); People v. Upshaw, 2017 IL App (1st) 151405, ¶ 80 (allegations of physical abuse not "strikingly similar" to the allegations in the new evidence in post-conviction case).

The remainder of petitioner's "evidence" against the four detectives is a compilation of four civil cases, some involving none of the four detectives and none of which ultimately resulted in any kind of judicial finding of wrongdoing by them. (Pet. Br. 30) The complaint in Corethian Bell v. City of Chicago names none of the four detectives as defendants, let alone the three others mentioned by petitioner. www.law.northwestern.edu/legalclinic/macarthur/projects/wrongful/documents/BellComplaint.pdf. The federal courts in the case of Bridewell v. Eberle, essentially absolved Det. Brian Forberg of any wrongdoing. In partially granting a defense motion to dismiss, Judge Leinenweber found that the complainant's allegation of coercive interrogation was "nothing more than a standard police interrogation and did not violate [a plaintiff's] constitutional rights." Bridewell v. Eberle, No. 08 C 4947, 2009 U.S. Dist. LEXIS 32159, at *8 (N.D. Ill.

Apr. 16, 2009). In ensuing proceedings, Judge Leinenweber granted a defense motion to dismiss another count, Bridewell v. Eberle, No. 08 C 4947, 2010 U.S. Dist. LEXIS 73549 (N.D. Ill. July 22, 2010), and later granted the defense motion for summary judgment on the remaining counts, Bridewell v. City of Chicago, No. 08 C 4947, 2012 U.S. Dist. LEXIS 88671, at *5 (N.D. Ill. June 27, 2012), an action affirmed by the Seventh Circuit. Bridewell v. Eberle, 730 F.3d 672 (7th Cir. 2013). The case of McGee v. City of Chicago, 2012 IL App (1st) 111084, ¶1, involved none of the four detectives, while Det. Bartik was a named defendant. Notably, the verdict for the plaintiff in McGee was overturned on appeal because of a tainted jury. Id. at ¶¶24-35. Finally, the fourth case involved a settlement between the City of Chicago and Maurice Patterson, not a verdict or judicial finding of police misconduct, after a wrongful conviction stemming from misapprehension and misstatements in court over the source of DNA on a bloody knife found at the crime scene. www.law.northwestern.edu/legalclinic/wrongfulconvictions/exonerations/il/maurice-patterson.html; articles.chicagotribune.com/2012-10-02/news/chi-34-million-settlement-recommended-for-wrongful-murder-conviction-20121002_1_wrongful-murder-conviction-murder-case-million-settlement. Dets. Forberg and Foster were two of ten individuals named as defendants by Patterson, chicago.legistar.com/LegislationDetail.aspx?ID=1213332&GUID=689C804A-70D3-4ED1-AB03-BD6071071304, but there was no finding of wrongdoing on either detective's part.

These four civil cases fail to provide any support to petitioner's claim where half of them did not even involve the four pertinent detectives, there were no judicial findings of wrongdoing or disciplinary action, and the unrelated lawsuits bore no resemblance to the

purported misconduct in this case. See People v. Cacini, 2015 IL App (1st) 130135, ¶66 (mere evidence of a civil suit against an officer charging some breach of duty unrelated to the defendant's case is not admissible to impeach the officer (citing People v. Coleman, 206 Ill. 2d 261, 279 (2002)); moreover, mere allegations of misconduct, without evidence the officer was disciplined, are not admissible as impeachment and do not raise an inference of bias or motive to testify falsely (citing Porter-Boens, 2013 IL App (1st) 111074, ¶20)). In Coleman, 206 Ill.2d at 282, the supreme court found lawsuits naming an officer irrelevant where they did not provide any inference that the officer had a motive to testify favorably to the State or to perjure himself. The supreme court cited the case of People v. Davis, 193 Ill.App.3d 1001 (4th Dist. 1990), with approval where the appellate court had found evidence of civil suits irrelevant where there had been no disciplinary action taken against the officer in a suit that had been settled and a pending suit was not related to the defendant's case. Coleman, 206 Ill. 2d at 278-79. See also People v. Nelson, 235 Ill. 2d 386, 422 (2009)(trial court did not abuse its discretion in precluding cross-examination about an unrelated pending civil case where the defendant did not identify any disciplinary actions taken against the officers); People v. Williams, 2011 IL App (1st) 093350, ¶¶26-45 (trial court properly precluded evidence of an unrelated lawsuit involving a police shooting where there was no evidence whatsoever that the detectives were disciplined in any manner for their involvement in the unrelated civil lawsuit which involved materially different allegations and many different officers), vacated on other grounds, People v. Williams, 2014 IL 113787.

Beyond all of these other problems with the "evidence" concerning the four police detectives in this case, it does not constitute evidence of actual innocence and is not (1)

newly discovered, (2) not discoverable earlier through the exercise of due diligence, (3) material and not merely cumulative, and (4) of such conclusive character that it would probably change the result on retrial.

As discussed above, evidence of actual innocence is evidence that would totally vindicate or exonerate the defendant. People v. Anderson, 401 Ill.App.3d 134, 140 (1st Dist. 2010); People v. Collier, 387 Ill.App.3d 630, 637-38 (1st Dist. 2008). Actual innocence is not the same as sufficiency of the evidence or reasonable doubt, nor mere impeachment of trial witnesses, but a claim of vindication or exoneration. People v. Brown, 2017 IL App (1st) 150132, ¶39. Petitioner's proposed evidence merely impeaches or contradicts the trial testimony and, accordingly, does not support a claim of actual innocence. See Brown, 2017 IL App (1st) 150132, ¶76, citing People v. Williams, 2016 IL App (1st) 133459, ¶57 ("at best the evidence contained in the affidavit merely affects the issue of the sufficiency of the evidence and therefore does not totally vindicate defendant"). Evidence that shows weakness in the prosecution's case—even police misconduct—but does not show actual innocence, *i.e.*, does not show the petitioner did not commit the crime, will not support a claim of actual innocence. People v. Mitchell, 2012 IL App (1st) 100907, ¶48. Since none of the above proposed evidence shows that petitioner did not commit the shooting in this case, it is not evidence of actual innocence.

Nor is it (1) newly discovered, (2) not discoverable earlier through the exercise of due diligence, (3) material and not merely cumulative, and (4) of such conclusive character that it would probably change the result on retrial.

Petitioner filed his first post-conviction petition on March 16, 2007. (C.R. 146) Since this shooting occurred on May 6, 2001, and purported evidence of police misconduct is considered remote in time if it is three years or more removed from the case in issue, see supra Porter-Boens; Patterson, petitioner easily could have obtained all the non-remote-in time complaints he has now obtained by the time he filed his first petition. He has not shown any reason he could not have acted earlier, especially given that the detectives' conduct in obtaining witnesses' statements was an issue at his trial. He apparently did not file a FOIA request to obtain the information he attached to the motion until October 2016. (Supp.C.R. (10/30/17) 200, 203, 204) He has given no reason for failing to file a FOIA request earlier, or for not raising this issue and seeking discovery in conjunction with his first petition. Although petitioner complains he has encountered "great resistance" to obtaining the complaints of police misconduct from the police department (Pet. Br. 29), the record shows instead that petitioner mounted an unduly burdensome and overly broad fishing expedition into complaints as to 44 police officers (Supp.C.R. (10/30/17) 200-2, 204-6, 212, 215), rather than an appropriate, narrowly-drawn request. Again, there were only 4, not 44, officers who obtained the bulk of the evidence against petitioner. In addition, contrary to petitioner's characterization, the record demonstrates that the police department clearly and reasonably attempted to cooperate with petitioner's unduly burdensome request. See People v. Lucas, 203 Ill.2d 410, 429 (2002)(In deciding whether to grant post-conviction discovery, courts may consider the scope of the discovery sought, the length of time between the conviction and the post-conviction proceeding, the burden of granting the discovery and the availability of the desired evidence through other sources).

In the absence of newly discovered evidence, the circuit court properly dismissed this claim. See People v. Snow, 2012 IL App (4th) 110415, ¶¶22, 27 (on its face, most of the defendant's supporting evidence would have been available with the exercise of due diligence; actual innocence claim properly dismissed).

The cases cited by petitioner are factually distinguishable and do not support his claim that the evidence he submitted is "newly discovered." For instance, in Patterson, 192 Ill. 2d at 106, 108-09, information relating to other allegations of torture to support a pattern of torture by Jon Burge, including an OPS report finding systemic abuse of prisoners by him and others working under him, would simply not have been discoverable by trial counsel at the time of the 1987 suppression hearing: at that time, OPS had **no** reports indicating that several other people had been tortured, and the defendant's appellate attorney had represented a plaintiff in a federal suit against the City of Chicago, Burge, and other officers, and notwithstanding the fact that the appellate attorney had available to him the full panoply of the civil discovery process, he did not discover the vast majority of the information upon which the defendant relied until two years after trial counsel filed the defendant's motion to suppress. In People v. Reyes, 369 Ill. App. 3d 1, 20 (1st Dist. 2006), counsel was previously unable to discover police records of misconduct through due diligence because a judge ruled defense counsel could not see them despite counsel's subpoena. Also in Reyes, like Patterson, and unlike the instant case as discussed above, the defendant was able to meet the Patterson test regarding evidence of police misconduct (temporal proximity, repetition of similar misconduct, and the similarity of the past misconduct to the conduct at issue in the case before the court); indeed, one of the complaints involving physical abuse of a suspect,

which was similar to the defendant's claim, had been sustained by OPS. Id. at 16-22. Because, again like Patterson and unlike the instant case, there was a pattern of misconduct that was similar to the misconduct the defendant alleged in his own case, the evidence was considered "new" despite its age. Id. at 19. Furthermore, the procedural posture of Reyes was a first-stage post-conviction proceeding which only had to meet the low "gist" standard of pleading. Id. at 18-24. The claim in People v. Almodovar, 2013 IL App (1st) 101476, ¶¶63-68, involved the same detective as in Reyes and was so similar that the court in Almodovar essentially followed Reyes; notably, it was also a first-stage proceeding.

In People v. Whirl, 2015 IL App (1st) 111483, ¶98, unlike the instant case, the circuit court acknowledged the pervasive evidence that Jon Burge and many of the officers working under him—including the detective alleged to have abused Whirl—regularly engaged in the physical abuse and torture of suspects with the goal of extracting confessions, Whirl's claims of torture were strikingly similar to other claims, the officer involved was identified in other allegations of torture, and Whirl's allegations were consistent with the findings of systemic and methodical torture under Burge. Thus, though the most recent incident of misconduct was four years prior to his arrest, it was part of a pattern. Id. at ¶100. Notably, the Illinois Torture Inquiry and Relief Commission had found that "by a preponderance of the evidence, there is sufficient evidence of torture to conclude [Whirl's] Claim is credible and merits judicial review for appropriate relief." Id. at ¶45. In People v. Tyler, 2015 IL App (1st) 123470, ¶162, 168, 186, not only was there substantial testimony that the defendant had been physically abused by police—in the form of testimony that his face appeared swollen, that he told a witness that he had been beaten, and a doctor's testimony that the defendant was

treated at the hospital for vomiting blood immediately after his confession—he presented evidence of physical abuse by detectives working on his case that "mirror[ed]" his complaints, at least one of which was also corroborated by evidence of abuse. The other complaints could not have been discovered through due diligence, as many of the allegations did not surface until many years later. Id. at ¶162. The witnesses in People v. Coleman, 2013 IL 113307, ¶102, were considered "newly discovered" because they likely would have asserted their fifth amendment privileges at the time of the defendant's trial. Finally, the appellate court vacated the decision of People v. Jones, 2016 IL App (1st) 123371, after a petition for rehearing, and ruled quite differently in People v. Jones, 2017 IL App (1st) 123371.

To the extent petitioner contends that there is evidence that arose subsequent to his first petition that supports an argument that he has presented new evidence not discoverable through due diligence (Pet. Br. 30-31), a review of that evidence shows that it is irrelevant and immaterial. The complaints to the police and civil lawsuits are irrelevant as discussed above.[5] A report by the U.S. Department of Justice relied upon by petitioner (Pet. Br. 30-31) concerned a review of complaints of misconduct to the police from the years 2011-2016, very far removed from the relevant time period of this case as discussed above. Investigation of the Chicago Police Department, pp. 5-7, https://www.justice.gov/opa/file/925846/download. Finally, although petitioner's brief refers to a citation in his motion to an article quoting the State's Attorney as "trying to end Cook County's reputation as the 'wrongful conviction

[5] One of the civil cases, which named none of the detectives as defendants which petitioner now names, was made public in 2002, long before petitioner filed his first petition in 2007, see http://articles.chicagotribune.com/2002-07-16/news/0207160227_1_mr-bell-confession-alleges, and thus was neither newly discovered nor material.

capital of the U.S.,'" by revamping the Conviction Integrity Unit (Pet. Br. 30; https://chicago.suntimes.com/chicago-politics/kim-foxx-planning-cook-county-wrongful-conviction-unit-revamp/), there is nothing in this statement or article specifically addressing this case or the detectives petitioner complains of.

None of the evidence petitioner submitted was material as it does not vindicate him and support a claim he is actually innocent, and it was entirely irrelevant. See People v. Gonzalez, 2016 IL App (1st) 141660, ¶58 (evidence of misconduct by a detective in other cases was immaterial, as it did not support a claim of actual innocence, and it would not have any bearing on a retrial in the absence of any nexus between the facts of Gonzalez' case and the alleged misconduct in other cases).

Finally, even assuming for argument's sake that petitioner offered "newly discovered" and material evidence, he did not proffer evidence of such conclusive character that it would probably change the result on retrial. The conclusiveness of the evidence has been held to be the most important requirement of an actual innocence claim. See People v. Brown, 2017 IL App (1st) 150132, ¶40 (citing People v. Washington, 171 Ill. 2d 475, 489 (1996)). The evidence against petitioner at trial was strong and it was corroborated. Four eyewitnesses gave statements identifying petitioner as the shooter. (C.R. 130 (Rule 23 Order on direct appeal)) Three of these witnesses also identified petitioner before the grand jury. Id. In addition, another witness, Michael Watson, identified petitioner's car as the vehicle the shooter was in at the gas station. Id. Physical evidence of the bullet's trajectory and the location of recovered cartridge cases corroborated the eyewitness accounts of Butler, Mason, and Stewart. Id. Not only did this Court reject an insufficiency of the evidence claim on

direct appeal, but a federal district court did so as well, going so far as to deny petitioner a certificate of appealability in federal court. (C.R. 124-31); United States ex rel. Jackson v. Hardy, No. 09 C 7774, 2011 U.S. Dist. LEXIS 38848, **22-25, 35-36 (N.D. Ill. Apr. 11, 2011).

Petitioner already argued at trial that the police coerced the witnesses' statements against him, and the jury rejected that argument. Despite the witnesses' claims about police threats or promises, the fact remains that there was substantial evidence that it was petitioner who intimidated the eyewitnesses, causing them to "flip" at trial. Indeed, this Court has already made that finding. On direct appeal, petitioner challenged the prosecutors' trial arguments on this point, and this Court rejected petitioner's contention, finding that the "argument that [petitioner] and the Vice Lords intimidated the witnesses to the point that they disavowed their prior statements at trial was a reasonable inference." (C.R. 133) "Clay and Mason both declared in their prior statements that [petitioner] instructed them not to talk to the police. Clay told Detective Forberg that he was worried about the danger he would face if the Vice Lords found out that he was cooperating with the police. Clay also believed that [petitioner] threatened him when he told Clay not to talk to the police." (C.R. 133-34) Notably, Stewart was a Vice Lord with petitioner and would have undoubtedly been subject to the same intimidation. (C.R. 121) The jury was aware of all of this information and chose to credit the witnesses' first statements made closer in time to the crime. United States ex rel. Jackson v. Hardy, No. 09 C 7774, 2011 U.S. Dist. LEXIS 38848, *25.

The farrago of unfounded complaints, remote in time, having no real nexus to the complaints alleged by the witnesses in this case, along with the other irrelevant and

immaterial information petitioner attached to his petition, could not possibly change the result on a retrial. The information petitioner has attached "reflect[s] the type of generalized allegations that are an inherent part of police work." Porter-Boens, 2013 IL App (1st) 111074, ¶24. The jury had strong evidence of petitioner's guilt and the single best explanation for why the witnesses disavowed their prior statements: petitioner and his fellow Vice Lords were the intimidators in this case. Generalized claims of misconduct, without any link to petitioner's case, *i.e.,* some evidence corroborating petitioner's allegations, or some similarity between the type of misconduct alleged by petitioner and that presented by the evidence of other cases of abuse, are insufficient to support a claim of coercion. See People v. Gonzalez, 2016 IL App (1st) 141660, ¶¶60-65 (the circuit court properly dismissed actual innocence claim at the second stage where a detective's alleged misconduct in other cases was not relevant).

Petitioner spills much ink on the supposed instructiveness of the case of People v. Jones, 2016 IL App (1st) 123371, but that opinion was vacated after a petition for rehearing, and the court ruled quite differently on rehearing in People v. Jones, 2017 IL App (1st) 123371.

A review of petitioner's documentation reveals the complete absence of any evidence that could support a claim of actual innocence. Petitioner has failed to attach evidence that is newly discovered, not discoverable earlier through the exercise of due diligence, material and not merely cumulative, and of such conclusive character that it would probably change the result on retrial. Therefore, Judge Clay properly denied leave to file a successive petition on this claim.

B. The Three Affidavits Submitted By Petitioner From Two Witnesses Who Testified At Trial And A Third Who Was Well Known To Him At The Time Of Trial Could Not Possibly Support A Claim Of Actual Innocence. They Were Neither New, Nor Material And Not Cumulative, Nor Likely To Change The Result On Retrial.

Two of the three affidavits petitioner attached were from witnesses who already testified under oath at petitioner's trial: Brandy Butler and Manuel Stewart. The third affidavit was from Quiana Davis who was in a relationship with petitioner and was known to all the parties at the time of trial. Petitioner attached an unsigned affidavit purportedly from Quiana to his first post-conviction petition. None of these affidavits are newly discovered evidence or evidence that could not have reasonably been discovered earlier, and they are wholly cumulative to the trial testimony of Butler and Stewart and not material. Further, none of the three affidavits were of such conclusive character that they would probably change the result on retrial.

All of these individuals were known to petitioner by the time of trial. Butler and Stewart testified under oath at trial. (C.R. 118, 121-22) As for Davis, Vernon Clay told the police Davis referred to petitioner as her man. (R. 721-22) In his signed statement, Clay said that Davis and petitioner were "fooling around" although not boyfriend and girlfriend. (R. 738) Clearly, Davis was known to petitioner and in some relationship with him. Although petitioner claims that Davis was not available to petitioner because she was "harassed" by the police and went into hiding and moved from the neighborhood, the very documents petitioner has attached undermine that claim. First, in Davis' own affidavit, she admits that she "was told that [her] testimony would not be needed during [petitioner's] trial." (Supp.C.R. (10/30/17) 227) Clearly, the parties were able to contact her before trial.

Second, other documents thoroughly contradict her claim in her affidavit that the police harassed her. The police conducted an investigation into Davis' harassment complaint, and not only did the investigating sergeant find the complaint "not sustained," the sergeant found that Davis was "deceptive in dealing with the police and her own identity" and a subsequent name check revealed she had an outstanding warrant for theft (contrary to another statement in her affidavit). (Supp.C.R. (10/30/17) 154-55, 183, 188, 227) Third, petitioner did attach an affidavit purporting to be Davis', albeit unsigned, to his first post-conviction petition to the effect that she was at the scene and petitioner was not the shooter. (C.R. 177) If the evidence was available at a prior post-trial proceeding, it does not qualify as newly discovered. People v. Snow, 2012 IL App (4th) 110415, ¶21.

Even assuming, *arguendo*, it could somehow be said Davis was unknown and unavailable to petitioner, Davis' affidavit still does not constitute newly discovered evidence. "An unbroken line of precedent holds that evidence is not newly discovered when it presents facts already known to a defendant at or prior to trial, though the source of those facts may have been unknown, unavailable or uncooperative." People v. Jones, 399 Ill. App. 3d 341, 364 (1st Dist. 2010) (collecting cases). In addition, the affidavit purports to relate petitioner's absence from the scene at the time of the murder. (Supp.C.R. (10/30/17) 227) However, petitioner could not have been unaware of his own whereabouts. Thus, he would have possessed this information at the time of trial and it is not newly discovered.

For example, in People v. Jones, 399 Ill. App. 3d 341, 359 fn.4 (1st Dist. 2010), the petitioner submitted an affidavit from a prison inmate who apparently was incarcerated at the same prison as the petitioner at the time of the filing of the petition. In the affidavit, the

affiant claimed that he was "solely responsible" for the murder, that he was not accompanied by the petitioner, and that the petitioner was nowhere in the vicinity. Id. at 359. Neither the circuit court nor the appellate court found this affidavit to be newly discovered evidence. Id. at 364. The appellate court relied on the "unbroken line of precedent hold[ing] that evidence is not newly discovered when it presents facts already known to a defendant at or prior to trial, though the source of those facts may have been unknown, unavailable or uncooperative." Id. Similarly, in People v. Barnslater, 373 Ill.App.3d 512, 513 (1st Dist. 2007), the petitioner pled guilty to aggravated criminal sexual assault and aggravated kidnaping. In a post-conviction proceeding, the petitioner attached an affidavit from the victim claiming that the petitioner did not sexually assault her and she was not held against her will. Id. at 515-16. Again, the trial and appellate courts agreed that this evidence was not newly discovered. Id. at 518-19. The appellate court could not conclude that the petitioner's evidence would qualify as "newly discovered," as the petitioner "would have to have known the underlying facts comprising what he presently identifies as 'newly discovered evidence'". Id. at 523. See also People v. Jarrett, 399 Ill.App.3d 715, 723-24 (1st Dist. 2010) (affidavits from witnesses that someone aimed a gun at the defendant, when the defendant knew that someone had supposedly aimed a gun at him prior to his trial, was not newly discovered notwithstanding the fact that the defendant may not have known the names of alleged witnesses to the gun aiming).

Furthermore, Butler and Stewart's affidavits were clearly cumulative to their trial testimony. (C.R. 118, 121-22); (Supp.C.R. (10/30/17) 230-32, 239-42) Petitioner strains to identify new material in these affidavits, but he erroneously claims that Stewart first said in

his affidavit that he did not speak to the police his first day at the police station; the record of his trial testimony proves otherwise. (R. 566; Pet. Br. 39) Moreover, the alleged compliment to Stewart from the detectives after his grand jury testimony is trivia and not material. (Pet. Br. 40) That witnesses may have been able to somehow remember a few details 16 years after the murder that they did not testify to under oath at trial does render their affidavits non-cumulative when the essence of the affidavits mirrors the essence of their trial testimony. Since five witnesses already testified at trial that they could not identify petitioner as the shooter, Davis' affidavit to that effect was plainly cumulative. See People v. Evans, 2017 IL App (1st) 143268, ¶¶35-36 (witness affidavit' was cumulative to another witness' trial testimony where both witnesses gave substantially the same version of events).

Finally, as discussed in the preceding subsection, even assuming, *arguendo*, that the affidavits could be considered "newly discovered" and not cumulative, they were not of such conclusive character that they would probably change the result on retrial. Besides the problems already noted with Davis' affidavit, Davis' and Stewart's affidavits contradict each other on Davis' whereabouts at the time of the shooting: Stewart claiming Davis entered the CITGO store and Davis claiming she never went into the store and was in the car at the time of the shooting. (Supp.C.R. (10/30/17) 222, 230) Furthermore, Davis never gave a statement to the police implicating petitioner. Her apparent ability to withstand police "harassment" undermines petitioner's main theory of the case that the four eyewitnesses succumbed to police coercion, rather than intimidation by petitioner and his gang. Moreover, it increases and emphasizes the number of witnesses to whom the police spoke whom they apparently could not coerce, further weakening any theory of police coercion. When the contradictions

and weaknesses and cumulativeness of these affidavits are considered in light of the evidence at trial, they could not possibly lead to a different verdict. Thus, petitioner failed as a matter of law to establish actual innocence. See People v. Evans, 2017 IL App (1st) 143268, ¶¶41-42 (recantations are considered inherently unreliable, and in light of the prosecution's evidence, the testimony of two witnesses would not have changed the jury's verdict); People v. Jones, 2012 IL App (1st) 093180, ¶61 (additional alibi information and the remaining portion of the witnesses' testimony in post-conviction proceedings were held by the circuit court to be contradictory to each other and to the testimony at trial, thus, the circuit court properly ruled that the testimony from the various post-conviction witnesses was unreliable and certainly not of such a conclusive character that it would probably result in a different outcome at retrial).

Although petitioner alleges the circuit court made improper findings in applying the actual innocence test (Pet. Br. 23), in fact, the circuit court properly considered petitioner's proffered evidence as well as the quantum of evidence presented against petitioner. The recent case of People v. Brown, 2017 IL App (1st) 150132, is instructive. The petitioner in Brown contended that two affidavits showed that he made a colorable claim of actual innocence that should be tested at second-stage proceedings. Id. at ¶29. The majority pointed out that the dissent "focuses on the requirement that we take all well-pleaded factual allegations as true," however, the majority believed that the dissent "misconstrues that concept and relies upon it so heavily that it effectively does away with the requirement that the new evidence be 'so conclusive in character as would probably change the result on retrial.'" Id. at ¶60.

The Brown majority turned for guidance to the case of People v. Sanders, 2016 IL 118123. Id. at ¶61. In affirming the trial court's dismissal of the petitioner's successive post-conviction petition, the supreme court in Sanders reaffirmed that "[a]ll well-pleaded factual allegations not positively rebutted by the trial record must be taken as true for purposes of the State's motion to dismiss." Id. at ¶65. Accordingly, it concluded that the trial court's consideration of its own credibility determination it had made previously upon hearing the recantation testimony at issue at the co-offender's evidentiary hearing was improper. Nonetheless, the supreme court found that the petition was properly dismissed. Id. The court noted that the recantation affidavit conflicted with much of the evidence at the petitioner's trial. Id. at ¶66. By the Brown majority's reading of Sanders, the supreme court did not take the allegations as true. They were not required to do so because the allegations were not well-pleaded facts that were unrebutted by the record. Id. at ¶68. Instead, the court in Sanders considered the trial record and the character of the petitioner's proposed new evidence and concluded that the new evidence was rebutted by the evidence at the petitioner's trial, and the Brown majority adopted the same approach. Id. The dissent's approach in Brown was to assume all allegations as true, and where the petitioner presents some proposed evidence tending to show that he was not the actual offender, his petition must continue for further proceedings. Id. at ¶69. However, the majority believed that the dissent's analysis misconstrued Sanders and effectively did away with the conclusiveness standard altogether. Id. Instead, Brown demonstrates that affidavits that are contradicted by the evidence at trial are not presumptively true.

The court in Brown also turned to People v. Rivera, 2016 IL App (1st) 132573. Id. at ¶72. In Rivera, the petitioner had been convicted of first-degree murder as the shooter. Id. The petitioner raised a claim of actual innocence based on an affidavit from his co-defendant, who had pled guilty to first-degree murder under a theory of accountability, and, in the affidavit, stated for the first time that he was the shooter in the murder, not the petitioner. Id. The reviewing court found that the co-defendant's affidavit was not of such conclusive character that it would probably change the result on retrial, noting that the supreme court on direct appeal described the evidence of the petitioner's guilt as overwhelming. Id. at ¶73.

In light of these cases, the circuit court properly considered both the character of the proposed evidence and the quantum of evidence of guilt presented at trial when discerning whether petitioner met his burden that the proposed evidence was so conclusive that it would probably change the result on a retrial. In view of the strength of the evidence of petitioner's guilt and the weaknesses in the evidence petitioner has attached to his petition, the circuit court properly concluded that petitioner had not met his burden.

C. Petitioner Also Failed To Satisfy The Cause And Prejudice Test.

For many of the same reasons set out above that petitioner failed to meet the actual innocence test, petitioner failed to meet his burden of showing cause and prejudice so as to obtain leave to file this successive petition. He neither demonstrated some objective factor external to the defense that impeded petitioner from raising his claim in an earlier proceeding, nor that the claim so infected the trial that his conviction violated due process. Because petitioner can show neither cause nor prejudice, this Court should affirm the trial court's dismissal of this successive petition.

In most circumstances, the filing of a successive petition is conditioned on satisfaction of the cause-and-prejudice test. 725 ILCS 5/ 122-1(f); People v. Tidwell, 236 Ill.2d 150, 158 (2010). It is clear that both elements or prongs of the cause-and-prejudice test must be satisfied in order for the defendant to prevail. People v. Guerrero, 2012 IL 112020, ¶15. Cause has been defined as "some objective factor external to the defense [that] impeded counsel's efforts' to raise the claim ... in an earlier proceeding." People v. Pitsonbarger, (2002), *internal citations omitted*; 725 ILCS 5/122-1(f). Prejudice requires a showing that the claim not previously raised so infected the trial that the resulting conviction or sentence violates due process. Pitsonbarger, 205 Ill.2d at 464; 725 ILCS 5/122-1(f). Failure to meet the cause-and-prejudice standard will be excused only where necessary to prevent a fundamental miscarriage of justice. "To demonstrate such a miscarriage of justice, a petitioner must show actual innocence or, in the context of the death penalty, he must show that but for the claimed constitutional error, he would not have been found eligible for the death penalty." Pitsonbarger, 205 Ill.2d at 459.

Petitioner has not shown why he could not have raised this claim in his first post-conviction petition. As discussed above, the bulk of his supporting documentation is not newly discovered or information that could not have been discovered earlier through reasonable diligence. And the supporting documentation that could be considered new is wholly irrelevant. The information existed prior to his first post-conviction petition, and he has provided no legitimate explanation of a factor external to the defense that prevented him from raising this claim earlier. See People v. Davis, 2014 IL 115595, ¶¶55, 56 (the defendant failed to explain why he was unable to discover allegedly new evidence earlier, or raise the

claim in any of his earlier post-conviction proceedings; a witness' affidavit testimony was not of such character that it could not have been discovered earlier by the exercise of due diligence); People v. Wideman, 2016 IL App (1st) 123092, ¶72 (even assuming the truth of the allegations in the motion for leave to file the successive petition and a witness' affidavit, the defendant did not articulate why the claim could not be discovered earlier with due diligence; he could not demonstrate "cause" under the Act). Since he has failed to establish "cause," the trial court properly denied him leave to file a successive petition and this Court need not even consider whether petitioner established "prejudice." People v. Sutherland, 2013 IL App (1st) 113072, ¶20 (the test for obtaining leave to file a successive post-conviction petition is cause and prejudice, not **cause or prejudice**)(emphasis in original).

Assuming, *arguendo*, that petitioner could somehow establish "cause," he cannot demonstrate "prejudice." As discussed above in subsections A and B, petitioner failed to show how his proffered documentation could satisfy the Patterson test: the documentation could not show that the officers committed misconduct in this case and it was too flimsy, attenuated, and tangential to be used as impeachment. Further, the affidavits could not change the outcome of a retrial. See People v. Orange, 195 Ill.2d 437, 455-56 (2001)(generalized allegations of coercive activity by police was not of such a conclusive character that it would change the result on retrial, and thus, the defendant did not suffer any prejudice as a result of the claimed error), citing People v. Mahaffey, 194 Ill. 2d 154 (2000).[6]

The brunt of petitioner's motion for leave to file a successive petition was his claim

[6] Petitioner's reliance on People v. Almodovar, 2013 IL App (1st) 101476, is misplaced for the reasons set out above in subsection A, distinguishing it and Reyes upon which Almodovar is based.

of actual innocence: his motion only addresses cause and prejudice in a little over a page of the 49-page motion. (Supp.C.R. (10/30/17) 52-53) Although Judge Clay denied petitioner's motion, petitioner contends that Judge Clay failed to evaluate his cause and prejudice argument, even though it is clear from a reading of petitioner's own brief that the cause and prejudice argument essentially rises or falls with the claim of actual innocence. (Pet. Br. 44-46) In any event, "[a]s this court has observed on many occasions, the appellate court may affirm the trial court on any basis that appears in the record. E.g., Ruch v. Padgett, 2015 IL App (1st) 142972, ¶40; People v. Olsson, 2015 IL App (2d) 140955, ¶17 ('We review the trial court's judgment rather than its reasoning, and we may affirm on any basis supported by the record.')." People v. Jones, 2015 IL App (1st) 133123, ¶33. See also People v. Johnson, 208 Ill.2d 118, 128-29 (2003)(it is a fundamental principle of appellate law that when an appeal is taken from a judgment of a lower court, the question before the reviewing court is the correctness of the result reached by the lower court and not the correctness of the reasoning upon which that result was reached; a logical corollary to the foregoing principle is the rule that a reviewing court can sustain the decision of a lower court for any appropriate reason, regardless of whether the lower court relied on those grounds and regardless of whether the lower court's reasoning was correct). The circuit court's judgment was that petitioner's motion for leave to file a successive petition should be denied, that judgment is supported by a consideration of the record and petitioner's claims of actual innocence and cause and prejudice, and the cause and prejudice claim here rises and falls with the actual innocence claim. Therefore, this Court should affirm Judge Clay's judgment

notwithstanding the absence of any specific pronouncement as to petitioner's claim of cause and prejudice.

D. This Court Should Affirm The Denial Of A Successive Petition. However, Even Assuming, *Arguendo*, That This Court Remands For Further Proceedings, Those Proceedings Should Not Be Third Stage In Accordance With The Post-Conviction Hearing Act.

Since petitioner failed to raise a colorable claim of actual innocence or satisfy the cause and prejudice test, Judge Clay properly denied leave to file a successive petition, and this Court should affirm.

However, assuming, *arguendo*, that this Court finds that petitioner is entitled to file a successive petition, the next appropriate proceedings under the Post-Conviction Hearing Act would not be third-stage proceedings as petitioner contends. The Illinois Post-Conviction Hearing Act (hereinafter the Act) provides a method by which by which a defendant may challenge his conviction or sentence for violations of federal or state constitutional rights. 725 ILCS 5/122-1, *et seq.* (2012); People v. Hodges, 234 Ill.2d 1, 9 (2009). A proceeding under the Act is not intended to be a continuation or substitute for direct appeal. Rather, it is a collateral proceeding that is limited to claims that were not, and could not have been, previously litigated. People v. Petrenko, 237 Ill.2d 490, 499 (2010). In a non-capital case, a post-conviction proceeding contains three distinct stages. People v. Harris, 224 Ill.2d 115, 124-25 (2007). At the first stage, the petition is examined by the court without input from either side to determine if it meets the low threshold required to warrant further post-conviction proceedings. Under this standard the petition must have both an arguable basis in law and in fact, must not be barred by *res judicata* or waiver, and must be properly supported

by corroborating evidence. Hodges, 234 Ill.2d at 11-12; People v. Blair, 215 Ill.2d 427, 448-49 (2005); People v. Delton, 227 Ill.2d 247, 254 (2008). A petition not meeting this low threshold is considered "frivolous and patently without merit" and should be summarily dismissed. Hodges, 234 Ill. 2d at 9.

If the petition survives first-stage review it advances to the second stage where, if the defendant is indigent and so desires, counsel may be appointed and where the State enters the litigation. 725 ILCS 5/122-4,122-5; People v. Tate, 2012 IL 112214, ¶10. If counsel is appointed, he is required to communicate with the defendant to ascertain his contentions of constitutional error, review those portions of the record relevant to those allegations, and amend the petition if necessary to adequately present the claims. Supreme Court Rule 651(c); People v. Perkins, 229 Ill.2d 34, 37 (2008). The State is then required to file an answer or a motion to dismiss the petition. 725 ILCS 5/122-5. Where the State seeks dismissal of a post-conviction petition instead of filing an answer, its motion to dismiss assumes the truth of the allegations to which it is directed and questions only their legal sufficiency. People v. Miller, 203 Ill.2d 433, 437 (2002). Thus, a motion to dismiss raises the sole issue of whether the petition is sufficient as a matter of law. People v. Domagala, 2013 IL 113688, ¶35, *quoting* People v. Coleman, 183 Ill.2d 366, 385 (1998). The court's focus during second stage review is also the legal sufficiency of the petition. Domagala, 2013 IL 113688, ¶35. The court must determine if the petition makes the "substantial showing" of a constitutional violation needed to warrant third stage post-conviction proceedings. Id. This is a claim by claim determination, and only those claims making the required showing are advanced to third stage for an evidentiary hearing. People v. Cleveland, 2012 IL App (1st) 101631, ¶55.

This case has not proceeded to second-stage proceedings. The People have not filed an answer or a motion to dismiss the petition as set out by the Act. 725 ILCS 5/122-5. This appellate brief addressing the petitioner's claims on appeal from denial of leave to file a successive petition in no way constitutes an answer or a motion to dismiss the petition. The People are barred from raising certain arguments in this brief that they would be permitted to raise in a second-stage answer or motion to dismiss, such as the timeliness of the petition. See People v. Boclair, 202 Ill.2d 89, 94-114 (2002). Petitioner's contention that this case should omit second-stage proceedings and progress directly to third-stage proceedings is in direct contravention of the plain language of the Act and should therefore be rejected.

The Illinois Supreme Court utterly rejects the position petitioner has taken. In People v. Smith, 2014 IL 115946, ¶28, the court observed that the statutory exception allowing for successive petitions upon a showing of cause and prejudice contained no express provision for fully resolving the cause-and-prejudice determination prior to proceeding with the three-stage post-conviction process outlined in the Act. Requiring a petitioner to establish cause and prejudice conclusively prior to being granted leave to file a successive petition might render the entire three-stage post-conviction process superfluous. Id. at ¶29. The statutory exception for successive petitions does not provide that a petitioner is entitled to relief upon satisfaction of the cause-and-prejudice test. Instead, it only gives a petitioner an avenue for filing a successive post-conviction petition. The legislature clearly intended for further proceedings on successive post-conviction petitions. Id. The supreme court has "repeatedly held that statutes should be read as a whole and construed so that no part is rendered meaningless or superfluous." Id. at ¶30, quoting People v. Edwards, 2012 IL 111711, ¶26.

Thus, the clear import of Smith is that the Act should not be rendered superfluous, and that satisfaction of the showing required for the filing of a successive petition merely grants the petitioner an avenue for filing a successive post-conviction petition. It in no way bypasses the three-stage procedure set out in the Act. See also People v. Bailey, 2017 IL 121450, ¶26 ("If the court determines that cause and prejudice have been adequately alleged and allows the petition to be filed, it advances to the three-stage process for evaluating post-conviction petitions). Petitioner does not explain how Smith's construction and defense of the language of the Act supports bypassing and ignoring the very proceedings set out in the Act.

In sum, this Court should affirm the judgment denying leave to file a successive petition. However, assuming, *arguendo*, this Court remands for further proceedings, this Court should not ignore the plain language of the Act or the precedent of our supreme court by remanding for third-stage proceedings.

CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court affirm the denial of leave to file a successive post-conviction petition.

Pursuant to People v. Nicholls, 71 Ill. 2d 166 (1978) and relevant statutory provisions 725 ILCS 5/110-7(h)(West 2004) and 55 ILCS 5/4-2002.1 (West 2004), the People of the State of Illinois respectfully request that this Court grant the People costs and incorporate as part of its judgment and mandate a fee of $100.00 for defending this appeal. In addition, pursuant to People v. Agnew, 105 Ill. 2d 275 (1985) and 55 ILCS 5/4-2002.1 (West 2004), the People respectfully request that this Court also grant the People an additional fee of $50.00 in the event oral argument is held in this case.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding the pages containing 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 46 pages.

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PLEASE TAKE NOTICE that on March 30, 2018, the foregoing Notice and Brief and Argument for Respondent-Appellee was filed with the Clerk of this Appellate Court of Illinois, First District, using the court's electronic filing system.

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CERTIFICATE OF SERVICE

Under penalties as provided bylaw pursuant to Section 1-109 of the code of Civil Procedure, the undersigned certifies that the statement set forth in this instrument are true and correct. I further certify that on March 30, 2018, I caused the foregoing Notice and Brief and Argument for Respondent-Appellee to be served on the above mentioned person at the above listed email address.

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APPENDIX 6

No. 1-17-1773

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Petitioner-Appellant.	)))))))))))))	Appeal from Cook County Circuit Court No. 01-CR-17492 Honorable Evelyn B. Clay, Presiding Post-Conviction Proceeding Appellant In Custody Date of Ruling Appealed June 15, 2017 Notice of Appeal Filed June 28, 2017

REPLY BRIEF OF PETITIONER-APPELLANT

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ORAL ARGUMENT REQUESTED

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II. ARGUMENT

A. Introduction[1]

Petitioner Kevin Jackson was convicted of murder at the age of 19 and sentenced to 45 years, which if served to completion will result in his incarceration until the age of 64—effectively a life sentence. Mr. Jackson asserts—offering substantial evidence—that he was not even present during the commission of the underlying crime. Even so, he was convicted, but solely on the basis of false statements, obtained by the coercive efforts of The Seven,[2] each of whom has an established and documented history of troubling misconduct.

Mr. Jackson's substantial evidence of this misconduct, and thus of the witness coercion that occurred prior to his trial, raises the probability that no reasonable juror would convict him. Yet, declining to credit his compelling evidence, and thereby committing reversible error, the circuit court denied his Motion. Moreover, the circuit court's purported basis for the denial was wholly improper, as it involved findings of fact, credibility determinations, and specific evaluation of the so-called, but undefined,

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[1] In a footnote, the State notes that Petitioner failed to include an appendix with his initial brief, as required by Supreme Court Rule 342. Petitioner asks that the Court nevertheless reach the merits of his brief, pursuant to *City of Chicago v. Concordia Evangelical Lutheran Church*, 2016 IL App (1st) 151864, ¶ 71 (noting that the failure to include a Rule 342 appendix does not divest the court of jurisdiction) and *People v. Townsend*, 275 Ill. App. 3d 200, 204-05 (1995) (choosing to reach the merits of appellant's brief, despite the failure to file an appendix, because the brief was otherwise "adequate"). Should the Court be disinclined to reach the merits of Petitioner's brief without an appendix, Petitioner asks that the Court grant him leave to supplement to correct the omission.

[2] Capitalized terms not defined herein have the same meaning as in Petitioner's initial brief.

"quality" of Mr. Jackson's evidence—none of which is proper until a third-stage evidentiary hearing.

Petitioner's Motion highlights that the *only* evidence supporting his conviction and 45-year sentence were false out of court statements coerced by The Seven. These statements are absolutely discredited by Petitioner's substantial evidence of The Seven's misconduct. The falsity of these out of court statements is particularly significant given that during its deliberations, the jury that ultimately convicted Mr. Jackson had noticeable difficulty reaching that verdict[3]—in sharp contrast to the State's claim that the evidence against Petitioner at trial was "strong" and "corroborated." Notably, when faced with new evidence of The Seven's collective history of misconduct, the State cavalierly shrugs it off as no more than a collection of "irrelevant" complaints. In light of their number and severity, the State's dismissive attitude is striking and suggests an intentional effort to obfuscate the facts before the Court.

The State's overzealous effort to justify the circuit court's ruling—with scant reference to the court's actual stated reasoning—underscores the weakness (and wrongheadedness) of that court's analysis. The State's resulting meandering brief presents a dramatically different view of the issues before the Court—a view the State bases on bootstrapped facts and misstatements of law. Like the circuit court, the State entirely fails to address Mr. Jackson's assertion that the statements upon which he was convicted were coerced and false. Accordingly, the State fails to account for the impact of this coercion on the veracity of the details therein. The State instead presents the

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[3] *See* Pet's. Br. at 42 n18.

statements—in whole and in part—as unassailable truths and encourages the Court to affirm the denial of Petitioner's Motion simply on the basis that Mr. Jackson was previously found guilty. Such circular logic seeks to render the entire Act a dead letter.

The State also fails to grasp the nuances of many of the decisions upon which it relies, thereby causing it to cite authority wholly inapposite to any issue before the Court. Most notably, the State mixes two distinct requirements of actual innocence petitions: one that is relevant to Petitioner's claims, and one that is not. Specifically, the State attempts to splice the requirements that his actual innocence claim completely vindicate and exonerate Petitioner, onto the unrelated requirement that his claim be supported by evidence that is new, material, non-cumulative and conclusive. This co-mingling of concepts has no basis in the law.

As such, the State's brief only obscures the issues before the Court and fails to either cure the errors of the challenged ruling, or to offer any independent justification for it. Under these circumstances, the circuit court's ruling must be reversed. Clearly, and at minimum, Mr. Jackson is entitled to file a successive petition under the Illinois Post-Conviction Hearing Act ("Act"), and to advance to second-stage proceedings. Any other result would only compound what already stands as a tragic miscarriage of justice.

B. The State's Attempt to Bootstrap False Statements into Accepted Facts Violates the Court's Obligation to Accept Petitioner's Well-Pled Facts

Throughout its brief, the State offers details from false and coerced out of court statements to the Court as established truths. In support of these assertions, the State cites the jury's verdict, this Court's prior decision affirming Petitioner's conviction, the denial of Petitioner's *habeas corpus* petition, and the false and coerced out of court statements themselves. (Response at 30-31.) The State goes so far as to argue that under

People v. Sanders, 2016 IL 118123, the Court need not accept Petitioner's well-pled allegations as true, despite *Sanders*' holding that it is reversible error to resolve factual issues prior to third-stage proceedings. *Id.* ¶¶ 1, 40, 42 (affirming on alternate dispositive grounds).

The State's argument is effectively that because Petitioner was convicted, all of the inculpatory evidence against him is unassailable. (Response at 30-31.) The implication being that Petitioner's conviction forecloses any ability to present a colorable claim of actual innocence. *See People v. Brown*, 2017 IL App (1st) 150132, ¶ 112 ("Every conviction is supported by some evidence of guilt, and evidence of innocence, by definition, will directly or indirectly contradict evidence of guilt. If a contradiction between [evidence] were enough by itself to derail an actual-innocence petition, our postconviction proceedings for actual-innocence claims would be a dead letter.") (J. Ellis in dissent.) This cannot be what is intended by the Act.

The Court should instead credit Petitioner's claim that the out of court statements used against him at trial were coerced, and were false. The Court should credit this allegation based on the substantial corroborating evidence Petitioner has submitted, including affidavits from coerced witnesses and evidence of The Seven's troubling history of misconduct, as detailed throughout Petitioner's initial brief and herein. *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 186 ("Even one incident of similar misconduct by the same detective can be sufficient to show intent, plan, motive, and could impeach the officer's credibility."). At the very least, the Court should reverse and hold that in light of Petitioner's allegations and evidence, the credibility of the out of court statements

should be properly tested in a third-stage evidentiary hearing at which point credibility determinations would be appropriate. *People v. Domagala*, 2013 IL 113688, ¶ 34.

Setting aside the State's attempt at bootstrapping, numerous of its factual assertions fail, including that "[t]he evidence against [P]etitioner at trial was strong and it was corroborated," (Response at 29), that Petitioner and Quina Davis were ever involved in a romantic relationship, (Response at 32), that there was "substantial evidence" that Petitioner, rather than The Seven, intimidated witnesses, (Response at 30), and that physical evidence corroborated the witnesses' out of court statements thereby suggesting Petitioner's guilt, (Response at 29).[4] Moreover, to the extent the State suggests the circuit court relied on any of these assertions for its ruling, the Court should reverse, as they constitute factual findings that are improper before a third-stage evidentiary hearing.

C. The Misconduct of All of The Seven Was Unfairly Prejudicial to Petitioner

The State argues that evidence of misconduct by three of The Seven should be ignored because they were "merely concerned interviewing Quiana [*sic*] Davis, who did not testify or give any evidence against [P]etitioner." (Response at 18.) Accepting its own argument, the State then accuses Petitioner of referring the Court to allegations of misconduct unrelated to the investigating detectives. (Response at 19.) The State's circular argument lacks merit.

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[4] The physical evidence is limited to photographs, shell casings and an autopsy report, (Response at 8), which only suggest that a shooting occurred and, perhaps, from where shots were fired; neither of which is in dispute. Notably, the physical evidence is *not* probative of the shooter's identity.

Petitioner identified The Seven based on a thorough review of the record of his investigation. Although it indicates that at least 44 police officers had some degree of involvement, Petitioner focuses on those identified as the responsible detectives, and those who interrogated witnesses and victims, who testified at trial, or who played some combination of these roles. (Suppl. R. C12-19.)

Curiously, the State suggests instead that the Court should only consider the involvement of four officers: Detectives Clisham, Forberg, Foster, and Howley. (Response at 18.) Would not the 113 complaints of misconduct against these four, plus the multiple civil lawsuits involving them, justify further proceedings just as surely as the full measure of misconduct alleged against all seven? Regardless, the State's argument fails to recognize that the misconduct of the remaining three officers (Detectives Bartik, Kaup, and Kowalski) was also unfairly prejudicial to Petitioner, and the State's rationalization for omitting them from consideration widely misses the point.

As Ms. Davis' affidavit makes clear, she made herself unavailable to either the State or Mr. Jackson by hiding from police and moving out of her neighborhood as the *direct result* of her coercive mistreatment by police—including her interactions with Detectives Bartik, Kaup, and Kowalski. (Suppl. R. C226-27.)[5] Had she not been so effectively intimidated, she would have testified on Petitioner's behalf at trial: she would have testified that he was not the shooter; there would have been no prior inconsistent statement with which to undermine her credibility; and, she would have corroborated the

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[5] Although Ms. Davis' affidavit does not identify Detectives Bartik, Kaup, or Kowalski by name, they are identified in police records as having transported Ms. Davis to and from her polygraph examination and as having administered it.

other witnesses' allegations of coercive interrogation tactics by The Seven. Therefore, her intimidation and mistreatment by police was prejudicial to Petitioner—it deprived him of critical exculpatory evidence. As such, the histories of misconduct of *all* of The Seven are highly relevant to and probative of Petitioner's innocence and deserves to be closely evaluated by the Court.

Necessarily then, the State's claim that Petitioner relies on allegations of misconduct and civil lawsuits unrelated to the investigating officers (*i.e.*, those involving Detectives Bartik, Kaup, and Kowalski) is nullified. (Response at 19.)

D. The State Offers No Sound Basis in Law or Fact to Rebut Petitioner's Argument that his Evidence of Misconduct by The Seven is New, Material, Non-Cumulative and Conclusive of His Innocence

The State attempts, as it must, to paint Petitioner's evidence variously as not newly discovered, material, non-cumulative, or conclusive. Although it argues that Petitioner's evidence should be excluded based on any one of these characterizations, the State concedes that the most important requirement of Petitioner's evidence is that it be conclusive. (Response at 15 citing *People v. Edwards*, 2012 IL 111711, ¶ 40.) Therefore, even if the Court determines that any of Petitioner's evidence is not newly discovered, or material, or non-cumulative, its conclusiveness must override any such fault.

For the reasons described below, each of the State's mischaracterizations should be rejected, and to the extent the circuit court's ruling relied on any such mischaracterization of Petitioner's evidence, it must be reversed.

1. Petitioner's Evidence of Misconduct by The Seven Considered in Relation to the Allegations in his Motion is Conclusive of His Innocence

In sprawling and disjointed fashion, the State argues that Petitioner's evidence is not conclusive. In doing so, however, it applies the wrong analysis for making this determination.

As described further below, the State offers three sometimes overlapping arguments for why Petitioner's evidence is not conclusive. First, the State attempts to link admissibility and discoverability to conclusiveness, and argues that Petitioner's evidence is neither admissible, nor discoverable. Second, the State proclaims (but fails to offer cogent analysis as to why) Petitioner's claims of misconduct by The Seven are dissimilar to their pattern and practice of misconduct. Third, the State offers a variety of qualitative rationales for simply disregarding Petitioner's evidence without further analysis of why it is supposedly inconclusive.

As described below, the State's, and by implication, the circuit court's, analysis is misguided and should be rejected in full.

a. Evidence Need Not Be Admissible or Discoverable to be Conclusive of Petitioner's Innocence

The State argues, without analysis (save a string-citation devoid of even explanatory parentheticals), that Petitioner's evidence of misconduct by The Seven "fail[s] the threshold of discoverability, let alone admissibility." (Response at 20.) Even assuming the Court accepts the State's legal conclusion (a legal conclusion Petitioner disputes), it is of no moment: proceedings under the Act are not subject to the Illinois

Rules of Evidence, Ill. R. Evid. 1101(b)(3) (eff. Jan. 6, 2015), and Petitioner's claims do not raise any issue of discoverability.[6] Moreover, the State ignores that this Court has granted numerous post-conviction petitioners relief based on evidence of police misconduct without parsing its admissibility at re-trial. *See, e.g.*, *People v. Almodovar*, 2013 IL App (1st) 101476, ¶ 55, 75, 78-79 (granting relief supported by newspaper article about civil rights case involving investigating officer); *People v. Reyes*, 369 Ill. App. 3d 1, 19- 24 (2006) (granting relief supported by CRs and corroborating affidavits).

Admissibility and discoverability are simply not at issue before the Court, and to the extent that the circuit court ruled on these bases, its ruling must be reversed.

b. Petitioner's Allegations and Evidence of Misconduct by The Seven are Sufficiently Similar to Be Conclusive of Petitioner's Innocence

The State repeatedly claims that Petitioner's allegations of misconduct are too dissimilar to those in his supporting evidence establishing a pattern and practice of misconduct by The Seven. (*See generally* Response at 20-23.) However, the only purported dissimilarity it can point to is that none of the witnesses coerced by The Seven's investigation underlying Petitioner's Motion claimed physical abuse, whereas some other complaints against The Seven do. (Response at 20.) The fact that the abuse alleged by Petitioner is not as severe as other abuse attributed to The Seven is not a

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[6] The State seems to raise this argument primarily to criticize Petitioner's FOIA requests for police records as "unduly burdensome." (Response at 25.) However, the State fails to either acknowledge the relevance of these records, or to recognize the simple fact that had the investigating officers not had a combined 626 complaints filed against them, the burden on all concerned parties would have been greatly reduced. (Suppl. R. C12.)

distinguishing factor, but simply a matter of degree. Moreover, even assuming this matter of degree calls into question the conclusiveness of the evidence involving physical abuse, it does not negate the conclusiveness of the remaining similar allegations of misconduct—any one of which may be sufficient on its own to warrant further proceedings on Petitioner's claims. *Tyler*, 2015 IL App (1st) 123470 ¶ 186.

For example, despite the State's claim that "*Bridewell v. Eberle*[] essentially absolved Det. Brian Forberg of any wrongdoing," (Response at 21), even a cursory review of the stipulated facts on summary judgment mandates an altogether different conclusion. Detective Forberg was one of two officers who attorneys stipulated interrogated a suspect for 63 hours, held a witness in a windowless room and denied her bathroom breaks until she was forced to relieve herself in a corner of her interrogation room, and interrogated a third witness for 27 hours until that witness agreed to give a statement naming the detectives' proffered suspect. (Suppl. R. C16.) The decision also documented allegations of polygraph improprieties. (Suppl. R. C16.) The State's assertion that these facts "absolve[]" Detective Forberg speaks volumes.

In fact, *Bridewell* and other evidence of misconduct involving The Seven closely mirrors Petitioner's allegations: that The Seven have a pattern and practice of coercing witnesses and suspects into providing the evidence demanded by The Seven, regardless of its truth, by interrogating them over long periods of time, holding them without access to an attorney, threatening them with extended detention and/or prosecution, and subjecting them to sham polygraph examinations. (Suppl. R. C15-18.)

The State's conclusory treatment of *Bridewell* follows its perfunctory reliance on *People v. Upshaw*, 2017 IL App (1st) 151405 and *People v. Johnson*, 2011 IL App (1st)

092817. (Response at 21.) Purportedly on the basis of their analyses, the State concludes Petitioner's allegations and evidence are too dissimilar to warrant further proceedings. (Response at 21.) But rather it is *Upshaw* and *Johnson* that are too dissimilar to be instructive. Specifically, neither case turned on the similarity of the petitioner's allegations to his evidence. *Upshaw* was decided on the basis that the detectives accused of misconduct in relation to the underlying conviction were not the detectives identified in the petitioner's evidence. *Upshaw*, 2017 IL App (1st) 151405, ¶ 79. And *Johnson* turned on the court's holding that the evidence was so "bare" and facially contradictory to itself that it could not support the petitioner's claims. *Johnson*, 2011 IL App (1st) 092817, ¶¶ 74-76. Moreover, both were reviewed following their dismissal after second-stage proceedings. *Upshaw*, 2017 IL App (1st) 151405, ¶ 1; *Johnson*, 2011 IL App (1st) 092817, ¶ 2.

The State also overreaches in claiming the allegations at issue before the Court are "generalized allegations that are an inherent part of police work … without any link to [P]etitioner's case, *i.e.*, some evidence corroborating [P]etitioner's allegations." (Response at 31.) Neither of the cases it cites is apposite. *People v. Porter-Boens*, 2013 IL App (1st) 111074, ¶1, 7, affirmed, on a direct appeal, the trial court's quashing of a subpoena for records of complaints against a police officer, in part on the basis that such records were confidential, which is of dubious present validity in light of *Fraternal Order of Police v. City of Chicago*, 2016 IL App (1st) 143884, ¶ 36 (holding that complaints filed against officer's are subject to disclosure under FOIA). And *People v. Gonzalez*, 2016 IL App (1st) 141660, ¶ 65, noted that even "slight" evidence of misconduct by

investigating officers warrants third-stage proceedings. To claim that either case involved "generalized allegations," or were decided on that basis, strains credibility.

Altogether, the State's assertion that Petitioner's allegations are merely "generalized allegations that are an inherent part of police work" demonstrates its shocking unwillingness to engage with the facts of Petitioner's allegations, or those detailed in Petitioner's evidence—which only highlights the weakness of its argument. Moreover, to the extent that the circuit court's ruling was based on a similarly dismissive view of Petitioner's evidence, it must be reversed.

c. Petitioner's Evidence of Misconduct by The Seven Indicates a Pattern and Practice of Misconduct Spanning Many Years Which Makes All the Allegations in Evidence Relevant to and Conclusive of Petitioner's Innocence

The State next argues there are two bright-line rules excluding from consideration the bulk of Petitioner's evidence of The Seven's misconduct. First, the State suggests that evidence of misconduct (or allegations thereof) more than three-years removed from Petitioner's conviction may not be considered. (Response at 19-20, 25.) Second, the State suggests that allegations of misconduct may only be considered if they were sustained by the investigating agency and the officer was then disciplined as a result. Both of the State's proffered bright-line rules are incorrect and must be disregarded.

First, although the State offers examples of reviewing courts choosing not to consider evidence more than three-years removed from the acts underlying a petition, any suggestion of a bright-line rule to this effect is belied by the clear words of *People v. Patterson*, 192 Ill. 2d 93 (2000), wherein the Illinois Supreme Court held that evidence of police misconduct spread over many years can still be considered "new evidence":

> Even incidents that are remote in time can become relevant, however, if the party presenting the evidence can present evidence of other incidents that occurred in the interim. Thus, a single incident years removed has little relevance. However, a series of incidents spanning several years can be relevant to establishing a claim of a pattern and practice of torture. Consequently, we believe that the claims detailed in the proffer should be considered new evidence, but only if defendant can establish the later discovery of other torture allegations linking defendant's claims to those contained in the proffer.

Id. at 140.

Moreover, since *Patterson* this Court has frequently considered evidence more than three-years removed from the events underlying a post-conviction petition. *See, e.g.*, *Reyes*, 369 Ill. App. 3d 1, 19 (2006) (considering allegations up to 15 years prior to the underlying claims); *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 100-10 (considering allegations four to 17 years prior to the underlying claims); *People v. Serrano*, 2016 IL App (1st) 133493, ¶ 33 (considering allegations up to 10 years prior to the underlying claims). The Court should reject the State's argument, and instead consider all the allegations against The Seven, because incidents since Petitioner's conviction have established a pattern and practice of misconduct by The Seven.

Second, by demanding that the Court disregard any unsustained allegations of misconduct, or allegations for which the officers were not disciplined, (Response at 18-20, 22-23), the State, in effect, asks the Court to "pay no attention to that man behind the curtain." *The Wizard of Oz* (MGM 1939). But the Court can, and should, take notice of

the well-established truth that during their existence, the CPD's Office of Professional Standards ("OPS") and IPRA routinely failed to provide effective oversight.[7]

As Petitioner argued below and in his initial brief to this Court, the recent report of the U.S. Department of Justice, which identified systemic failures in the investigation of misconduct allegations filed against Chicago police, is relevant to his claim that The Seven have routinely engaged in misconduct and have escaped any meaningful discipline for it despite the dozens of allegations lodged against them. (Suppl. R. C14; Pet's Br. at 28, 31.) Similarly, statements by the State's ultimate representative before this Court, Cook County State's Attorney Kimberly Foxx, identifying police misconduct as a leading factor in wrongful convictions over the past 28 years and describing Cook County as the "wrongful conviction capital of the U.S.," are relevant to Petitioner's claim that he was wrongfully convicted on the back of false statements obtained through police misconduct. (Suppl. R. C55; Pet's Br. at 28, 30.) This is a miscarriage of justice that can only be corrected by reversing the circuit court's denial of Petitioner's Motion.

To be clear, Petitioner does not argue that OPS's and IPRA's sordid histories establish on their own that The Seven engaged in misconduct. Rather, Petitioner argues

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[7] *See, e.g.*, Dan Hinkel et al., *Broken police oversight system rarely punishes cops*, Chicago Tribune, July 14, 2016, *available at* http://www.chicagotribune.com/news/watchdog/ct-chicago-police-ipra-investigations-met-20160713-story.html; Dan Hinkel and Jodi Cohen, *Emanuel plans to scrap beleaguered police oversight agency IPRA*, Chicago Tribune, May 14, 2016, *available at* http://www.chicagotribune.com/news/local/breaking/ct-ipra-abolish-met-20160513-story.html; Tim Novak, *THE WATCHDOGS: Suspended cop skirts punishment — for 14 years*, Chicago Sun-Times, Mar. 26, 2017, *available at* https://chicago.suntimes.com/chicago-politics/the-watchdogs-suspended-cop-skirts-punishment-for-14-years/.

that the substantial evidence he has submitted related to the history of misconduct by The Seven should not be disregarded on the basis that OPS and IPRA failed to sustain the majority of these allegations. OPS's and IPRA's dereliction of duty should no more serve as a shield for the State (and The Seven), than it should act as a sword for Petitioner. The Court should instead consider all the evidence submitted by Petitioner, in light of what is known about OPS and IPRA. Viewed in context, the sheer volume of allegations filed against The Seven make them credible, and supportive of Petitioner's claims.[8]

On this basis, the State's reliance on the reasoning of *People v. Coleman*, 206 Ill. 2d 261 (2002), is unavailing, as it predates the widespread knowledge of OPS' dereliction of duty, and it predates IPRA's very existence. (Response at 23.) The State's reliance on *People v. Williams*, 2011 IL App (1st) 093350 is also misplaced due to the very facts highlighted by the State—the "trial court properly precluded evidence of an unrelated lawsuit … which involved materially different allegations and many different officers." (Response at 23.)

Furthermore, in light of Chicago's shameful and remarkable history of failing to address police misconduct, decisions based on allegations of misconduct by other police departments are, by definition, distinguishable.[9] Accordingly, the State's reliance on *People v. Nelson*, 235 Ill. 2d 386 (2009) and *People v. Davis*, 193 Ill. App. 3d 1001 (4th

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[8] Such contextualized consideration of the complaints also defeats the State's assertion that Ms. Davis' complaint against The Seven was baseless and that she was "deceptive" during its investigation. (Response at 33.)

[9] This is not to suggest that only Chicago police may engage in misconduct, but rather that in light of the facts known about OPS and IPRA, the analysis of what constitutes credible evidence of misconduct is different when it involves Chicago police than when it does not.

Dist. 1990), is misplaced. Moreover, both *Nelson* and *Davis* are also distinguishable as direct appeals, not post-conviction decisions, and for the very allegations and evidence of misconduct with which they grapple, which are far removed from those at issue before the Court. *Nelson*, 235 Ill. 2d at 419-20; *Davis*, 193 Ill. App. 3d at 1003, 06.

Whether or not the circuit court treated either of the State's proposed bright-line rules as categorical limits on its ability to engage with Petitioner's evidence, it is clear from its ruling that it disregarded the bulk of Petitioner's evidence of misconduct by The Seven, which was improper, and requires that its ruling be reversed.

2. Petitioner's Evidence of Misconduct is Newly Discovered

The State also argues that Petitioner's evidence is not newly discovered, but the authorities on which it relies provide scant support.

The State assumes that because evidence at issue in *People v. Jones*, 399 Ill. App. 3d 341 (2010), *People v. Barnslater*, 373 Ill. App. 3d 512 (2007), and *People v. Jarrett*, 399 Ill. App. 3d 715 (2010), was not new, somehow neither is Petitioner's. (Response at 33-34.) And while the State does recite some of the facts and holdings of each case, it fails to tie these to Petitioner's case. (Response at 33-34.) Moreover, since both *Barnslater* and *Jarrett* were decided on an unrelated legal basis—whether the petitioners, both of whom were convicted on accountability theories, had alleged innocence of *any* wrongdoing—neither case is apposite to issues before the Court. *See Barnslater*, 373 Ill. App. 3d at 526-27; *Jarrett*, 399 Ill. App. 3d at 718-19, 24. Additionally, *Barnslater* concerned a second-stage dismissal. *Id.* at 513.

To the extent the circuit court's ruling similarly relied on improper analysis of the newness of Petitioner's evidence, it must be reversed.

3. Petitioner's Evidence of Misconduct is Both Material and Non-Cumulative

The State describes material evidence as that which "is relevant and probative" of Petitioner's innocence. (Response at 15 citing *People v. Jones*, 2017 IL App (1st) 123371, ¶ 43.) And it concedes that evidence "that adds to what was before the fact-finder or creates new questions in the mind of the trier of fact is not cumulative." (Response at 15 citing *People v. Ortiz*, 235 Ill. 2d 319, 336 (2009) and *People v. Williams*, 392 Ill. App. 3d 359 (1st Dist. 2009).)

Except in conclusory terms, the State fails to explain how Petitioner's evidence falls short of either of these standards. Petitioner's evidence supports his claim that the *only* evidence entered against him at trial was false and coerced, which is relevant and probative of his innocence, and therefore is material. And although witnesses at trial testified they were coerced by The Seven, none of the evidence of The Seven's history of misconduct was before the fact-finder; therefore, Petitioner's evidence is non-cumulative. The State's reliance on *People v. Evans*, 2017 IL App (1st) 143268, to argue otherwise is misguided. (Response at 35.)

Evans was differently postured, presented the court with clearly conflicting allegations, and was decided on a legal issue unrelated to any before the Court. First of all, *Evans* followed the dismissal of a petition after second-stage proceedings. *Id.* at ¶ 1. Second, the defendant's claims purported to rely on affidavits, which if credited, contradicted his own admissions and allegations. *Id.* at ¶ 39. Third, the defendant was convicted on an accountability theory, and by his own admissions, in his petition, was present at the commission of the crime, was armed, and fired his weapon at the man he was convicted of murdering. *Id.* at ¶ 31. Therefore, he did not present the court with a

viable petition, and as such, the court's holding that his evidence was cumulative, was clearly ancillary to its ruling, moreover, its analysis of that issue was not particularly instructive.

E. Petitioner's Allegations and Supporting Evidence "Raise the Probability" that No Reasonable Juror Would Convict Him Therefore He is Entitled to Leave to File a Successive Petition

By cherry-picking convenient quotations from inapposite decisions, the State implies that Petitioner must clear a sky-high hurdle to be entitled to file a successive petition. Although successive petitions may generally be disfavored, and actual innocence claims must be supported by credible evidence, *Edwards*, 2012 IL 111711, ¶¶ 29, 32-33, the State's dire proclamations that Petitioner cannot carry his burden are unsupported in the law.

For example, the State argues, based on *People v. Hobley*, 182 Ill. 2d 404, 444 (1998) and *People v. Orange*, 195 Ill. 2d 437, 460 (2001), that "[n]ew evidence that goes to discredit the reliability of the evidence introduced at trial does not qualify as evidence of actual innocence." (Response at 14.) This is untrue, and neither case cited by the State stands for this principle. *See, e.g.*, *Ortiz*, 235 Ill. 2d 319, 335-36 (2009) (testimony that contradicts trial evidence may support an actual innocence claim); *People v. Coleman*, 2013 IL 113307 ¶ 103 (corroborating evidence that petitioner was elsewhere at time crime was committed was probative of his innocence). Rather, both cases cited by the State address whether the petitioner presented a free-standing actual innocence claim. *Hobley*, 182 Ill. 2d at 444; *Orange*, 195 Ill. 2d at 460.

The State's clearest overreach, however, is its suggestion that the requirement that Petitioner's claims "completely vindicate[] … or exonerate[]" him, (*see* Response at 14 *citing People v. Anderson*, 401 Ill. App. 3d 134, 140 (2010) and *People v. Collier*, 387 Ill.

App. 3d 630, 637-38 (2008)), imposes a heightened standard of review on whether his evidence is new, material, non-cumulative and conclusive. The State's position has no basis in the law.

What *Anderson*, *Collier*, and their progeny actually require is that Petitioner's claims, if proven, absolve him of any lesser included offense or related criminal action. *Evans*, 2017 IL App (1st) 143268, ¶ 30 ("The hallmark of an actual innocence claim is total vindication or exoneration; it is a claim that the defendant is free of *any* criminal involvement, either in the crime for which he was convicted or any lesser included offense." (emphasis in original, internal quotation marks and citations omitted)). This threshold requirement asks whether a petitioner would remain culpable of some criminal act even supposing his claims are true—it does not test the strength of his evidence. Even a cursory review of the cases it cites makes this distinction clear. *See, e.g.*, *People v. Anderson*, 401 Ill. App. 3d 134 (2010) (defendant convicted on accountability theory for driving shooter to and from shootout, claimed to lack requisite knowledge, but admitted to driving shooter, and therefore remained criminally culpable). As such, every reference the State makes to whether Petitioner's claims completely vindicate and exonerate him is misguided, unsupported in law, and should be disregarded by the Court.

Despite the State's confusion, the law is clear that at this stage of proceedings Petitioner's well-pled assertions must simply "raise[] the probability that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence," *Edwards*, 2012 IL 111711, ¶ 24, and that his well-pled assertions must be treated as true, *Domagala*, 2013 IL 113688, ¶ 35. Plainly, no reasonable jury would convict Petitioner if

he was not even present at the the crime; therefore, he has carried his burden, and the circuit court's ruling must be reversed.

F. The Line of Cases from *Patterson* to *Tyler* Upon Which Petitioner Supported His Motion Should Guide the Court's Analysis

Primarily in reference to their analyses of what constitutes new evidence, the State urges the Court to disregard *Patterson*, 192 Ill. 2d 93 (2000); *Reyes*, 369 Ill. App. 3d 1 (2006); *Almodovar*, 2013 IL App (1st) 101476; *Whirl*, 2015 IL App (1st) 111483; *Tyler*, 2015 IL App (1st) 123470; and *Coleman*, 2013 IL 113307, based on the conclusory assertion that they are "factually distinguishable and do not support [Petitioner's] claim that the evidence he submitted is 'newly discovered.'" (Response at 26-29.)[10] However, the State declines to apply the facts before the Court to these decisions' analyses, as Petitioner has done in his Motion and his initial brief to this Court; therefore, it is unclear on what basis the State contends they are distinguishable.

In their place, the State offers *People v. Snow*, 2012 IL App (4th) 110415, *Gonzalez*, 2016 IL App (1st) 141660, and *Brown*, 2017 IL App (1st) 150132, which it erroneously argues reveal Petitioner's evidence to be not new, or material, or conclusive, respectively. (Response at 26, 29.)

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[10] The State also notes for the Court that Petitioner relied, in part, on *People v. Jones*, 2016 IL App (1st) 123371, which was nullified upon rehearing by this Court. Petitioner concedes that his reliance on the analysis and holding of *Jones* was ultimately misplaced; however, the facts described in the initial *Jones* decision, which were cited by Petitioner—including allegations of misconduct by at least one of The Seven that led to a false confession and later exoneration—are undisturbed by the Court's decision to grant a rehearing.

On the basis that the petitioner in *Snow* did not "assert any due diligence in discovering evidence supporting [his] actual-innocence claim," his evidence was not newly discovered. 2012 IL App (4th) 110415, ¶22-23. Petitioner, however, has provided the Court substantial evidence of the efforts to which he went to obtain evidence of The Seven's misconduct. (*See, e.g.*, Suppl. R. C14, 192-215.)

On the basis that the petitioner in *Gonzalez* did not claim the investigating detective committed misconduct in relation to his case, but only in other cases, his evidence was not material. *Gonzalez*, 2016 IL App (1st) 141660, ¶ 65. In affirming the underlying decision, a panel of this Court specifically noted that "[h]ad [petitioner] presented any evidence, however slight, that [the investigating detective] coerced, improperly influenced, or intimidated a witness in this case … a convincing argument would have been made to advance respondent's petition to a third-stage evidentiary hearing." *Id.* Petitioner has clearly presented more than slight evidence that The Seven "coerced, improperly influenced, [and] intimidated" witnesses.

Finally, in *Brown*, over a fervid dissent, the majority ruled that, by themselves, two affidavits, neither of which were from eyewitnesses, were not conclusive of petitioner's innocence and so did not entitle him to leave to file a second successive post-conviction petition. *Brown*, 2017 IL App (1st) 150132, ¶ 55. In contrast, Petitioner has submitted three affidavits, all from eyewitnesses, each of whom states that Petitioner was not present at the scene of the crime, and each of whom alleges they were coerced by The Seven into falsely identifying Petitioner as the shooter. Petitioner has also submitted corroborating evidence of a pattern and practice of similar misconduct by The Seven.

None of these authorities justifies the circuit court's ruling, which must therefore be reversed as it is unsupported in law or fact.

G. Petitioner Has Showed Both Cause and Prejudice Entitling him to Leave to File a Successive Petition

The State's argument that Petitioner's cause and prejudice claim is foreclosed on the basis of the authorities it cites lacks merit, as none of them shed light on the issues before the Court. (Response at 39-40.) For example, in *People v. Davis*, 2014 IL 115595, ¶¶ 9, 54-55, the court affirmed the summary dismissal of petitioner's "fifth request for collateral review," which for the fourth consecutive time sought relief for ineffective assistance of counsel. And in *People v. Wideman*, 2016 IL App (1st) 123092, ¶ 69-72, the court ruled the petitioner's vague claim of a *Brady* violation, which was not raised below, was insufficient to show cause when he had not articulated any reason for why his claim could not have been discovered previously. In contrast to both, Petitioner is appealing the denial of leave to file his first successive post-conviction petition, and he has provided the Court with several justifications for not raising his claims earlier, including that some evidence did not exist previously, and that he was delayed in obtaining other evidence of misconduct by the denial of his FOIA requests.

The State's suggestion that Petitioner has failed to show prejudice is ludicrous: he has claimed he is incarcerated for a crime of which he is entirely innocent. *People v. Washington*, 171 Ill. 2d 475, 487-88 (1996) (incarceration of an innocent person violates the Illinois Constitution).

III. CONCLUSION

For all the foregoing reasons, Petitioner asks the Court to reverse the circuit court's decision and grant him leave to file a successive petition for relief under the Post-

Conviction Hearing Act, to grant him the further relief requested in his Motion and his initial brief before this Court, and to grant him such further relief as the Court deems appropriate.

Date: April 16, 2018

Respectfully submitted,

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IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

No. 1-17-1773

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Petitioner-Appellant.	)	Appeal from Cook County Circuit Court No. 01-CR-17492 Honorable Evelyn B. Clay, Presiding Post-Conviction Proceeding Appellant In Custody Date of Ruling Appealed June 15, 2017 Notice of Appeal Filed June 28, 2017

CERTIFICATE OF COMPLIANCE OF
PETITIONER-APPELLANT'S REPLY BRIEF

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) 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 6382 words.

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NOTICE OF FILING

TO: Cook County State's Attorney Office, Criminal Appeals Division
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PLEASE TAKE NOTICE that on the 13th day of April 2018, I filed electronically Petitioner-Appellant's Reply Brief in the above captioned matter with the Clerk of the Appellate Court of the State of Illinois, First Judicial District, a copy of which is hereby electronically served upon you.

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April 2018, a true and correct copy of Petitioner-Appellant's Reply Brief, filed in the above-captioned matter, and its attendant Notice of Filing were sent via the Court's electronic filing system to:

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I further hereby certify that on this 16th day of April 2018, a true and correct copy of Petitioner-Appellant's Reply Brief, filed in the above-captioned matter, and its attendant Notice of Filing were sent via electronic mail to:

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APPENDIX 7

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PETITION FOR REHEARING BY PETITIONER-APPELLANT

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PETITION FOR REHEARING BY PETITIONER-APPELLANT

Petitioner-Appellant Kevin Jackson, by and through his undersigned counsel, hereby petitions this Court, pursuant to Illinois Supreme Court Rule 367, for rehearing of his appeal and modification of this Court's judgment, as expressed in its written opinion.

I. INTRODUCTION

Despite this Court's recognition that absolutely no forensic or physical evidence connects Mr. Jackson to the crimes at issue, that in fact, "no evidence, other than the recanting witnesses' inconsistent statements" supports his conviction, and further and perhaps most incredibly that "the surviving victim and the only … eyewitness to the shooting who testified at trial [who did not claim to have been coerced], stated unequivocally that Mr. Jackson looked nothing like the man

who shot him. (Op. ¶ 9.)[1] Mr. Jackson is nevertheless continuing to serve a 45-year sentence for urder and aggravated discharge of a firearm (Suppl. R. C41-42). As this Court is also aware, the jury, presented with such meager and conflicting evidence attempting to tie Mr. Jackson to the shooting, had difficulty even reaching a verdict, and passed multiple questions to the Court, including one inquiring about the "law for hung jury." (Op. ¶¶ 47-49.) Today, despite several attempts to exonerate himself and secure relief from this wrongful conviction over the past seventeen years, frequently *pro se*, Mr. Jackson remains incarcerated. (Op. ¶¶ 50-52.)

Since 2015, Mr. Jackson has been represented by private counsel across multiple law firms, collaborating to investigate his case, probe his claim of innocence, and examine the conduct of the seven police officers most responsible for his arrest and wrongful conviction ("The Seven").[2] (Op. ¶ 81.) Despite "considerable" effort, (Op. ¶ 81), even for private law firms, by 2017 Mr. Jackson's counsel was only able to obtain the most basic summary information about the 150 complaints ("CRs") then known to have been filed against The Seven. Armed with what information he had been able to unearth, Mr. Jackson filed the motion for leave to file a successive post-conviction petition, the subject of this appeal, in May 2017. (Suppl. R. C14-19, C58-75.) Mr. Jackson alleged that he is an innocent man and was wrongfully convicted on the basis of coerced, false statements obtained by The Seven. (Suppl. R. C9-11.) Mr. Jackson supported his claims of innocence with evidence of past allegations of misconduct by The Seven in the form of summary information

[1] 2018 IL App (1st) 171773.

[2] This Court took exception to the term "The Seven" seemingly because of its finding that Mr. Jackson had not proven that the officers routinely worked together, engaged in misconduct together, or were involved in a conspiracy. (Op. ¶ 84.) However, "The Seven" remains a convenient shorthand for "the seven officers primarily responsible for the investigation that led to the arrest and wrongful conviction of Mr. Jackson," and is therefore used herein.

about the CRs filed against The Seven, records of civil litigation involving misconduct by The Seven, media reports describing misconduct by The Seven, and affidavits from witnesses who were intimidated and coerced by The Seven. (Suppl. R. C12-19.)

Mr. Jackson sought leave to file a successive post-conviction petition on the basis of both cause and prejudice and actual innocence. (Suppl. R. C46-56.) He further argued that if given leave to file a successive post-conviction petition—thereby enabling him to obtain discovery—he would uncover substantially more information regarding misconduct by The Seven. (R1258.)

His motion for leave to file a successive post-conviction petition was denied by now-retired Circuit Court Judge Evelyn Clay in June 2017, (C522), a decision this Court affirmed by written opinion 2018 IL App (1st) 171773, dated September 28, 2018.

This Court's decision was premised, in significant part, on three holdings: (1) that prior misconduct of one of The Seven was not "strikingly similar" to that alleged by Mr. Jackson and therefore was not relevant to his motion for leave, (2) that Mr. Jackson's actual innocence claim was not "freestanding" and therefore not viable, and (3) that one of the affidavits supporting Mr. Jackson's actual innocence claim was not newly discovered. Each of these holdings is contrary to Illinois law, and is individually and collectively sufficient grounds for this Court to grant rehearing and modify its decision and written opinion. Accordingly, Mr. Jackson files the instant petition for rehearing seeking such relief.

Additionally, since Mr. Jackson's appeal was filed, he has continued to seek release of records from the Chicago Police Department ("CPD") and the Civilian Office of Police Accountability ("COPA," previously the Independent Police Review Authority ("IPRA")) that both bodies refused to release previously despite Mr. Jackson's multiple proper Illinois Freedom of Information Act ("FOIA") requests. Since the Court heard oral argument on his appeal, Mr.

Jackson has finally obtained several additional records from CPD and COPA that further corroborate his claims of misconduct by The Seven.

Concurrently herewith, Mr. Jackson files a motion to supplement the record with these documents that should have been produced to him previously by CPD, IPRA and COPA (the "Motion"). These records, through no fault of Mr. Jackson, were not previously produced and were therefore unavailable to him at the time he filed his motion for leave to file a successive post-conviction petition. If this Court grants the Motion, these records will provide further and independently sufficient grounds for granting rehearing. And, if given leave to file a successive post-conviction petition, Mr. Jackson would unquestionably be entitled to rely on these records upon remand. *People v. Minniefield*, 2014 IL App (1st) 130535, ¶ 4 (counsel filed supplemental petition following remand from the first-stage dismissal and appeal).

For the foregoing reasons, as further developed herein, Mr. Jackson hereby petitions this Court to grant rehearing of his appeal, to modify its rulings and written opinion accordingly, to grant him leave to file a successive petition, and to grant further relief as the Court deems appropriate.

II. ARGUMENT

A. The Court's decision is founded upon a misapprehension of what constitutes "strikingly similar" misconduct under the binding precedent of *People v. Patterson* and this Court's prior decisions.

There is no requirement in the law of Illinois that Mr. Jackson's motion for leave to file a successive post-conviction petition be supported by "strikingly similar" evidence, and as the phrase has been used to describe evidence previously, it is clear that Mr. Jackson's evidence is, in fact, "strikingly similar" to his allegations. Accordingly, for this Court to deny Mr. Jackson leave to file a successive post-conviction petition on the basis that his allegations are not "strikingly similar" to his evidence is without basis in either fact or law and must be reversed.

1. Although the Court recognized that very little evidence supports Mr. Jackson's conviction, and that one of The Seven previously admitted similar misconduct in judicial proceedings, it failed to apply these facts as required by precedent.

This Court's review of the facts underlying Mr. Jackson's case led it to conclude—as it must—that *no evidence*, except recanted and allegedly coerced statements, actually supports his conviction. (Op. ¶¶ 9-10, 83.) As such, this Court rightly found that evidence of misconduct by any of The Seven could have changed the outcome of the trial, and therefore warrants further proceedings on Mr. Jackson's claims:

> [W]e agree with Mr. Jackson that evidence of past witness coercion by the same officers involved here may well have made a difference in the outcome of this case, particularly where there was no evidence, other than the recanting witnesses' inconsistent statements, tying Mr. Jackson to the shooting and the surviving victim clearly and consistently testified that Mr. Jackson was not the shooter."

(Op. ¶ 83; *see also People v. Banks*, 192 Ill. App. 3d 986, 994 (1st Dist. 1989) (holding that even a single instance of prior misconduct is sufficient to warrant further proceedings); *cf. People v. Reyes*, 369 Ill. App. 3d. 1, 19 (1st Dist. 2006) ("If even a fraction of the allegations included in this evidence had been presented prior to trial, it appears likely that [the officer's] credibility would have been damaged and defendants' confessions would have been suppressed.").)

Therefore, independent of any other evidence Mr. Jackson has presented, the decision of *Bridewell v. City of Chicago*, No. 08-C-4947, 2012 WL 2458548 (N.D. Ill. June 27, 2012) on its own entitles Mr. Jackson to leave to file a successive post-conviction petition. The stipulated facts of the *Bridewell* case clearly demonstrate that Detective Brian Forberg (one of The Seven) has previously coerced false statements from a witnesses to a murder—through lengthy detentions and high-pressure interrogation tactics—and as a result arrested an innocent person, who was held for *three years* before all charges were dropped when prosecutors identified serious deficiencies in the investigation. *Id.* at *1-2. As this Court recognized, the parties in *Bridewell* stipulated that

Detective Forberg obtained false statements from witnesses in that investigation through "coercion by withholding food, water, and bathroom breaks." (Op. ¶ 90.)

Here, four witnesses specifically and forcefully recanted at trial the prior statements leveraged out of each of them by the now familiar conduct of Detective Forberg and The Seven. (*See* detailed discussion of each witness' testimony of coercion at Op. ¶¶ 14-15 (Brandi Butler); ¶¶ 19-20 (Vernon Clay); ¶ 24 (Shemika Mason); ¶ 29 (Manuel Stewart).) As the Court correctly noted:

> "At trial, however, none of these witnesses identified Mr. Jackson as the shooter. They instead each testified that they had been threatened and coerced by detectives into signing the statements and giving the grand jury testimony implicating Mr. Jackson. No forensic evidence connected Mr. Jackson to the crime and Michael Watson, the surviving victim and the only other eyewitness to the shooting who testified at trial stated unequivocally that Mr. Jackson looked nothing like the man who shot him."

(Op. ¶ 9.)

Yet, despite the dearth of evidence against Mr. Jackson, totally exculpatory testimony from the surviving witness, (Op. ¶ 9), and the established fact of Detective Forberg's prior misconduct, this Court denied Mr. Jackson leave to file a successive post-conviction petition, in part, on the basis that the conduct in *Bridewell* "is similar but not 'strikingly similar' to the alleged coercion in this case." (Op. ¶ 90.) *Contra People v. Coleman*, 2013 IL 113307, ¶ 109 (holding that the strength of the evidence of guilt factors into whether to grant leave to file a successive petition).

2. This Court's analysis turns on a characterization of "strikingly similar" misconduct that is inconsistent with the understanding and prior application of the phrase by this and other courts.

This Court's holding that the misconduct alleged by Mr. Jackson and the misconduct that occurred in *Bridewell* are not "strikingly similar" is entirely anomalous in the law. Mr. Jackson has been unable to identify a single instance, outside of the First District, in which an appellate court or the Illinois Supreme Court has dismissed, or affirmed the dismissal of, any post-conviction

proceeding on the basis that its allegations were not "strikingly similar" to others. Furthermore, to the extent that a lack of "strikingly similar" allegations is appropriate grounds for denying leave, this Court nevertheless construed the phrase in a way that is inconsistent with the First District precedent upon which it purports to rely.

This Court cites *People v. Nicholas*, 2013 IL App (1st) 103202, in support for its analysis, which in turn relies on *People v. Wrice*, 406 Ill. App. 3d 43 (1st Dist. 2010), which traces the phrase back to its origin in *People v. Patterson*, 192 Ill. 2d 93 (2000). (Op. ¶ 85.) None of these decisions supports this Court's holding. Rather, each indicates that this Court dramatically overstates the degree of similarity necessary to be considered "strikingly similar."

In *Nicholas*, a panel of this Court stated that the defendant's claims were "strikingly similar to the physical abuse documented in [a 2006 report by a Special State's Attorney investigating allegations of torture involving CPD (the "2006 Report")] as to the time period, location, manner, method, participants and the role of the participants in securing coerced statements from other prisoners in [Chicago Police Department] Areas 2 and 3." 2013 IL App (1st) 103202, ¶ 40. The defendant's allegations were that in 1991, while he was being interrogated about a shooting, he failed to give the answers detectives were seeking, and therefore he was smacked, punched, kicked, knocked to the ground, and may have been beaten with a red bat by Detectives O'Brien, Stehlik, and others. *Id.* ¶ 4. The findings of the 2006 Report, which were held to be "strikingly similar" to the defendant's allegations, were that "numerous arrestees complained of being beaten and/or tortured by Detective O'Brien and other detectives at Area 3." *Id.* ¶ 24. Therefore, under *Nicholas*, allegations are "strikingly similar" if they involve the same detective, occur in the same geographic or administrative area, and involve similar methods of misconduct—in this case, physical abuse. *Id.* ¶¶ 4, 24.

In *Wrice*, the defendant alleged he was taken to a basement of Area 2 on at least two occasions when he failed to give the officers questioning him the answers they wanted. 406 Ill. App. 3d at 44-45. While in the basement, he was struck about the face, arms, legs, and groin with a flashlight and a solid piece of rubber. *Id.* The court found that these allegations were "'strikingly similar' to those of other prisoners at Areas 2 and 3," and apparently relied on the same 2006 Report as *Nicholas*. *Id.* at 53. The *Wrice* decision described the misconduct detailed in the 2006 Report as ranging from striking detainees with flashlights, fists, and feet, to the use of mock execution, stress positions, and electroshock. *Id.* at 48-49. Therefore, under *Wrice*, allegations of coercion are "strikingly similar" if they involve some of the same methods of abuse, but need not involve all of the same methods—in this case, striking the defendant with a flashlight, fists, and feet, was "strikingly similar" even though he was not also subjected to mock execution, stress positions, or electroshock. Also, the additional detail of being struck by a solid piece of plastic was not dissimilar enough from the allegations in the 2006 Report to deny that his allegations were "strikingly similar."

In *Patterson*, where the phrase originates, the court described only one aspect of the defendant's allegations as "strikingly similar" to prior allegations of misconduct, and its decision did not turn on this finding.[3] 192 Ill. 2d at 145. Specifically, in summarizing the defendant's claims, the Illinois Supreme Court stated:

[3] Mr. Jackson disputes that *Patterson* establishes a rigid requirement that his allegations be "strikingly similar" to past allegations. While it is unquestionably a bell-weather case in Illinois post-conviction jurisprudence, *Patterson* was procedurally a very different case than that presented here, since it was a death penalty case, and a first petition, which made no overt claim to establishing a new test for evaluating the evidence supporting claims of actual innocence. *See People v. Mitchell*, 2012 IL App (1st) 100907, ¶¶ 80-82 (Murphy, J., concurring) (remand for further proceedings on successive petition warranted despite lack of "strikingly similar" allegations).

> [W]e note that defendant has consistently claimed that he was tortured. In fact, he made this claim during his first court appearance. Moreover, defendant's claims are now and have always been strikingly similar to other claims involving the use of a typewriter cover to simulate suffocation. Additionally, defendant describes the use of a gun as a threat and beatings that do not leave physical evidence. Further, the officers that defendant alleges were involved in his case are officers that are identified in other allegations of torture. Finally, defendant's allegations are consistent with the OPS findings that torture, as alleged by defendant, was systemic and methodical at Area 2 under the command of Burge.
>
> * * *
>
> Thus, we believe that defendant has presented sufficient evidence at the pleading stage to entitle him to a hearing.

Id. Therefore, under *Patterson*, allegations are "strikingly similar" if any aspect of the allegations is the same as prior allegations of misconduct—in this case the detail of being suffocated with a typewriter cover. Read in full, the court was at least as persuaded by the consistency of the defendant's claims, which it noted three separate times, as it was with their "striking[] similar[ity]" to others' claims, which it noted only once.

Altogether, *Nicholas*, *Wrice*, and *Patterson* establish that for claims of misconduct to be "strikingly similar" they need only have some combination of the same participants, have occurred in the same general location, and share some of the same methods. Moreover, as important—if not more important—is whether the claims are consistent over time or with others' prior allegations.

Mr. Jackson's allegations and supporting evidence are both "strikingly similar" and perfectly consistent. In both *Bridewell* and the instant case, Detective Forberg: (1) detained witnesses to a murder for extended periods; (2) held them in interrogation rooms without access to one another, to family or friends, or to an attorney; (3) over the course of their detention, explicitly told them what information to put in their statements; (4) succeeded in obtaining statements that were later recanted; (5) and, at least once in both investigations, used a polygraph

examination as leverage to obtain a false statement. (*Compare* Suppl. R. C34-38, C220-43 *with Bridewell*, 2012 WL 2458548, at *1-2). Viewed side-by-side, Mr. Jackson's allegations are plainly much more "strikingly similar" to the misconduct in *Bridewell* than were the allegations in *Nicholas*, *Wrice*, or *Patterson* to the prior allegations of misconduct to which they were compared.

Mr. Jackson's "strikingly similar" and consistent evidence, when considered in light of this Court's recognition that "no evidence" supports his conviction, except for the statements allegedly coerced by this misconduct (Op. ¶ 83), renders Mr. Jackson's claims compelling, and entitles him to leave to file a successive post-conviction petition. To instead hold that Mr. Jackson has failed to meet his burden because in *Bridewell* Detective Forberg coerced witnesses by "withholding food, water and bathroom breaks," whereas in the instant case he coerced them by threatening criminal prosecution is to take an exceedingly—and unjustifiably—narrow view of what constitutes "strikingly similar." *Cf. People v. Cannon*, 293 Ill. App. 3d 634, 640 (1st Dist. 1997) (Wolfson, J.) ("Minor differences in technique do not alter the nature of the torturer's work.").

Therefore, this Court's holding that Mr. Jackson failed to carry his burden because his evidence of misconduct by The Seven is not "strikingly similar" to previous misconduct breaks from prior precedent—both binding Illinois Supreme Court precedent and prior decisions of this Court. As such, this Court should grant rehearing on this matter, modify its opinion accordingly, and grant Mr. Jackson leave to file a successive post-conviction petition.

B. This Court should grant rehearing because its decision misapprehends the precedential value of *People v. Hobley*.

The Illinois Supreme Court has repudiated its prior holding that claims of actual innocence must be "freestanding." Accordingly, for this Court to deny Mr. Jackson leave to file a successive post-conviction petition on the basis that his claim is not "freestanding" is without basis in the law and must be reversed.

1. This Court's opinion suggests that it believed itself compelled under *People v. Hobley* to affirm the Circuit Court's ruling with respect to Mr. Jackson's actual innocence claim because it is not "freestanding."

This Court's analysis of Mr. Jackson's actual innocence claim is underpinned by *People v. Hobley*, 182 Ill. 2d 404 (1998); specifically, its holding that evidence offered in support of a claim of a constitutional violation may not also be relied upon to support a claim of actual innocence. In the parlance of *Hobley*, such a claim is not "freestanding" and is not viable. This Court found that Mr. Jackson's claim of actual innocence is not "freestanding," because it is supported by evidence of misconduct by The Seven, which also supports an independent constitutional claim. This Court's opinion indicates that it considered itself bound by *Hobley* to reach its ultimate decision regarding Mr. Jackson's actual innocence claim. (Op. ¶ 70 ("We *must* reject this [actual innocence] argument." (emphasis added)).)

This Court's holding fails to recognize that *Hobley* has been abrogated by the Illinois Supreme Court and is no longer controlling on this point of law. Rather, *People v. Coleman*, 2013 IL 113307, is controlling and requires the opposite end result.

2. This Court's opinion mistakes *Hobley* for binding precedent when in fact *Hobley* has been abrogated by the Illinois Supreme Court.

In *People v. Coleman*, 2013 IL 113307, ¶ 83, the Illinois Supreme Court clarified the meaning and effect of "freestanding" and "gateway" claims of actual innocence. Under federal law, a "freestanding" claim is one "in which the defendant challenges only his factual innocence," whereas a "gateway" claim is one "in which the defendant challenges both his factual innocence and the fairness of his trial." *Id.* ¶ 89. Under Illinois law, this is a distinction without a difference. *Id.* ¶¶90-91. Rather, while the Illinois Supreme Court admits it "may have used the label 'freestanding' to describe" previous claims, it has not done so "as an alternative to the label 'gateway.'" *Id.* ¶ 90. Instead, under Illinois law:

> [A] postconviction actual-innocence claim is just that—a postconviction actual-innocence claim…. There is no anomaly in our case law because the evidentiary burden for an actual-innocence claim is always the same whether or not it would be considered a freestanding or gateway claim under federal law.

Id. ¶ 91. *Coleman*'s in-depth analysis leaves no question that Illinois law has intentionally deviated from federal law, and *does not* distinguish between gateway and freestanding claims of actual innocence. *Id.* ¶ 89-92. *Hobley*'s contrary holding that only "freestanding" claims of actual innocence are cognizable under Illinois law, 182 Ill. 2d at 443-44, is quite simply, of no present precedential value.

Moreover, there is no basis to conclude that the Illinois Supreme Court ever meant for *Hobley* to have the effect this Court imposed here, considering its almost immediate retreat from *Hobley*'s "freestanding" holding. Since *Hobley* was decided, the Illinois Supreme Court has only invoked it to deny a claim of actual innocence on the basis that it was not freestanding one single time, in *People v. Orange*, 195 Ill. 2d 437, 463 (2001).[4] Meanwhile, in numerous other decisions considering claims of actual innocence, the supreme court has declined to even mention either *Hobley* or the term "freestanding." *See, e.g.*, *People v. Sanders*, 2016 IL 118123; *People v. Allen*, 2015 IL 113135; *People v. Edwards*, 2012 IL 111711; *People v. Shum*, 207 Ill. 2d 47 (2003); *People v. Johnson*, 205 Ill. 2d 381 (2002); *People v. Collins*, 202 Ill. 2d 59 (2002).

The supreme court has also implicitly rejected *Hobley* by suggesting that the same evidence, in fact, *can* support both claims of cause and prejudice and actual innocence. *See People v. Tate*, 2012 IL 112214, ¶¶ 17, 23-25, 29 (reversing dismissal of petition seeking relief on both theories

[4] A panel of this Court recognized in *People v. Weathers*, 2015 IL (1st) 133264, ¶ 35, that *Orange* was partially abrogated by *People v. Wrice*, 2012 IL 111860, in that it is no longer appropriate to analyze allegations of coerced confessions under a harmless error standard.

supported by the same affidavits; although the court reversed only on the basis of cause and prejudice, it made no mention of either a freestanding requirement or of any deficiency stemming from the overlapping evidence); *cf. Collins*, 202 Ill. 2d at 82 (McMorrow, J., dissenting) ("[A]llowing a claim of actual innocence to be lost because of a procedural deficiency would be contrary to principles of justice and fairness." (internal quotation marks omitted) (*citing People v. Boclair*, 202 Ill. 2d 89, 102 (2002)).

When the Illinois Supreme Court does cite *Hobley*, both before and since *Orange* was decided, it has been far more likely to cite it for something other than its holding that an actual innocence claim must be freestanding. *See, e.g.*, *People v. Williams*, 209 Ill. 2d 227, 241 (2004) ("The lesson of *Hobley* is that a juror affidavit alleging exposure to '*prejudicial* outside influences' is sufficient to raise a presumption of prejudice and to shift the burden to the State to establish that such contacts were harmless." (emphasis in original) (internal citation omitted)); *People v. Pitsonbarger*, 205 Ill. 2d 444, 455 (2002) ("If the petition does make a substantial showing of a constitutional violation, the matter proceeds to an evidentiary hearing." (citing *Hobley*, 182 Ill. 2d at 428)); *People v. Hickey*, 204 Ill. 2d 585, 595-96 (2001) ("[T]he doctrine of waiver will be relaxed where fundamental fairness so requires. . . ." (citing *Hobley*, 182 Ill. 2d at 428)); *People v. Page*, 193 Ill. 2d 120, 162 (2000) (citing *Hobley,* 182 Ill. 2d at 467-70, for its holding that the Illinois death penalty instructions were not unconstitutional).

The last seventeen years of Illinois Supreme Court jurisprudence, as described and clarified in *Coleman*, indicate that the Illinois Supreme Court does not consider *Hobley*'s "freestanding" holding to accurately convey the law of Illinois—and neither should this Court. As such, this Court should grant rehearing, modify its opinion accordingly, and grant Mr. Jackson leave to file a successive post-conviction petition.

C. The Court's decision conflicts with binding precedent that specifies that the ultimate test of evidence of actual innocence is its conclusiveness.

The Illinois Supreme Court has made clear that conclusiveness is the most important quality of evidence supporting a claim of actual innocence, and he evidence submitted by Mr. Jackson, as recognized by this Court, is conclusive. Accordingly, for this Court to deny Mr. Jackson leave to file a successive post-conviction petition on the basis that this evidence is not newly discovered is a miscarriage of justice and must be reversed.

1. This Court recognized that Ms. Davis's affidavit was material and non-cumulative and that it is conclusive of Mr. Jackson's innocence.

This Court explicitly held that Ms. Davis's affidavit is non-cumulative, stating:

> Ms. Davis's affidavit … is not cumulative of testimony offered at trial by other witnesses. Evidence is only cumulative if it adds nothing to what was already before the jury.

(Op. ¶ 74) (internal quotation marks omitted.) This Court also indicated that Ms. Davis's affidavit offers material and conclusive information:

> This case turned on credibility determinations. The testimony of another eyewitness, who knew Mr. Jackson well, who would have recognized him, and who did not identify him but instead described someone else as the shooter, would have added something new to the evidence before the jury. And, unlike the other witnesses, Ms. Davis never signed a statement implicating Mr. Jackson as the shooter.

(*Id*.)

As this Court properly recognized, Ms. Davis was uniquely situated among the occurrence witnesses to testify to Mr. Jackson's innocence, because her story never changed—she gave police no prior inconsistent statement with which she could be impeached. (*Id*.) In a case that "turned on credibility determinations," (*id.*), such testimony would certainly "*raise the probability* that it is more likely than not that no reasonable juror would have convicted" Mr. Jackson in light of her testimony, *Edwards*, 2012 IL 111711, ¶ 31 (emphasis added). *See also Banks*, 192 Ill. App. 3d at

994 (holding that even a single instance of prior misconduct is sufficient to warrant further proceedings); *cf. Reyes*, 369 Ill. App. 3d at 19 ("If even a fraction of the allegations included in this evidence had been presented prior to trial, it appears likely that [the officer's] credibility would have been damaged and defendants' confessions would have been suppressed.").

In light of this Court's own findings regarding the weaknesses of the evidence against Mr. Jackson (*see* Op. ¶¶ 9, 83), there is no dispute that Ms. Davis's affidavit increases the *probability* of a different result, and therefore, is material and conclusive of Mr. Jackson's actual innocence. *See People v. White*, 2014 IL App (1st) 130007, ¶¶ 5-9, 24-26 (in case with similarly contradictory testimony and no forensic evidence, exculpatory affidavit from occurrence witness who did not testify at trial was sufficiently likely to change result on retrial to warrant further proceedings). This is especially so since the Illinois Supreme Court has emphasized that the focus of post-conviction proceedings is on "probability, not certainty." *Coleman*, 2013 IL 113307, ¶ 97 (citing *People v. Davis*, 2012 IL App (1st) 110305, ¶¶ 62-64) (clarifying that even in third-stage proceedings, "probability, not certainty" is paramount). Moreover, the fact the jury had difficulty reaching a verdict, and inquired about the law of hung juries (Op. ¶¶ 47-49), further indicates what a close decision it was on the meager and conflicting evidence presented. Under such circumstances, Ms. Davis's testimony could very well have tipped the scales toward a different result.

The only fault this Court specifically assigned to Ms. Davis's affidavit was that "Mr. Jackson has not shown that he could not have discovered Ms. Davis's exonerating testimony sooner through due diligence." (Op. ¶ 76.) To hold, on this basis alone, that Ms. Davis's affidavit does not justify granting Mr. Jackson leave is, under this Court's prior decisions, a flagrant

miscarriage of justice. Moreover, it is contrary to Illinois Supreme Court decisions establishing unequivocally that conclusiveness is paramount in evaluating evidence of actual innocence.

2. This Court's denial of leave to file a successive post-conviction petition because Ms. Davis's affidavit is not newly discovered is a miscarriage of justice under its own prior decisions and under guiding principles established by the Illinois Supreme Court.

Whether evidence of actual innocence is newly discovered is not dispositive of whether leave to file a successive post-conviction petition is appropriate, nor is it even the most important consideration. Rather "[t]he conclusiveness of the new evidence is the *most important* element of an actual innocence claim" under the Illinois Post-Conviction Hearing Act. *Sanders*, 2016 IL 118123, ¶ 47 (emphasis added) (citing *People v. Washington*, 171 Ill. 2d 475, 489 (1996)); *accord Coleman*, 2013 IL 113307, ¶ 84 (citing cases).

Illinois courts have, therefore, relaxed the requirement that evidence be "newly discovered" in numerous circumstances similar to the instant case. *See, e.g.*, *Coleman*, 2013 IL 113307, ¶ 102 (affidavits of five witnesses were treated as new, despite prior knowledge of the witnesses, because they would have been uncooperative previously); *People v. Ortiz*, 235 Ill. 2d 319, 333-34 (2009) (testimony of eyewitness was treated as new because defendant, who admitted to being at the scene of the crime, claimed he could not have seen the eyewitness because of where he was standing and the eyewitness did not come forward on his own previously); *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 162 (records of police misconduct that predated defendant's trial were nevertheless treated as new because of typical difficulty of obtaining them); *cf. People v. Washington*, 171. Ill. 2d 475, 493 (1996) (McMorrow, J., concurring) (due process prohibits formalist considerations from "overrid[ing] the natural demands of justice.")

Furthermore, this Court has refused to ignore evidence of actual innocence simply because it is "not technically 'newly discovered,'" when it would be "fundamentally unfair" to do so.

People v. Warren, 2016 IL App (1st) 090884-C, ¶ 130. In *Warren*, the defendant's successive post-conviction petition relied on affidavits that had undeniably been available during earlier post-conviction proceedings, but his attorney had failed to utilize them at that time, despite the affiants' apparent willingness to testify. *Id.* ¶ 115-16. In refusing to turn a blind eye on the evidence, a panel of this Court held that:

> It would be a miscarriage of justice if defendant were denied his day in court where his allegations and supporting documentation, supported by the record and taken as true at this stage, demonstrate that he was unable to put forth exculpatory evidence of his innocence through no fault of his own.

Id. ¶ 130. For the same reason that it would have been a miscarriage of justice to deny the defendant in *Warren* his day in court, it is a tragic miscarriage of justice to now deny Mr. Jackson his.

On its face, Ms. Davis's story is quite similar to that of the affiants' in *Warren*. As this Court is aware, Ms. Davis was known to the defense at the time of Mr. Jackson's trial, but she was not called to testify, and she was told that her testimony would not be needed. (Op. ¶ 76.) But in *Warren*, it was undeniably the defense who chose not to utilize the affiants, whereas it is ambiguous, at best, who told Ms. Davis that her testimony was not needed.

This Court seems to assume that it was defense counsel who told Ms. Davis this (Op. ¶ 76), but the record is by no means clear on that point. Ms. Davis's statement was simply that "[e]ventually, I was told that my testimony would not be needed during Kevin's trial." (Suppl. R. C 227.) Ms. Davis makes no mention of who told her that, and indeed makes no mention of ever being contacted by counsel for either the State or for Mr. Jackson—only to being harassed by CPD. It is, therefore, not clear whether it was counsel for Mr. Jackson, the State, or some third party who told her that she would not be needed to testify. It is not even clear that Ms. Davis knows who it was that told her that her testimony was not needed. Furthermore, if the Court's assumption is

incorrect, and it was actually the prosecution or the police who told her this, this action (whether or not intended to do so) may have further hindered Mr. Jackson's defense. But even if Ms. Davis was told by the defense that her testimony was not needed, *Warren* indicates that this Court should nevertheless consider her testimony in order to avoid a miscarriage of justice.

Therefore, this Court's holding that Mr. Jackson failed to carry his burden because Ms. Davis's affidavit could have been obtained previously, breaks from this Court's prior decisions and from the guiding principles of post-conviction jurisprudence established by the Illinois Supreme Court. As such, this Court should grant rehearing on this issue, modify its opinion accordingly, and grant Mr. Jackson leave to file a successive post-conviction petition.

D. This Court should grant rehearing because newly obtained records of the CPD and COPA only made available to Mr. Jackson since this matter was briefed and argued further corroborate his claims.

The Illinois Supreme Court has made clear that the overriding concern of post-conviction proceedings must be on fundamental fairness, and it is fundamentally unfair to deny Mr. Jackson leave to file a successive post-conviction petition on the basis of insufficient evidence, when he properly, timely, and repeatedly requested that evidence from State institutions who are bound under statute to provide him with the requested information. This miscarriage of justice must be reversed.

1. Despite considerable efforts over several years, and through no fault of his own, Mr. Jackson has been unable to obtain many of the records of misconduct by The Seven that he has properly sought from CPD and COPA.

As this Court recognized, Mr. Jackson has expended "considerable" effort over multiple years to obtain police records detailing citizens' allegations of misconduct by The Seven. (Op. ¶ 81.) In large part, Mr. Jackson has sought these records through FOIA requests. *See Fraternal Order of Police, Chicago Lodge No. 7 v. City of Chicago*, 2016 IL App (1st) 143884, ¶ 36 (holding

that records of this type are subject to FOIA). Yet, despite his efforts—including engaging a separate law firm to prosecute a collateral lawsuit seeking the release of records pursuant to FOIA (*see* Suppl. R. C192-215)—Mr. Jackson was able to obtain only summary information about the prior allegations of misconduct by The Seven before filing his motion for leave to file a successive post-conviction petition. (Op. ¶¶ 84, 86-87.)

While his appeal has been pending before this Court, Mr. Jackson has continued his quest for these improperly withheld records by issuing seventeen (so far) new and painstakingly tailored FOIA requests to CPD and COPA. CPD, in particular, has continued to be slow to respond to these requests, but Mr. Jackson has finally obtained some detailed—if heavily redacted—information regarding several allegations of misconduct by two of The Seven. Several of these allegations are similar to those made by Mr. Jackson, and suggest that certain members of The Seven were jointly involved in similar misconduct on other occasions. Had CPD and COPA[5] produced this information in response to Mr. Jackson's original FOIA requests, or even in response to his collateral lawsuit, this information would all have been included in the motion for leave to file a successive post-conviction petition underlying this appeal.

In his Motion filed concurrently herewith, Mr. Jackson seeks to supplement the record with these newly obtained records from CPD and COPA. In the event that Mr. Jackson's Motion is granted, he provides the following summary information related to the records and how this information supports his Petition.[6]

[5] At the time of his original requests, Mr. Jackson submitted the requests to COPA's predecessor, IPRA.

[6] In any event, if granted leave to file his successive post-conviction petition, Mr. Jackson intends to supplement his petition with this newly acquired information. *See People v. Minniefield*, 2014 IL App (1st) 130535, ¶ 4 (counsel filed supplemental petition following remand from first-stage dismissal and appeal).

2. The records recently obtained by Mr. Jackson further corroborate his claims of a pattern and practice of misconduct by The Seven.

The newly obtained records further corroborate Mr. Jackson's allegations of routine misconduct by The Seven, both individually and collectively. In particular, Mr. Jackson's more recent efforts have focused on obtaining information regarding the prior allegations of misconduct by the two detectives most responsible for the investigation that led to his arrest and wrongful conviction: Detectives Brian Forberg and John Foster.[7] The newly obtained records reveal substantial misconduct that is both strikingly similar to and consistent with Mr. Jackson's allegations.

The newly obtained records establish at least two additional instances in which Detectives Forberg and Foster have been accused of jointly engaging in misconduct strikingly similar to that alleged in Ms. Davis's affidavit. Specifically, Detectives Forberg and Foster have been accused of harassing family and friends of potential murder witnesses by repeatedly and illegally entering their homes and being verbally and physically abusive to residents during these raids. (*See* Motion, Attachment 1, 2d Suppl. R. C2-9.) Ms. Davis's affidavit and the complaint her mother filed both describe very similar coercive misconduct by the detectives. (Suppl. R. C151-91, 220-28.)

The newly obtained records also indicate that Detectives Forberg and Foster were accused on a previously unknown occasion of coercing a suspect into giving a false confession—the fourth such allegation Mr. Jackson has uncovered, in addition to *Bridewell*, *Patterson* (*see* Suppl. R. C15-16), and his own case—and that the methods of coercion were similar in each case. Specifically,

[7] Although the newly obtained records are heavily redacted (as appropriate under FOIA), Mr. Jackson has attempted to identify and exclude those records that relate to misconduct of which this Court is already aware—*e.g. Bridewell v. City of Chicago*, No. 08-C-4947, 2012 WL 2458548 (N.D. Ill. June 27, 2012), and *Patterson v. City of Chicago*, No. 1:11-cv-07052 (N.D. Ill. Oct. 6, 2011). (*See* Suppl. R. C15-16.)

in this recently obtained complaint, Detectives Forberg and Foster allegedly held a suspect in an uncomfortably cold interrogation room for an extended period of time, without access to a bathroom, and subjected him to verbal and physical abuse in order to coerce his confession. (*See* Motion, Attachment 1, 2d Suppl. R. C10-15.)

On his own, Detective Foster has an even longer history of similar and egregious misconduct. In addition to the two known times he was accused of unlawfully entering and searching residences with Detective Forberg, he has been accused of the same misconduct at least seven other times on his own or in concert with other officers. (*See id.*, 2d Suppl. R. C16-52.) During one of these allegedly illegal searches, he is further accused of having physically and verbally abused an eight-to-nine months pregnant woman[8] who he placed under arrest. (*See id.*, 2d Suppl. R. C16-24.)

Detective Foster also has a long and substantiated history of racist, sexist, and homophobic conduct. (*See id.*, 2d Suppl. R. C53-100.) The most striking of these incidents relates to his expulsion from a federal Drug Enforcement Administration ("DEA") training program, after he repeatedly made racist remarks to and about his fellow black and Asian law enforcement officers. (*See id.*, 2d Suppl. R. C53-65.) In deciding to expel him from the program, the head of the training found that:

> [Detective Foster's] performance failed to demonstrate that he possessed the aptitude, attitude, discipline, demeanor, integrity, dependability, mature judgement [sic] and ability to follow instructions, orders and regulations to be a Special Agent with the Drug Enforcement Administration.

[8] It is noteworthy that on at least one other occasion, Detective Foster has been accused of treating a pregnant woman poorly, since Brandi Grant has claimed that The Seven used her pregnancy at the time of their investigation to leverage a false statement out of her. (*See* Suppl. R. C241.)

(*Id.*, 2d Suppl. R. C57.) This CR was sustained, in part based on interviews of at least seven special agents (presumably of the DEA, however that information has been redacted), a basic agent (presumably a DEA trainee, however that information has been redacted), and a Staff Coordinator of the DEA. Detective Foster's history of deep, abiding racism and sexism are particularly relevant since everyone involved in this case, other than the police, were black and several of the allegedly coerced witnesses were women.

All of these complaints corroborate Mr. Jackson's allegations that Detectives Forber and Foster, the two lead detectives responsible for his arrest and wrongful conviction, have an established pattern and practice of misconduct. Moreover, these complaints corroborate Ms. Davis's affidavit in which she alleged that Detective Foster, along with Detective Forberg, harassed her and her mother by repeatedly and unlawfully entering their home searching for Ms. Davis and were verbally abusive while doing so.

This newly obtained corroborating evidence of misconduct by two of The Seven—and the two lead detectives, at that (Suppl. R. C18)—entitles Mr. Jackson to leave to file a successive post-conviction petition. *Banks*, 192 Ill. App. 3d at 994 (holding that even a single instance of prior misconduct is sufficient to warrant further proceedings); *cf. Reyes*, 369 Ill. App. 3d. at 19 ("If even a fraction of the allegations included in this evidence had been presented prior to trial, it appears likely that [the officer's] credibility would have been damaged and defendants' confessions would have been suppressed.").

Therefore, this Court's holding that Mr. Jackson failed to carry his burden because he presented insufficient evidence of misconduct should be reversed, on the basis of this newly acquired evidence, which he was unable to obtain previously through no fault of his own. As such,

this Court should grant rehearing on this issue, modify its opinion accordingly, and grant Mr. Jackson leave to file a successive post-conviction petition.

III. CONCLUSION

As this Court has recognized, "police misconduct, including witness coercion, does occur[, and] … courts must play a significant role in ensuring that individuals are not wrongfully imprisoned as a result of such tactics." (Op. ¶ 91.) Mr. Jackson has provided ample evidence corroborating his claims that police misconduct is solely responsible for his conviction and resultant 17 years of incarceration, so far. And as this Court has recognized, the evidence of Mr. Jackson's involvement in the shooting for which he is incarcerated is limited to the inconsistent statements of allegedly coerced witnesses. (Op. ¶ 83.) Moreover, the surviving victim "clearly and consistently testified that Mr. Jackson was not the shooter." (*Id*.) And on this meager and conflicting evidence, the jury had difficulty reaching its verdict, and did so only after inquiring about the law of hung juries and being told to continue deliberating. (Op. ¶¶ 47-49.) Therefore, to hold as this Court has, that denying Mr. Jackson leave to file a successive post-conviction petition is appropriate, is precisely the type of miscarriage of justice that the Illinois Supreme Court has repeatedly cautioned against.

Therefore, on the basis of all of the foregoing, Petitioner-Appellant asks the Court to grant rehearing on his appeal, to reverse the circuit court's decision, to grant him leave to file a successive petition for relief under the Post-Conviction Hearing Act, and to grant him such further relief as the Court deems appropriate.

Date: October 19, 2018

Respectfully submitted,

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IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

No. 1-17-1773

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Petitioner-Appellant.	)	Appeal from Cook County Circuit Court No. 01-CR-17492 Honorable Evelyn B. Clay, Presiding Post-Conviction Proceeding Appellant In Custody Date of Ruling Appealed June 15, 2017 Notice of Appeal Filed June 28, 2017

CERTIFICATE OF COMPLIANCE OF
PETITIONER-APPELLANT'S PETITION FOR REHEARING

I certify that this brief conforms to the requirements of Rules 367(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) 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 fewer than 8,100 words.

Date: October 19, 2018

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PLEASE TAKE NOTICE that on the 19th day of October 2018, we filed electronically **Petition for Rehearing by Petitioner-Appellant** with the Clerk of the Appellate Court of the State of Illinois, First Judicial District, a copy of which is hereby served upon you.

/s/ *Brandon C. Clark*
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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October 2018, a true and correct copy of the foregoing **Petition for Rehearing by Petitioner-Appellant** was sent via the Court's electronic filing system to:

Cook County State's Attorney Office
Criminal Appeals Division
Attn: Deputy Supervisor Annette Collins
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I further hereby certify that on this 19th day of October 2018, a true and correct copy of the foregoing **Petition for Rehearing by Petitioner-Appellant** was sent via electronic mail to:

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Date: October 19, 2018

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APPENDIX 8

No. 1-17-1773

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County, No. 01-CR-17492 Honorable Evelyn B. Clay, Judges Presiding.

ORDER

This matter coming to be heard on defendant-appellant Kevin Jackson's petition for rehearing from this court's opinion dated September 28, 2018;

IT IS HEREBY ORDERED:

- the State has 21 days from the date this order is entered to file an answer to the petition for rehearing; and

- Mr. Jackson has 14 days from the due date of the State's answer to file a reply.

ORDER ENTERED

NOV 0 8 2018

APPELLATE COURT, FIRST DISTRICT

JUSTICE

JUSTICE

JUSTICE

APPENDIX 9

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Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

NO. 17-1773

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Respondent-Appellee,

vs.

KEVIN JACKSON,

Petitioner-Appellant.

Appeal from the Circuit Court of Cook County, Criminal Division.
Honorable **EVELYN CLAY**, Judge Presiding.

ANSWER TO PETITION FOR REHEARING

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Respondent-Appellee,

vs.

KEVIN JACKSON,

Petitioner-Appellant.

THIS COURT CORRECTLY APPLIED CONTROLLING PRINCIPLES OF LAW.

This Court previously determined that petitioner failed to meet his burden of showing either a colorable claim of actual innocence or cause and prejudice, and thus, affirmed the circuit court's denial of leave to file a successive post-conviction petition. People v. Jackson, 2018 IL App (1st) 171773, ¶¶70-95. That determination was correct. Petitioner now contends that this Court misapplied the law in ruling (1) that the allegations of police misconduct inunrelated cases that he included in his petition—particularly an unsuccessful federal civil suit against one detective—were not "strikingly similar" to the alleged coercion in this case; (2) that petitioner's actual innocence claim concerning police misconduct was not "freestanding," and thus, not cognizable as a claim of actual innocence, though this Court did consider the claim under the cause-and-prejudice test; and (3) that one of the affidavits attached to the petition was not "newly discovered." (Pet. 3) However, every one of these

contentions is premised upon a misapprehension of either the applicable law or its validity. The People submit that, after this Court reviews the applicable law, particularly the binding decisions of our supreme court, it will conclude that petitioner's claims are legally spurious and should be rejected.

A. The Federal Civil Litigation Which Resulted In A Finding Of No Police Misconduct And The Ultimate Dismissal Of All Counts Against Detective Forberg Was Utterly Irrelevant, Not "Strikingly Similar," And Could Not Possibly Support Further Proceedings On The Post-Conviction Petition.

Petitioner's argument for rehearing depends upon rearguing a point he has already made. Petitioner contends, once again, that federal civil litigation against Detective Brian Forberg warrants further proceedings on his petition. (Pet. Br. 16; Pet. 5-6) Notably, Rule 367 prohibits reargument of the case in the petition. Ill. Sup. Ct. R. 367(b) ("Reargument of the case shall not be made in the petition."). In any event, the federal district court found no coercion on the part of the detective and ultimately dismissed all the counts in the complaint against him, and the Seventh Circuit Court of Appeals affirmed. Under binding Illinois Supreme Court precedent, this litigation is irrelevant to petitioner's case. Furthermore, this Court correctly determined that the alleged misconduct in the civil litigation was not "strikingly similar"—phrasing that originates in our supreme court and has been repeatedly utilized by other courts.

The federal courts in the civil litigation of Bridewell v. Eberle, essentially absolved Det. Brian Forberg of any wrongdoing. In partially granting a defense motion to dismiss, Judge Leinenweber found that the complainant's allegation of coercive interrogation was "nothing more than a standard police interrogation and did not violate [a plaintiff's] constitutional rights." Bridewell v. Eberle, No. 08 C 4947, 2009 U.S. Dist. LEXIS 32159, at

*8 (N.D. Ill. Apr. 16, 2009). In ensuing proceedings, Judge Leinenweber granted a defense motion to dismiss another count, Bridewell v. Eberle, No. 08 C 4947, 2010 U.S. Dist. LEXIS 73549 (N.D. Ill. July 22, 2010), and later granted the defense motion for summary judgment on the remaining counts, Bridewell v. City of Chicago, No. 08 C 4947, 2012 U.S. Dist. LEXIS 88671, at *5 (N.D. Ill. June 27, 2012), an action affirmed by the Seventh Circuit. Bridewell v. Eberle, 730 F.3d 672 (7th Cir. 2013).

Mere evidence of a civil suit against an officer charging some breach of duty unrelated to the defendant's case is not admissible to impeach the officer. People v. Coleman, 206 Ill. 2d 261, 279 (2002). That is all that petitioner presented here. In light of the absence of any finding of liability or wrongdoing on the part of Detective Forberg in the failed civil litigation, that litigation cannot serve to show wrongdoing in the instant case. See People v. Cacini, 2015 IL App (1st) 130135, ¶66 (mere evidence of a civil suit against an officer charging some breach of duty unrelated to the defendant's case is not admissible to impeach the officer (citing Coleman, 206 Ill. 2d 261)). Moreover, in light of the five years that passed between the investigation in petitioner's case and the 2006 incidents in Bridewell, see Bridewell v. Eberle, No. 08 C 4947, 2009 U.S. Dist. LEXIS 32159, at *2, this incident was too remote in time to be relevant. See People v. Porter-Boens, 2013 IL App (1st) 111074, ¶19, citing People v. Patterson, 192 Ill.2d 110, 115 (2000) (our supreme court has specifically "declined to find evidence of prior police brutality to be relevant when *** the allegation *** occurred three years before the case at bar."). See also People v. Cacini, 2015 IL App (1st) 130135, ¶70 (trial court did not abuse its discretion in finding officers' complaint files, which were remote as they were more than three years old,

were not discoverable or admissible).

While petitioner seizes on unsubstantiated allegations that were agreed to unless otherwise noted—as they had to be for the purpose of a motion for summary judgment, see Bridewell v. City of Chicago, No. 08 C 4947, 2012 U.S. Dist. LEXIS 88671, at **5-6—the federal judge found that the police had probable cause to arrest the three plaintiffs and granted summary judgment. The same judge had earlier denied a claim of coercive interrogation, finding that the interrogation was "nothing more than a standard police interrogation and did not violate [the plaintiff's] constitutional rights." Bridewell v. Eberle, No. 08 C 4947, 2009 U.S. Dist. LEXIS 32159, at *8 (N.D. Ill. Apr. 16, 2009). Ultimately, the Seventh Circuit affirmed the dismissal of the counts. Bridewell v. Eberle, 730 F.3d 672, 675 (7th Cir. 2013). With respect to plaintiff Bridewell's claim regarding the duration of her detention prior to presenting her before a judge, the Seventh Circuit found that Bridewell could not show any injury because a state court judge ultimately concluded that probable cause existed for her arrest and that she was not entitled to release on bail. Id. at 676-77. Notably, under the law of this State, the length of a detention does not itself demonstrate coercion and is merely one factor to be considered in determining whether a statement was coerced. People v. Willis, 215 Ill.2d 517, 533-34 (2005)(delay in presenting the defendant to a judge for a probable-cause determination "does not of itself vitiate a confession but is merely a factor to be considered on the question of voluntariness." (quoting People v. House, 141 Ill.2d 323, 380 (1990)). Without a finding of any wrongdoing or liability on the part of Detective Forberg, this federal civil litigation had no relevance or bearing on petitioner's claims at all.

It is beyond dispute that a defendant raising a claim involving police misconduct in other cases must present evidence indicating that the same officers or supervisors were involved and that the same type of misconduct was involved in order for a court to conclude that such evidence was relevant to the defendant's claims. People v. Hobley, 159 Ill. 2d 272, 312 (1994); People v. Patterson, 192 Ill. 2d at 110. In addressing a post-conviction claim where the defendant alleged he had new evidence that his confession was the product of torture, our supreme court considered whether this new evidence was newly discovered, material and not merely cumulative, and of such conclusive character that it would probably change the result upon retrial, in order to determine if it could surmount the bar of *res judicata*. Patterson, 192 Ill. 2d at 139. In finding the new evidence material, our supreme court observed that Patterson's claims of torture were "strikingly similar to other claims involving the use of a typewriter cover to simulate suffocation", as well as other acts of torture involving the use of a gun as a threat and beatings that did not leave physical evidence. Id. at 145. Later, our supreme court affirmed the appellate court's ruling on a similar post-conviction claim (except for the remedy) and explicitly quoted from that opinion, as in Patterson, the defendant on appeal:

> (1) consistently claimed, during his motion to suppress, at trial, and on post-conviction review, that he was tortured; (2) his claims of being beaten are **strikingly similar** to those of other prisoners at Areas 2 and 3; (3) the officers involved, Sergeant Byrne and Detective Dignan, are identified in other allegations of torture; and (4) defendant's allegations are consistent not only with OPS findings (under the preponderance of the evidence standard of proof) of systemic and methodical torture at Area 2 under Jon Burge, but also with the [Special State's Attorney's] Report's findings of torture under the stricter standard of proof beyond a reasonable doubt. As such, defendant has satisfied the 'prejudice' prong of the cause-and-prejudice test.
> People v. Wrice, 2012 IL 111860, ¶43(emphasis added).

See also People v. Anderson, 375 Ill. App. 3d 121, 141 (1st Dist. 2007)(affirming summary dismissal of post-conviction petition and distinguishing Patterson where the supreme court found that the defendant's allegations that Jon Burge threatened him with a revolver were "strikingly similar" to allegations of systematic torture found in the Goldston report); People v. Johnson, 2011 IL App (1st) 092817, ¶¶78, 80 (in post-conviction case, claims in other cases were not "strikingly similar," citing Patterson, to the type of police misconduct alleged to have occurred in the defendant's case); People v. English, 2014 IL App (1st) 102732-B, ¶55 (affirming denial of leave to file successive petition alleging similar claim where the defendant presented no "strikingly similar" claims of physical abuse, and the witnesses only claimed a general threat, not that they were physically intimidated by the police); People v. Upshaw, 2017 IL App (1st) 151405, ¶80 (allegations of physical abuse not "strikingly similar" to the allegations in the new evidence in post-conviction case).

In the face of this precedent, petitioner argues that our supreme court did not mean what it said when it applied the "strikingly similar" standard to determine the relevance of other claims of police misconduct. (Pet. 6-10) Where the Illinois Supreme Court has declared the law on any point, it alone can overrule and modify its previous opinion, and the lower judicial tribunals are bound by such decision and it is the duty of such lower tribunals to follow such decision in similar cases. Blumenthal v. Brewer, 2016 IL 118781, ¶28. Thus, petitioner's argument is best addressed to our supreme court, not this Court.

Further, petitioner's contentions concerning People v. Nicholas, 2013 IL App (1st) 103202, People v. Wrice, 406 Ill. App.3d 43 (1st Dist. 2010), and Patterson itself do not support his contention that this Court's opinion is legally anomalous or unsupported. In

Nicholas, the post-conviction petitioner's claims that he was tortured into confessing were "strikingly similar" to the physical abuse documented in the 2006 Report of the Special State's Attorney regarding coerced statements from other prisoners at Areas 2 and 3. 2013 IL App (1st) 103202, ¶40. Notably, the 2006 Report found that torture occurred at Areas 2 and 3 beyond a reasonable doubt. Id. This report evaluated 148 complaints of torture perpetrated by police officers under the command of Jon Burge at Area 2 and Area 3 from 1973 to 2006, finding widespread, systematic torture of prisoners. People v. Wrice, 406 Ill. App. 3d at 52-53. In light of this report, the appellate court found Nicholas' claims of being smacked, punched, and kicked by detectives at Area 3 in 1991, before his confession, "strikingly similar to the physical abuse documented in the 2006 Report as to the time period, location, manner, method, participants and the role of the participants". Nicholas, Id.

In attempting to analogize this case to Nicholas, petitioner overlooks the fact of the 2006 Report, which found "beyond a reasonable doubt" that torture occurred at Areas 2 and 3 and that such torture was widespread and systematic. The failed civil litigation in Bridewell which petitioner points to in this case does not compare to the 2006 Report. In Bridewell, Detective Forberg had probable cause to arrest the three plaintiffs, and when one of the plaintiffs invoked his right to counsel, that invocation was honored. Bridewell v. Eberle, 730 F.3d at 674-76. There was nothing in the Bridewell plaintiffs' complaints that Detective Forberg coerced them into inculpating someone by threatening to charge them with various crimes, which was the brunt of the recanting witnesses' trial testimony in the instant case. People v. Jackson, 2018 IL App (1st) 171773, ¶90; Bridewell v. City of Chicago, No. 08 C 4947, 2012 U.S. Dist. LEXIS 88671.

Further, while petitioner and Nicholas stress the importance of consistent allegations of torture (Pet. 9; Nicholas, Id.), the recanting witnesses' complaints of coercion were anything but consistent. Vernon Clay gave a written statement implicating petitioner to Assistant State's Attorney Lisa Hennelly in which he stated that he had been treated "all right" by the police and by the ASA; that he was offered a sandwich to eat and anything that he wanted to drink but he did not want anything; that he was allowed to use the washroom when he needed; and that no threats or promises were made to him to get him to make the statement. (R. 740) Clay also testified to this effect before the grand jury. (R. 880) Clay told ASA Lanahan the items contained in his handwritten statement were true. (R. 870) Manuel Stewart gave a written statement implicating petitioner to ASA Lisa Hennelly in which he stated that he had been treated fine by the police and by ASA Hennelly; that he had been given pop and McDonald's to eat and was allowed to use the bathroom when he needed; and that no one threatened him or promised him anything to get him to make the statement. (R. 787) Stewart also testified to this effect before the grand jury. (R. 868) Stewart told ASA Lanahan the items contained in his handwritten statement were true. (R. 860) Brandi Butler gave a written statement implicating petitioner to ASA Colleen Daly in which she stated that she had been treated well by the police and ASA Daly; that she had been allowed to use the bathroom whenever she needed; that she had a pop to drink, a double cheeseburger and fries; that no one made her any threats or promises to get her to make a statement; and that she was doing so freely and voluntarily. (R. 824) Butler also testified to this effect before the grand jury. (R. 857) Butler told ASA Lanahan the items contained in her handwritten statement were true and that no threats or promises were made. (R. 842-43)

Shemika Mason gave a written statement implicating petitioner to ASA Daly in which she stated she had been treated well by the police and ASA Daly; that she had been allowed to use the bathroom if she needed; that she had a pop to drink; that no one made her any promises or threats to get her to make the statement; and that she was doing so freely and voluntarily. (R. 812) This evidence is utterly inconsistent with the witnesses' belated claims of coercion.

For all the same reasons, Wrice and Patterson provide no support to petitioner's contention that this Court's opinion is legally anomalous or unsupported. Wrice involved the same 2006 Report of the Special State's Attorney finding torture beyond a reasonable doubt and widespread and systematic torture of suspects at Areas 2 and 3 by Jon Burge and his underlings. 406 Ill.App.3d at 44, 53. Wrice complained he was struck multiple times, including with a flashlight, by Area 2 detectives, and cited to the 2006 report naming the same detectives as well as a sustained OPS report (as well as 6 other sustained OPS reports) finding that one of the detectives struck a suspect with a flashlight. Id. at 44, 48-50. Wrice's claims of being beaten were strikingly similar to those of other prisoners at Areas 2 and 3. Id. at 53. Further, Wrice consistently claimed, during his motion to suppress, at trial, and on post-conviction review, that he was tortured. Id. at 53. Patterson involved one OPS report which concluded that systemic abuse occurred at Area 2, and the data supporting the report identified 13 other incidents of the use of a plastic bag or a typewriter cover to suffocate the victims and 11 incidents in which a firearm was used to threaten or strike the victim. 192 Ill. 2d at 141. It also involved a second OPS report finding that Jon Burge actively participated in the mistreatment of Andrew Wilson, burned Wilson with a radiator, repeatedly shocked

him, and engaged him in several unjustified physical altercations while Wilson was handcuffed. Id. Patterson's claims were strikingly similar to other claims involving the use of a typewriter cover to simulate suffocation and the use of a gun as a threat. Id. at 145. And Patterson consistently claimed that he was tortured. Id.

The cases cited by petitioner are wholly different from the instant case and cannot support a finding that the recanting witnesses' claims are strikingly similar to any substantiated findings of misconduct involving Detective Forberg. To the extent petitioner cites, in a footnote (Pet. 8), to the concurring opinion of a single justice, the fact is that the majority opinion in that case once again relied upon the 2006 report about a pattern of criminal conduct committed by officers at Area 2, specifically finding convincing evidence beyond a reasonable doubt that the detective battered suspects and committed perjury about the suspects' alleged confessions. People v. Mitchell, 2012 IL App (1st) 100907, ¶¶60, 62.

Finally, to the extent petitioner contends that the weight of the evidence of his guilt is somehow probative to the issue of the relevance of other unrelated allegations of police misconduct, all of the above cases clearly demonstrate that petitioner is arguing a non sequitur. The People will address the evidence against petitioner in proper context below.

In sum, this Court correctly determined that the alleged misconduct in the failed civil litigation involving Detective Forberg did not establish "the necessary connection between the alleged misconduct of any one officer that [petitioner] claims led to his conviction and a pattern and practice of sufficiently similar misconduct by that same officer." Jackson, 2018 IL App (1st) 171773, ¶92.

B. The Illinois Supreme Court Has Clearly Differentiated Between Claims Of Actual Innocence And Claims Of Error That Are Subject To The Cause-And-Prejudice Test.

This Court Correctly Adhered To The Law Promulgated By Our Supreme Court In Applying The Cause And Prejudice Test To A Claim That Ultimately Centers On Impeachment of Police Witnesses Rather Than Proof Of Innocence.

"Where a defendant makes a claim of trial error, as well as a claim of actual innocence, in a successive post-conviction petition, the former claim must meet the cause-and-prejudice standard, and the latter claim must meet the Washington standard." People v. Coleman, 2013 IL 113307, ¶91. "In Illinois, a post-conviction actual-innocence claim is just that—a post-conviction actual-innocence claim." Id. In citing Coleman to this Court, petitioner neglected to address this crucial portion of that opinion. While petitioner cherry-picks from Coleman and thus concludes that Coleman has overruled—without ever mentioning—People v. Hobley, 182 Ill.2d 404 (1998) as well as People v. Orange, 195 Ill.2d 437, 455-56 (2001), regarding the proposition that a claim of actual innocence must be "freestanding", the supreme court clearly retained the distinction between claims of actual innocence and claims subject to the cause-and-prejudice test. A clear-eyed, objective reading of Coleman does not support petitioner's contention that this Court misapplied the law.

The portion of Coleman cited above cannot simply be ignored. Nor can the context of the discussion regarding "freestanding" in the supreme court opinion be ignored. In Coleman, the defendant filed a successive petition claiming actual innocence based on newly discovered evidence. Id. at ¶¶ 49, 77. The defendant supported the successive petition with affidavits of five witnesses to the effect that the defendant did not take part in the crimes. Id. at ¶¶102-3. These affidavits represent the epitome of a claim of actual innocence, *i.e.*, evidence that the defendant did not commit the crime—he was actually innocent of the crime. On appeal, the prosecution asked the supreme court to adopt a stricter evidentiary

standard for proving free-standing actual innocence claims, based upon Schlup v. Delo, 513 U.S. 298 (1995). Id. at ¶¶ 85-87. The Illinois Supreme Court declined and discussed the differences in federal habeas corpus law between a "freestanding" and "gateway" claim and how different burdens of persuasion might apply in federal law to those two types of actual innocence claims. Id. at ¶¶86-90, 92. Instead, the supreme court rejected the notion of different burdens of persuasion and reiterated and applied a unitary standard for proving actual innocence claims—that of People v. Washington, 171 Ill. 2d 475 (1996). Coleman, id. at ¶¶91, 94. To prove actual innocence, the supreme court reiterated, a post-conviction petitioner "must present new, material, noncumulative evidence that is so conclusive it would probably change the result on retrial. Id. at ¶96.

What Coleman did not do is abolish the distinction between claims subject to the actual innocence standard and claims subject to the cause-and-prejudice standard. That is demonstrated from the portion of the opinion quoted above. Certainly, it did not overrule Hobley or Orange, as its opinion does not mention those prior opinions. Hobley was cited by the supreme court as recently as People v. Newton, 2018 IL 122958, ¶28, albeit on different grounds. Courts have continued to employ the "freestanding" marker and Hobley to distinguish between claims subject to the actual innocence standard and claims subject to the cause-and-prejudice test. See People v. Flowers, 2015 IL App (1st) 113259, ¶¶31-35; People v. Gonzalez, 2016 IL App (1st) 141660, ¶¶29-30; People v. Zareski, 2017 IL App (1st) 150836, ¶71.

To the extent petitioner relies on People v. Tate, 2012 IL 112214, as support that the same evidence can support application of both the actual innocence and cause-and-prejudice

standards, it should be noted that the procedural posture of that case is inapposite: an original, first-stage petition which only had to meet the low-threshold "arguable" standard. Id. at ¶¶9, 19-20. The court there only addressed a claim of ineffective assistance of trial counsel for failure to call witnesses. Id. at ¶¶4, 27.

The gravamen of petitioner's allegations regarding police misconduct is impeachment, not evidence that petitioner is actually innocent of the offense. See People v. Jackson, 2018 IL App (1st) 171773, ¶82 (petitioner contends "that evidence of a pattern and practice of police misconduct by the detectives in this case would have allowed him to more fully challenge both the prior inconsistent statements of the recanting witnesses and the State's claim that those statements were truthful, while the recantations at trial were not."). Thus, it is not a claim of actual innocence—evidence that petitioner did not commit the crime—and this Court properly analyzed the claim under the rubric of the cause-and-prejudice test. Jackson, 2018 IL App (1st) 171773, ¶¶70-71, 79-92.

Even assuming, *arguendo*, that the supreme court has somehow overruled Hobley and Orange despite not saying so, and despite upholding the distinction between successive post-conviction claims subject to the actual innocence standard and claims subject to the cause-and-prejudice test, no different result is warranted in this case. As discussed above, this Court did not reject petitioner's claim out of hand, but analyzed it under the cause-and-prejudice test, ultimately finding the claim insufficient. Our supreme court has itself recognized that "it is difficult, if not impossible, to imagine a scenario where a meritorious [actual innocence] claim could not meet the cause-and-prejudice test." People v. Ortiz, 235 Ill.2d 319, 332 (2009). Thus, a post-conviction claim, sufficiently meritorious to pass the

cause-and-prejudice test, should pass the actual innocence standard, notwithstanding the different elements involved. However, since petitioner's claim was insufficient to meet the cause-and-prejudice test, it would be insufficient to establish a colorable claim of actual innocence. In the end, the flaw observed by this Court—that petitioner, "at this point [has not] made the necessary connection between the alleged misconduct of any one officer that [petitioner] claims led to his conviction and a pattern and practice of sufficiently similar misconduct by that same officer," Jackson, 2018 IL App (1st) 171773, ¶92—would necessarily doom his claim under either standard. Petitioner would still be unable to show how "it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence". People v. Edwards, 2012 IL 111711, ¶24.

In sum, viewing Coleman in its entirety, petitioner cannot show that the supreme court has abrogated Hobley and Orange or the distinction between claims to be adjudicated under the actual innocence standard and the cause-and-prejudice test. Even assuming for argument's sake that petitioner could make this showing, having failed to show cause and prejudice, he cannot make out a colorable claim of actual innocence.

C. This Court Correctly Applied The Law In Finding A Witness Whom The Defense Knew Of At The Time Of Trial Was Not Newly Discovered.

The defense clearly knew of Quiana (also spelled Quina) Davis at the time of trial, as petitioner concedes. (Pet. 17) In his signed affidavit attached to his first post-conviction petition, petitioner averred that Quiana visited and called him during his incarceration, that she had spoken to a Public Defender's investigator about the events of the shooting, and that she was present at trial, but was not called to testify. (C.R. 175) Her unsigned affidavit attached to the same petition claimed that she had been subpoenaed to testify at trial. (C.R.

177) Clearly, as this Court has already found, Quiana Davis' affidavit attached to the successive petition cannot possibly constitute newly discovered evidence. The precedent of the Illinois Supreme Court makes it clear that this fact was dispositive in rejecting petitioner's claim of actual innocence predicated on Quiana Davis.

To the extent petitioner contends that evidence in support of a claim of actual innocence need not be newly discovered, petitioner has misstated the law. (Pet. 16) The Illinois Supreme Court has clearly and consistently set out the elements of a claim of actual innocence. See People v. Ortiz, 235 Ill. 2d 319, 333 (2009)(the evidence in support of the claim must be newly discovered; material and not merely cumulative; and of such conclusive character that it would probably change the result on retrial); People v. Edwards, 2012 IL 111711, ¶32 (the elements of a claim of actual innocence are that the evidence in support of the claim must be "newly discovered"; material and not merely cumulative; and of such conclusive character that it would probably change the result on retrial); People v. Coleman, 2013 IL 113307, ¶96 (in order to succeed on a claim of actual innocence, the defendant must present new, material, noncumulative evidence that is so conclusive it would probably change the result on retrial; new means the evidence was discovered after trial and could not have been discovered earlier through the exercise of due diligence); People v. Sanders, 2016 IL 118123, ¶24 (the evidence of actual innocence must be (1) newly discovered, (2) not discoverable earlier through the exercise of due diligence, (3) material and not merely cumulative, and (4) of such conclusive character that it would probably change the result on retrial).

Furthermore, the Illinois Supreme Court has explicitly rejected claims of actual

innocence for failing to present newly discovered evidence. See Edwards, 2012 IL 111711, ¶34 (rejecting alibi affidavits as not newly discovered evidence because the defendant obviously knew of his alibi at the time of trial, on appeal, and during initial post-conviction proceedings, and the fact that the defendant was allegedly with the affiants' family in their house on the night of the offense could have been discovered sooner with the exercise of due diligence). See also People v. Bailey, 2017 IL 121450, ¶45 (rejecting the notion that the defendant presented "newly discovered" evidence in support of the cause prong of the cause-and-prejudice test and denying leave to file successive petition, where the defendant's motion failed to present any facts that would support a finding that the evidence was "newly discovered"; for example, he claimed that certain medical evidence regarding an injury, which would show that he could not have committed the offense, was "newly discovered" because the trial court determined that the evidence was irrelevant and refused to allow him to present it at trial).

Contrary to petitioner's presentation to this Court, the cases he cites do not stand for the proposition that the element of "newly discovered" evidence may be relaxed or disposed of. (Pet. 16) In fact, the cases he cites consistently upheld the necessity of showing the element, and simply found the evidence to be newly discovered on the facts. In People v. Coleman, 2013 IL 113307, ¶100, the supreme court rejected two of eight affidavits as not newly discovered. The court found five of the affidavits newly discovered where four of the five affiants would have asserted their fifth amendment privilege, rendering them unavailable to the defense. Id. at ¶102. The fifth affiant would have testified, but he was unavailable because he was shot three times after telling participants in the crime he would testify for the

defendant his brother, and he left the area for a hospital in Detroit. Id. at ¶¶60, 62. In People v. Ortiz, 235 Ill. 2d at 334, the affiant did not admit to having witnessed the incident until more than 10 years after trial, and he averred that he was at the scene in a place where he would not have been seen by the defendant. Id. In People v. Tyler, 2015 IL App (1st) 123470, ¶162, some cases of police misconduct occurred after the trial, and some did not surface until many years later; it would have been unreasonable to expect defense counsel to discover whom these individual detectives were abusing unless counsel interviewed every suspect who was detained by them.

Finally, petitioner's reliance upon People v. Warren, 2016 IL App (1st) 090884-C, ¶¶132, 141-42, is misplaced in light of the distinguishable and repeatedly self-described "unique" facts of that case. Unlike most post-conviction petitioners, the petitioner in Warren was represented by retained counsel at the initial phase, rather than representing himself, and counsel's incompetence was instrumental in preventing the petitioner from even making a record of newly discovered evidence. Id. at ¶141. The newly discovered evidence consisted of four affidavits. Id. at ¶¶33-37. Post-conviction counsel represented he did not have time to attach the affidavits before the statute of limitations ran; however, inexplicably, he never attempted to amend the petition to include the affidavits. Id. at ¶142. Even more incredibly, as the concurrence pointed out, there is not even a statute of limitations for claims of actual innocence. Id. at ¶162. In any real sense, the evidence of these four witnesses' testimony was not available because the petitioner's lawyer would not submit the evidence or even create a record of the evidence. Id. at ¶130. This was the petitioner's first opportunity to raise this issue. Id. at ¶165. About the only recourse available to defendant was to try to fire

his lawyer and get a new one—which the defendant tried to do, without success. Id. at ¶129. The court confined its holding "to the unique instance where retained counsel unreasonably failed to make any record whatsoever of the proffered evidence, thus leaving defendant in a legal limbo, guaranteeing the dismissal of his petition before the trial court and effectively nullifying any opportunity to complain of his attorney's deficient performance on appeal from that dismissal, while at the same time defendant would be procedurally barred from presenting the evidence in a successive petition because, of course, his counsel knew of the evidence previously but failed to act on it, so it is not newly discovered." Id. at ¶141.

This Court has distinguished Warren on its facts. See People v. Miranda, 2018 IL App (1st) 170218, ¶30. And this case is nothing like Warren. Petitioner's current post-conviction counsel did nothing to prevent either a record being made of Quiana Davis' affidavit or precluding the circuit court from considering the issue below. Quite the opposite is true. Nor was this anything like the first time petitioner could have raised an issue about Davis' prospective testimony. Indeed, petitioner has had a plethora of opportunities to raise this issue. Petitioner obtained a hearing on his motion for new trial at which several witnesses were called, but petitioner did not raise any issue about Quiana Davis. (R. 1056-1215) Petitioner failed to raise this issue on direct appeal. (C.R. 115-40) He actually did raise this issue previously in his first post-conviction petition, but the circuit court summarily dismissed the petition as frivolous and patently without merit, and this Court affirmed on appeal. People v. Jackson, No. 07-1680, p.10-12, Rule 23 Order (1st Dist. April 29, 2009). He did not raise this issue in his petition for federal habeas corpus relief. United States ex rel. Jackson v. Hardy, No. 09 C 7774, 2011 U.S. Dist. LEXIS 38848, at *1-2 (N.D. Ill. Apr.

11, 2011). Nor did petitioner raise the issue in his motion to vacate conviction/sentence as void, which the circuit court treated as a petition for relief from judgment under 735 ILCS 5/2-1401. (C.R. 237-39, 274-75) Petitioner's own affidavit demonstrates his knowledge from early on of Ms. Davis' prospective testimony and her availability to testify, and he has had multiple opportunities to raise this issue since then. (C.R. 175) Warren is inapposite.

To the extent that petitioner, now for the first time in these proceedings on petition for rehearing, attempts to suggest a claim of ineffective assistance of trial counsel for failing to present Davis' testimony, that suggestion is firmly barred by the precedent of our supreme court. (Pet. 17-18) See People v. (Tramaine) Jones, 213 Ill.2d 498, 508(2004) (the appellate court is not free, as the supreme court is under its supervisory authority, to excuse, in the context of post-conviction proceedings, an appellate waiver caused by the failure of a defendant to include issues in his or her post-conviction petition); People v. (Lee) Jones, 211 Ill.2d 140, 143, 149 (2004)(constitutional claims raised for the first time on appeal and which were not included in the defendant's post-conviction pleading are procedurally defaulted); People v. Young, 2018 IL 122598, ¶16 (any claim that is not included in the original or an amended petition is forfeited; however, a forfeited claim may be raised in a successive post-conviction petition if the defendant can satisfy the cause-and-prejudice test).

Petitioner quibbles with this Court's incidental inference that it was the defense that told Quiana Davis she would not be needed to testify. (Pet. 17) Considering petitioner's own affidavit concerning his contacts with Quiana, her revealing that she had spoken to a Public Defender's investigator, her presence at the trial, and the substance of her potential testimony as found in her signed and unsigned affidavits, along with the unsigned affidavit

stating she had been subpoenaed, it was clear she was a defense witness, and if the defense wanted her, they certainly would have called her or enforced their subpoena, or raised the issue much sooner and much more frequently since trial.

While this Court made no express finding on the conclusiveness of Davis' affidavit, the many substantial inconsistencies and refutations of her affidavit mean her potential testimony is not of such conclusive character that it would probably change the result on retrial. One major problem is the content of petitioner's affidavit claiming Davis was present at trial, had spoken to a defense investigator, and was available to testify, and the competing claim that Davis was not available to petitioner because she was "harassed" by the police and went into hiding and moved from the neighborhood. In Davis' own affidavit, she admitted that she "was told that [her] testimony would not be needed during [petitioner's] trial." (Supp.C.R. (10/30/17) 227) The police conducted an investigation into Davis' harassment complaint, and not only did the investigating sergeant find the complaint "not sustained," the sergeant found that Davis was "deceptive in dealing with the police and her own identity" and a subsequent name check revealed she had an outstanding warrant for theft (contrary to another statement in her affidavit). (Supp.C.R. (10/30/17) 154-55, 183, 188, 227)

Another serious problem posed by Davis' affidavit is the conflict between her and witness Manuel Stewart's affidavit on Davis' whereabouts at the time of the shooting: Stewart claiming Davis entered the CITGO store and Davis claiming she never went into the store and started to get out of the car but immediately returned to it at the time of the shooting. (Supp.C.R. (10/30/17) 222, 230) The issue of what Quiana did outside of the car was probative because there was evidence her actions outside the car motivated the shooting.

At the gas station, Vernon Clay saw Gangster Disciple Stanley "Meechie" Watson and Davis whispering and hugging. Meechie asked Davis on a date, but she told him that petitioner was her boyfriend. Meechie also made an inappropriate sexual gesture toward Davis. Petitioner then shot at Meechie. (C.R. 118-19)

In light of the evidence of a relationship between petitioner and Quiana Davis, calling her as a witness would fly in the face of the strong likelihood that jurors might discount her testimony as the product of her relationship with petitioner. See People v. Gonzalez, 407 Ill. App. 3d 1026, 1032, 1038-39 (2nd Dist. 2011)(court rejected claim of ineffective assistance for failure to call alibi witness because of witness' relationship with the defendant as the mother of his son; she likely would not have been considered credible); People v. Barcik, 365 Ill. App.3d 183, 192-94 (2nd Dist. 2006)(court affirmed the dismissal of a first-stage petition claiming ineffectiveness for failure to call the defendant's fiancée, even though counsel's decision not to call her left the defense theory uncorroborated, where there was no reasonable probability of a different result had she testified at least in part because her relationship with the defendant would have undermined her credibility); People v. Deloney, 341 Ill. App. 3d 621, 635 (1st Dist. 2003) (rejecting a claim of ineffectiveness where "the alibi witnesses [that counsel did not call] were the defendant's cousins and, as such, their credibility may have carried little weight").

Davis' apparent ability to withstand police "harassment" undermines petitioner's main theory in post-conviction review that the four eyewitnesses against him succumbed to police coercion, rather than intimidation by petitioner and his gang. Davis never gave a statement to the police implicating petitioner. She actually increases and emphasizes the

number of witnesses with whom the police spoke but whom they apparently could not coerce, further weakening any theory of police coercion. Notably, petitioner came over to Quiana's house on the evening following the murder and told Shemika, Brandi, and Quiana not to talk to the police. (R. 812)

When the contradictions and weaknesses of Davis' affidavit are considered in light of the evidence at trial, it could not possibly lead to a different verdict. Thus, petitioner failed as a matter of law to establish actual innocence, in addition to the fact the affidavit was not newly discovered evidence. See People v. Jones, 2012 IL App (1st) 093180, ¶61 (additional alibi information and the remaining portion of the witnesses' testimony in post-conviction proceedings were held by the circuit court to be contradictory to each other and to the testimony at trial, thus, the circuit court properly ruled that the testimony from the various post-conviction witnesses was unreliable and certainly not of such a conclusive character that it would probably result in a different outcome at retrial).

In considering the possibility of a different outcome, it bears noting that Michael Watson's non-identification of petitioner was problematic. Watson testified at trial that the shooter was 120 feet away from him and wearing a mask. (R. 621-22) Watson could not see the shooter's face and could only tell the person, whom he initially described as a "black male Caucasian", had a dark complexion. (R. 620-22) Watson ranted bizarrely during cross-examination about both attorneys threatening to prosecute him and had to be instructed to answer the question posed by defense counsel. (R. 625) And yet he was able to tell the police the person who shot at him was sitting in petitioner's car in the near vicinity of the crime at E and J Liquors a month before the shooting, and he was able to describe that car.

(R. 707) The liquor store is at 55th and Damen, very near the crime scene. (R. 511) The fact of seeing the shooter in petitioner's car at or near the crime scene fits a pattern that tends to prove petitioner's guilt and bolster the initial statements of the eyewitnesses. Petitioner rode to the crime scene in that car on the night of the shooting. (R. 785, 810, 822) On May 18, 2001, petitioner was in the car about two blocks from the crime scene. (R. 696-700) Again, on June 19th, petitioner was in the car parked at the crime scene. (R. 747-50)

In any event, this Court correctly applied the law in finding that Quiana Davis was not a newly discovered witness. The defense clearly knew of Quiana Davis at the time of trial, as petitioner concedes. Quiana visited and called petitioner during his incarceration, she had spoken to a Public Defender's investigator about the events of the shooting, and she was present at trial, but was not called to testify. (C.R. 175) Her unsigned affidavit claimed that she had been subpoenaed to testify at trial. (C.R. 177) Clearly, Quiana Davis' affidavit attached to the successive petition cannot possibly constitute newly discovered evidence. The precedent of the Illinois Supreme Court is clear that this fact was dispositive in rejecting petitioner's claim of actual innocence.

D. Since This Court Has Denied The Motion To Supplement The Record, Petitioner's Argument Concerning Newly Obtained Records Should Be Rejected At This Time.

Petitioner finally contends that this Court should consider newly obtained evidence that was not presented to the circuit court or to this Court before now. (Pet. 18-23) However, this Court denied petitioner's motion to supplement the record with this material on November 8, 2018. Therefore, this Court should reject this argument for now, which petitioner may choose to raise in a successive petition in the circuit court.

A reviewing court may not rely in any way on facts which were not of record, nor

may it consider any argument based on matters outside the record. Prochnow v. El Paso Golf Club, 253 Ill. App. 3d 387, 392 (4th Dist. 1993); People v. Carini, 357 Ill.App.3d 103, 105 n1 (1st Dist. 2005). See also Keener v. City of Herrin, 235 Ill.2d 338, 346 (2009)(consideration of the case restricted to matters of record; a party may generally not rely on matters outside the record to support its position on appeal; when a party's brief fails to comply with that rule, a court of review may strike the brief, or simply disregard the inappropriate material); People v. Dunn, 306 Ill.App.3d 75, 79 (1st Dist. 1999)(supplementation of the record with a post-conviction petitioner's affidavit would introduce new evidence into the record which would violate Rule 329; therefore, the court struck any reference to the affidavit from the petitioner's reply brief and from the record).

CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court deny petitioner's petition for rehearing.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this answer to petition for rehearing conforms to the requirements of Rule 367. The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the answer under Rule 367, is 25 pages.

By: /s/ Jon Walters
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PLEASE TAKE NOTICE that on November 29, 2018, the foregoing Answer was filed with the Clerk of this Appellate Court of Illinois, First District, using the court's electronic filing system.

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CERTIFICATE OF SERVICE

Under penalties as provided bylaw pursuant to Section 1-109 of the code of Civil Procedure, the undersigned certifies that the statement set forth in this instrument are true and correct. I further certify that on November 29, 2018, I caused the foregoing Answer to be served on the above mentioned counsel at the above listed email address.

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APPENDIX 10

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No. 1-17-1773

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from Cook County Circuit Court No. 01-CR-17492
Plaintiff-Appellee,	)	Honorable Evelyn B. Clay, Presiding
v.	)	
KEVIN JACKSON,	)	Post-Conviction Proceeding Appellant In Custody
Petitioner-Appellant.	)	Date of Ruling Appealed June 15, 2017
	)	Notice of Appeal Filed June 28, 2017

REPLY BRIEF IN SUPPORT OF PETITIONER-APPELLANT'S PETITION FOR REHEARING

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II. ARGUMENT

A. Introduction

Petitioner-Appellant Kevin Jackson petitioned for rehearing of his appeal on the basis of three assignments of error. These are: (1) the Court misapplied the law in holding the misconduct Detective Brian Forberg admitted to in *Bridewell v. Eberle*, No. 08-C-4947, 2012 WL 2458548 (N.D. Ill. June 27, 2012), is not "strikingly similar" to the allegations in Mr. Jackson's case; (2) the Court wrongly held its decision was compelled by *People v. Hobley*, 182 Ill. 2d 404 (1998); and, (3) the Court improperly held Ms. Quina Davis's affidavit is not "newly discovered" evidence under Illinois law.[1]

The State's scattershot response aggressively attacks the credibility of Mr. Jackson, witness Ms. Davis, and even the surviving victim Mr. Michael Watson, but fails to elucidate any legally sound defense of the Court's holdings with respect to Mr. Jackson's assignments of error.[2] As such, this Court should grant rehearing of Mr. Jackson's appeal and reverse its decision in accordance with Illinois law and the mandates of justice.

B. The State's Efforts to Minimize the Misconduct Established in *Bridewell* are Misleading and Do Not Refute that the Misconduct therein is "Strikingly Similar" to that Alleged by Mr. Jackson.

In attempting to refute that Mr. Jackson's allegations of misconduct are "strikingly similar" to the misconduct Detective Forberg admitted to in *Bridewell*, the State revives a

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[1] A fourth grounds for rehearing was mooted by this Court's denial of Petitioner-Appellant's Motion to Supplement the Common Law Record, *Instanter*, by order dated November 8, 2018.

[2] Throughout its Answer, the State accuses Mr. Jackson, *inter alia*, of "spurious" arguments, of improper re-argument, and of misstating the law. (*See, e.g.*, Answer at 2, 6, 15.) Mr. Jackson believes these accusations are self-evidently lacking in merit; therefore, they are not addressed herein. Should the Court credit any of these accusations, Mr. Jackson asks to be granted leave to supplement this reply and respond.

line of argument previously rejected by this Court—*i.e.*, that the case of *Bridewell* "absolved" Detective Forberg of any wrongdoing. *Compare* Answer at 2-3, *with* Appellate Oral Argument at 19:43-22:13, June 27, 2018 (Tr. 26:3-29:17, App. at A028-31) The State also wrongly accuses Mr. Jackson of claiming "our supreme court did not mean what it said when it applied the 'strikingly similar' standard" in the past. (Answer at 6.) Neither argument withstands scrutiny.

The State misstates the facts of *Bridewell*, (*see* Answer at 4, 7), and urges the Court to affirm its prior holding on the basis of these misstated facts; this is clearly a retread of an argument this Court has already correctly rejected. *Nat'l Union Fire Ins. Co. of Pittsburgh v. DiMucci*, 2015 IL App (1st) 122725, ¶ 2 ("Stipulations are judicial admissions … [and] are admissible in other cases as evidentiary admissions."); *Myoda Computer Ctr., Inc. v. Am. Fam. Mut. Ins. Co.*, 389 Ill. App. 3d 419, 423 (1st Dist. 2009) ("[S]tipulations by parties or their attorneys will be enforced unless it is established that the stipulation is unreasonable, the result of fraud, or contrary to public policy.").

The State's misplaced—and misleading—focus on a statement by Judge Leinenweber in an early ruling in the *Bridewell* litigation sidesteps the facts adduced later in the litigation. *Compare* Answer at 3 (citing Judge Leinenweber's ruling on a motion to dismiss), *with Bridewell v. Eberle*, 730 F. 3d 672, 679 (7th Cir. 2013) (Wood, J., concurring) ("I agree with my colleagues that Officer[] … Brian Forberg had probable cause to arrest each of the plaintiffs … [but t]he fact that the plaintiffs … were subjected to a grueling and humiliating 4-hour interrogation *after* their arrest is deeply disturbing." (emphasis in original)), *and Bridewell*, 2012 WL 2458548, at *1 (parties stipulated, *inter alia*, that police held and interrogated one witness in a room for so long that she resorted to urinating in the

corner of the room). Furthermore, the State's claim that the summary judgment entered in *Bridewell* "absolved" Detective Forberg of wrongdoing, is directly contradicted by Judge Leinenweber's clear holding that judgment was compelled (1) by his finding that police had probable cause to arrest the plaintiffs, and (2) by plaintiffs' participation in a class action settlement rendering their claims *res judicata*—not because of any lack of misconduct. 2012 WL 2458548, at *2, 4.

In spite of the State's repeated attempts at misdirection, the parties' stipulation in *Bridewell* irrefutably establishes witness coercion by Detective Forberg including that:

- Detective Forberg held multiple witnesses for up to 63 hours before bringing them before a judge;
- Detective Forberg interrogated witnesses for many hours without bathroom breaks and that on account of the excessively long interrogations one witness resorted to urinating in the corner of her interrogation room; and,
- Detective Forberg utilized a "completely biased" lie-detector test to extract a false statement from at least one witness.

2012 WL 2458548, *1.

In the end, prosecutors dropped all charges against the target of Detective Forberg's investigation, Ms. Bridewell, after determining that the witness statements upon which the charges were based were entirely untrustworthy and that Detective Forberg's underlying investigation had substantial flaws.[3] *Bridewell*, therefore, firmly establishes that Detective Forberg has previously acted just as Mr. Jackson alleges. In fact, as detailed in Mr.

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[3] Contrary to the State's characterization of *Bridewell* as "failed civil litigation," (Answer at 7), it was Detective Forberg's unsound investigation that failed.

Jackson's petition for rehearing, Detective Forberg's conduct in Mr. Jackson's case is "strikingly similar" to how he *admitted* to acting in the investigation underlying the *Bridewell* litigation. In both cases he used long, uncomfortable, high-pressure interrogations to overcome witnesses' truthful refusals to name Detective Forberg's chosen suspect as the perpetrator; he also used sham polygraph examinations to break the witnesses' mental fortitude; and, witnesses reported that Detective Forberg told them what to say in their police statements. Moreover, in both instances—contrary to this Court's stated belief—witnesses were threatened with incarceration for their refusals to provide Detective Forberg with the statements he wanted. *Compare* Op. at ¶ 90, *with Bridewell v. Eberle*, 2009 WL 1028229, *3 (N.D. Ill. Apr. 6. 2009), ("Defendants [including Detective Forberg] told [a witness] that if she did not cooperate and identify [the] killer she may be incarcerated, which necessarily would separate her from her children"). Crucially, the Court's holding emphasized this single, distinguishing factor between *Bridewell* and Mr. Jackson's case, which in truth was no distinction at all.

Given the nearly identical conduct of Detective Forberg in both *Bridewell* and in Mr. Jackson's case, it is incontrovertible that the misconduct of Detective Forberg in both is "strikingly similar." Analyzing the reasoning of the decisions relied on by this Court—*People v. Patterson*, 192 Ill. 2d 93 (2000), *People v. Wrice*, 406 Ill. App. 3d 43 (1st Dist. 2010), and *People v. Nicholas*, 2013 IL App (1st) 103202—to the facts before this Court, leaves no room for doubting that the misconduct in *Bridewell* is "strikingly similar" to that in Mr. Jackson's case. (Pet. for Reh'g at 6-10.) Mr. Jackson's detailed review shows the degree of similarity between Detective Forberg's conduct in *Bridewell* and in Mr. Jackson's case far exceeds what has constituted "strikingly similar" conduct in any prior

decision of this Court or of the Illinois Supreme Court. The cases cited by the State fail to suggest otherwise.

The State directs the Court to *People v. Anderson*, 375 Ill. App. 3d 121 (1st Dist. 2007), *People v. Johnson*, 2011 IL App (1st) 092817, *People v. English*, 2014 IL App (1st) 102732-B, and *People v. Upshaw*, 2017 IL App (1st) 151405, and incorrectly claims these decisions support the Court's decision. (Answer at 6.) The defendant's evidence in *Anderson* did not name or relate to the officer he claimed had committed misconduct in his case. 375 Ill. App. 3d at 137-38. The court's decision in *Johnson*, turned on the fact that the evidence was untrustworthy, not on whether it was "strikingly similar." 2011 IL App (1st) 092817, ¶¶ 75-76, 80. In *English*, the petitioner's allegations of generalized threats, none involving physical abuse, and which were raised for the first time in a second post-conviction petition, were not "strikingly similar" (or arguably, even slightly similar) to the claims of physical abuse presented in *Wrice* and other cases stemming from the Jon Burge torture scandal. 2014 IL App (1st) 102732-B, ¶ 55. And, finally, in *Upshaw*, the defendant's allegations that he was beaten one time on his way to the police station and was then mostly left alone in handcuffs once he arrived at the station were not "strikingly similar" to prior allegations of systematic and "*repeated* beatings by punching, kicking, hitting with a flashlight and a rubber hose, choking, and the use of electric shock and suffocation" throughout prior defendants' detentions. 2017 IL App (1st) 151405, ¶ 80 (emphasis added). These analyses of dissimilar misconduct are neither analogous to, nor

refute Mr. Jackson's position.[4]

In addition to directing the Court to inapposite cases, the State also pointedly accuses Mr. Jackson of claiming "that our supreme court did not mean what it said when it applied the 'strikingly similar' standard" to allegations of police misconduct. (Answer at 6.) A considerably more accurate statement of Mr. Jackson's argument is that our supreme court did not mean *more than* what it said. In *Patterson*, our supreme court only stated that some of the many elements of the allegations before it were "strikingly similar" to past allegations of misconduct in other cases. Read in context, the supreme court merely characterized the evidence—it did not impose a new standard of review. (Pet. for Reh'g at 8-9.) Therefore, the State's implication that Mr. Jackson has mislead the Court, and its insistence that there is a "strikingly similar *standard*," are both overstated.

Also overstated is the relevance of the inconsistencies between the coerced statements of witnesses and their later, truthful trial testimony. The State argues extensively that the coerced witness statements should be taken as true and therefore support the Court's prior decision. (Answer at 8-10.) Notably, the State claims that the coerced statements' agreement that each witness was treated well and was fed by the police during their interrogation is conclusive evidence that such treatment actually occurred. This circular argument strains any semblance of logic by supposing that *coerced* and *false* statements would be truthful about how well the witnesses were treated. Moreover, it

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[4] The State also continues to argue that *Bridewell* is irrelevant because the misconduct at issue therein is temporally removed from Mr. Jackson's case. (Answer at 3.) It is, therefore, worth noting that a panel of this Court has previously found misconduct spanning 33 years to be "strikingly similar … *as to the time period*." *People v. Nicholas*, 2013 IL App (1st) 103202, ¶ 40 (emphasis added).

miscomprehends the fact that the inconsistency between the witnesses' coerced statements and their trial testimony is the *very basis* of Mr. Jackson's claim of witness coercion.

C. The State's Claim that Actual Innocence Claims Must be "Freestanding" Violates Basic Concepts of *Stare Decisis*.

In continuing to defend the precedential status of *People v. Hobley*, 182 Ill. 2d 404, the State incorrectly claims that Mr. Jackson "cherry-picks" from and "ignore[s]" the essential language of *People v. Coleman*, 2013 IL 113307. (Answer at 11.) Rather, Mr. Jackson's analysis focuses on precisely the portions of *Coleman* that the State references, (Pet. for Reh'g at 12), and methodically demonstrates that *Hobley*'s holding that actual innocence claims must be "freestanding" is no longer the law of Illinois.

Over nearly 20 years following *Hobley*, our supreme court has repeatedly declined to apply *Hobley*'s "freestanding" requirement to actual innocence claims, even when its holding is squarely on-point; then in *Coleman*, the supreme court clearly, if implicitly, overruled *Hobley* by holding that actual innocence claims *need not* be "freestanding." *Coleman*, 2013 IL 113307, ¶ 91. The law of Illinois cannot be both that stated by *Hobley* and the diametrically opposed holding stated by *Coleman*; therefore, as the later decision, *Coleman* must control this Court's analysis. *Chicago Union Traction Co. v. Kallberg*, 107 Ill. App. 90, 91 (1st Dist. 1903) ("Any apparent conflict between these decisions and decisions of this court or previous decisions of the supreme court, must be resolved in favor of the later expressions of the supreme court."); *see also Cates v. Cates*, 156 Ill. 2d 76, 80 (1993) ("[E]ffect must be given to the implications contained in the decision of a higher court and … the premises implicit in a holding are as authoritative as the holding itself."). The State has no answer for this foundational principle of *stare decisis*.

Coleman makes one thing clear: "the evidentiary burden for an actual-innocence

claim [under Illinois law] is always the same whether or not it would be considered a freestanding or gateway[5] claim under federal law." 2013 IL 113307, ¶ 91. Therefore, even if Mr. Jackson's claim is ancillary to a claim of trial error as the State argues, his evidentiary burden is the same. (*See, e.g.*, Answer at 13 (*citing* Op. ¶ 82).) This Court's holding, therefore, is irreconcilable with *Coleman* and must be reversed. (*See* Op. ¶ 70.)

Furthermore, to the extent the State argues that evidence that would impeach the credibility of the police involved in Mr. Jackson's investigation or the integrity of their investigation cannot support an actual innocence claim, its argument is contrary to prior decisions of this court. *See, e.g.*, *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 186 (evidence of systemic abuse by the officers involved in defendant's case is material in deciding guilt or innocence); *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 80 (Issue is whether the outcome would have differed "if the officer who denied harming the defendant had been subject to impeachment based on evidence revealing a pattern of abusive tactics employed by that officer in the interrogation of other suspects.") citing *Patterson*, 192 Ill. 2d 145 (Court must determine whether "any of the officers who interrogated defendant may have participated in systemic and methodical interrogation abuse … [and whether] those officers' credibility at the suppression hearing might have been impeached as a result.").

Finally, the State's assertion that even if this Court erred by not considering Mr. Jackson's claim under the actual innocence standard, that error was harmless, is belied by

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[5] *Coleman* explains that under federal jurisprudence a "gateway actual-innocence claim" is an actual innocence claim coupled with a constitutional error claim, but explicitly rules against imposing such a division in Illinois. 2013 IL 113307, ¶ 83.

the very case it cites for support. In *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009), the supreme court explicitly held that satisfaction of the actual innocence test provides *separate* and *independent* grounds for post-conviction relief. Regardless of whether a successful actual innocence claim might also satisfy the cause and prejudice test, the very existence of a separate and independent test proves that the supreme court has already rejected the State's harmless error argument.

D. The State's Efforts to Undermine the Value and Credibility of Ms. Davis's Affidavit are Improper and Have No Bearing on Whether it is Newly Discovered.

This Court has already rejected the State's arguments regarding Ms. Davis's affidavit, and instead held that it contains material, non-cumulative, and conclusive information. (Op. ¶ 74.) Therefore, the State's renewed attempts to minimize its value are simply improper. Ill. S. Ct. R. 367 (eff. Nov. 1, 2017). Likewise, the State's efforts to undermine Ms. Davis's credibility, (Answer at 20-22), and its astonishing attacks on the surviving victim, Mr. Michael Watson, (Answer at 22), are improper, and frankly, nonsensical. *People v. Coleman*, 183 Ill. 2d 366, 390-91 (credibility determinations are reserved for third-stage evidentiary hearings).

The State claims the inconsistency between the coerced witness statements and Ms. Davis's affidavit is evidence of her untruthfulness. (Answer at 20-22.) But the very essence of Mr. Jackson's claim is that the coerced witness statements are inaccurate, so the State's argument simply misses the point. This thinly veiled renewal of the State's losing argument that the coerced witness statements are trustworthy, while the witnesses themselves (including, especially Ms. Davis) are not, must once again be rejected.

The State's only other attack on Ms. Davis's affidavit as "newly discovered" amounts to a disagreement over terminology. Mr. Jackson identified several instances in

which evidence has been "newly discovered" even though it existed and could have been discovered at the time of trial or prior post-conviction petition. Mr. Jackson described these holdings as instances in which "Illinois courts have … relaxed the requirement that evidence [supporting an actual innocence claim] be 'newly discovered.'" (Pet. For Reh'g at 16.) The State instead characterizes these as instances in which courts have "found the evidence to be newly discovered on the facts." (Answer at 16). Potato, potaato.

The State has not and cannot refute the fact that defendants were granted post-conviction relief on the basis of actual innocence claims in *Coleman*, *Ortiz*, *Tyler*, and *Warren*, that each was supported in part by evidence that existed at the time of prior proceedings that was either known to or was capable of discovery by the defendant during those prior proceedings. (Pet. for Reh'g at 16-18.) Whether that was because those courts "relaxed" the "newly discovered" rule, or because the definition of "newly discovered" is pliable enough to support these holdings "on the facts," is mere semantics. The point—which the State fails to address—is that when confronted with material, non-cumulative, conclusive evidence of innocence, such as that presented by Mr. Jackson, courts are loath to simply ignore it on the basis that it might have been presented sooner.

III. CONCLUSION

For all the foregoing reasons, Petitioner asks this Court to grant rehearing of his appeal, to reverse its prior decision and that of the circuit court, to grant him leave to file a successive post-conviction petition for relief under the Post-Conviction Hearing Act, and to grant him such further relief as the Court deems appropriate.

Date: December 13, 2018

Respectfully submitted,

/s/ Brandon C. Clark
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No. 1-17-1773

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Petitioner-Appellant.	)))))))))))))	Appeal from Cook County Circuit Court No. 01-CR-17492 Honorable Evelyn B. Clay, Presiding Post-Conviction Proceeding Appellant In Custody Date of Ruling Appealed June 15, 2017 Notice of Appeal Filed June 28, 2017

APPENDIX TO REPLY BRIEF IN SUPPORT OF PETITIONER-APPELLANT'S PETITION FOR REHEARING

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Document	Date	Pages
Transcript of Oral Arguments , People v. Jackson, Case No. 1-17-1773	June 27, 2018	A001-45

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

No. 1-17-1773

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from Cook County
	)	Circuit Court No. 01-CR-17492
Plaintiff-Appellee,	)	Hon. Evelyn B. Clay, Presiding
	)	Post-Conviction Proceeding
v.	)	Appellant In Custody
	)	Date of Ruling
KEVIN JACKSON,	)	June 15, 2017
	)	Appealed
	)	Notice of Appeal Filed
Petitioner-Appellant.	)	June 28, 2017

ORAL ARGUMENTS
JUNE 27, 2018

APPEARANCES:
JUSTICE SHELDON HARRIS
JUSTICE MARY MIKVA
JUSTICE DANIEL PIERCE

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(Thereupon:)

THE CLERK: 17-1773, People v. Kevin Jackson.

UNIDENTIFIED JUSTICE: Would the attorneys who are going to argue the case please approach the bench, identify yourselves and the party you represent, and indicate to the Court how much time you would like to argue your position.

MR. CLARK: Good afternoon, Your Honors. Brandon Clark for appellant Kevin Jackson. I think approximately 20 minutes.

UNIDENTIFIED JUSTICE: Very well.

MR. WALTERS: Assistant state's attorney Jon Walters for the People, and about the same amount of time.

UNIDENTIFIED JUSTICE: Very well. Have a seat. Mr. Clark.

MR. CLARK: Thank you, Your Honor. May I also save time for rebuttal, just a couple of minutes?

UNIDENTIFIED JUSTICE: Sure.

MR. CLARK: Thank you.

UNIDENTIFIED JUSTICE: Now, that

microphone is for records purposes only, not for amplification, so if you want to be heard by the masses out there in the courtroom, keep your voice up so they can hear you.

MR. CLARK: Yes, Your Honor, I will.

UNIDENTIFIED JUSTICE: Very well, proceed.

MR. CLARK: Thank you. Your Honor, I represent -- my name is Brandon Clark. I represent appellant Kevin Jackson. We are here today to discuss the denial of his motion to file successive post-conviction petition.

There are primarily two errors that I would like to discuss with the Court here today that were made by the circuit court, the first of which is that the -- excuse me, the Court considered what it termed the quality of Mr. Jackson's evidence, and the second is that it ruled that his evidence was insufficiently conclusive to warrant further proceedings.

In all other respects, Mr. Jackson rests on his briefs unless, of course, the

Court has any questions about anything else within the briefs.

JUSTICE MIKVA: Well, just make sure, I mean, our review is de novo here, it really kind of doesn't matter what the trial court did, there's no deference here to the trial court's discretion, is there?

MR. CLARK: No, Your Honor, but I think by highlighting the few errors that the Court did make, it will illuminate for the Court why it should have reached a different decision, and why we're asking for a different decision from this Court.

JUSTICE MIKVA: Okay.

MR. CLARK: Before I turn to these -- these two errors, as I mentioned, I think will illuminate to the Court why Mr. Jackson should be granted leave, there are three facts that I'd like to keep -- for everyone to keep in mind. The first is that at trial not a single witness, nobody that testified at trial identified Mr. Jackson as the shooter.

The second is that, in fact, when called, one of the surviving victims

testified that, and I quote, "He looks nothing like the man who shot him." And third, the jury had a difficult time convicting in this case, and passed a question to the judge about law of hung juries. I think this --

UNIDENTIFIED JUSTICE: Well, how do you define a "difficult time"? Just because they took seven or eight hours over two days?

MR. CLARK: No, Your Honor, because the jury specifically passed a question to the Judge inquiring about the law of hung jury. I think that indicates that it was having a difficult time reaching consensus. It goes to the - the weight of the evidence that was -- to the amount of evidence that was presented at trial.

Let's turn now to the first of the two errors that the circuit court committed in denying Mr. Jackson's motion, that is considering the so-called quality of his evidence.

The Court didn't specifically say it, but by reading its ruling, it was very

clear that was concerned with primarily three things. One was the admissibility of evidence, the second was the credibility of the evidence, and the third were conflicts in the evidence. All three of these were impermissible for the Court to consider at this stage. The none of them would be permissible until at least a third-stage evidentiary hearing.

Under Illinois Rule of Evidence, 1101(b)(3), admiss -- excuse me.

JUSTICE MIKVA: The rules of evidence don't apply on post conviction. We understand that.

MR. CLARK: Thank you, Your Honor. That is exactly my point. So the Court's concern with that was error. Second, concerning itself with the credibility of the evidence. The Court specifically stated that it found Manny Stewart's affidavit to be not credible because of his inherent bias as Mr. Jackson's cousin.

The Court also said that it did not find Quina Davis's affidavit to be credible, because in her affidavit, after

stating that she told the police the truth during a polygraph examination, she was then told that she had failed the polygraph examination, and on that basis the Court said that she found her to be not credible. Both of these are inappropriate, and under Illinois's recent decision of People v. Sanders, are reversible error.

Third, the Court was concerned with resolving conflicts in the evidence. Specifically, Mr. Jackson's petition presented the Court with evidence of misconduct by the officers most involved in his investigation.

I won't go through all that now, I'm sure the Court is aware of the long history of citizen complaints and civil suits filed against these officers, however, the Court credited the CPD and the dispositions of these complaints over the conflicting evidence of the recent DOJ report stating that those investigations have primarily -- or maybe not primarily, but in large part been poorly done. Now, whether --

JUSTICE MIKVA: But the burden is on

you at this point. I mean, the burden is not on anybody other than you at this point, right?

MR. CLARK: Yes, Your Honor, (Inaudible.)

JUSTICE MIKVA: Okay. So putting aside the quality issues, you needed to come forward with evidence, and the reality is that, even though you had to work very hard to get those logs, and I understand that, they don't really say anything.

MR. CLARK: Well, Your Honor, turning to those -- to those logs, the Court found, which I would note was inappropriate, she should not be making factual findings at this point, but the Court found that the CR's were primarily for minor things, in the Court's words, such as stealing office supplies.

That's simply not borne out by the record. Of the 150 CR's involving these seven detectives, 48 were for use of excessive force. 30 were for --

UNIDENTIFIED JUSTICE: How many were sustained?

MR. CLARK: Very few.

UNIDENTIFIED JUSTICE: Like how many?

MR. CLARK: A handful. I'm not sure of an exact number. Less than 10.

UNIDENTIFIED JUSTICE: (Inaudible.)

JUSTICE MIKVA: And of those, on those ones, we really don't know what the facts are of any of those or whether they're similar. We really don't know based on the logs.

MR. CLARK: Correct, Your Honor.

JUSTICE MIKVA: That what you're alleging happened here is similar to what happened in any of those other cases.

MR. CLARK: Correct, Your Honor.

JUSTICE MIKVA: Which is what you would need to show ultimately, is it not?

MR. CLARK: At an evidentiary hearing, that is exactly what we need to show.

JUSTICE MIKVA: Okay.

MR. CLARK: You're right.

I think that on this point, this Court's decision in People v.

Tyler and People v. Reyes are illustrative. Beginning with People v. Reyes, in that case, similar to here, there was a murder conviction based on witness testimony.

There was also a confession in that case, which we do not have here. The defendant in that case filed his motion and provided a newspaper article, 23 CR's, and an FBI report that suggested that the single detective that was being accused of misconduct, had a pattern and practice of such misconduct.

This Court found that on the basis of just those few allegations against a single detective that the defendant had made a showing of actual innocence in spite of the fact that most of the claims had occurred as many as five years -- I'm sorry, excuse me, most recently five years prior to his trial, and yet found that the evidence was new, material, noncumulative, and conclusive of innocence.

Similarly, in People v. Tyler, which I think is --

JUSTICE MIKVA: All right. Well, let's -- let's talk about your evidence of factual innocence. Really looking at the misconduct part of your evidence, right -- I sort of look at yours as the eyewitness part and the misconduct part. Is that fair?

MR. CLARK: Uh-huh, sure.

JUSTICE MIKVA: So looking at the misconduct part, I don't see how that goes to actual innocence at all. I don't see how that's free-standing proof of actual innocence at all, and I think the Supreme Court has made clear in Hobley that it's got to be free-standing. You've got to look at that evidence and say, that guy didn't do it.

All we know from that evidence is these cops might be lying, because they've lied before, and they've done what you've said they've done, they've done in other cases. That doesn't mean that by itself in a free-standing way that your guy is innocent.

MR. CLARK: Well, Your Honor,

I think that, like I mentioned, People v. Tyler and Reyes has gone the other way on very similar facts.

JUSTICE MIKVA: See, if the Supreme Court goes one way and we go another way, we're bound by what the Supreme Court says.

MR. CLARK: Of course, Your Honor, and so for that I would say -- I would turn, then, to our claim or Mr. Jackson's claim under the cause and prejudice test.

JUSTICE MIKVA: Okay.

MR. CLARK: Where, as the Court surely knows, we must show a cause for not having raised the claim previously and prejudice flowing therefrom. I think that the cause element we've already covered, the fact that the evidence was new, difficult to find, so on and so forth.

The prejudice flowing therefrom is clearly that without the ability to impeach these officers at trial on the basis of this evidence, the jury was left with recanted testimony from witnesses, and a seemingly stellar record of the police in front of them upon which to determine

whether or not those recantations were -- were true or not.

JUSTICE MIKVA: But that's where the point you started out with, which was how close the evidence was in this case --

MR. CLARK: Yes, Your Honor.

JUSTICE MIKVA: -- which is relevant.

MR. CLARK: Yes, Your Honor. This is very much like People v. Almodovar in that case, in essence that there are allegations of police misconduct, there were coerced statements, there's no physical evidence tying that defendant or Mr. Jackson to their -- to their claims.

And on the basis of recanted witness statements and a single, I believe, article out of the Tribune about this officer, this Court held that this --

UNIDENTIFIED JUSTICE: How many years after the trial?

MR. CLARK: Excuse me, Your Honor?

UNIDENTIFIED JUSTICE: How many years after the trial was the article in the newspaper?

MR. CLARK: I -- I don't recall, Your Honor.

UNIDENTIFIED JUSTICE: Well over ten.

MR. CLARK: Yes, Your Honor.

UNIDENTIFIED JUSTICE: Correct?

MR. CLARK: That very well could be. I would have to check.

UNIDENTIFIED JUSTICE: So how -- how could you impeach an officer about events that took place 10 to 12 years after the incident on trial?

MR. CLARK: Are you -- are you speaking in -- in People v. Almodovar or in our case, Your Honor?

UNIDENTIFIED JUSTICE: In your case.

MR. CLARK: In our case. So --

UNIDENTIFIED JUSTICE: You -- you just said that you want -- that the defendant was entitled, if he had this information, he could impeach the officer's testimony.

MR. CLARK: Yes, Your Honor.

UNIDENTIFIED JUSTICE: Well, how could he impeach the officer's testimony

with -- in 2003, when the trial was, with complaints that were lodged in 2009, '10, '11, '12, a newspaper article in '13, a justice department report in '14 and '15, how do you do that?

MR. CLARK: Your Honor has actually -- absolutely hit on the crux of the post conviction proceedings. It's a collateral attack. We actually are required to have new information. So the fact that the allegations were not known at the time of the trial is actually in favor --

UNIDENTIFIED JUSTICE: It didn't even happen at the time of trial.

MR. CLARK: Exactly, Your Honor. So there's a -- say this Court at this stage and the circuit court previously should not engage in fact finding on the basis of these CR's.

So taking petitioner's allegations as true that these CR's show misconduct similar to the type that has been alleged here, they show that these officers have over the course of many years engaged in

this pattern and practice of misconduct, and that -- the fact that it has continued beyond his conviction actually weighs in favor of granting a third-stage evidentiary hearing, or even, for that matter, a second-stage hearing in order to further probe the evidence of actual innocence or cause and prejudice as the case may be.

UNIDENTIFIED JUSTICE: Well, the -- the entire trial consisted of witnesses who gave statements to the police the night of or the next day implicating the defendant.

MR. CLARK: Not quite, Your Honor. If I may?

UNIDENTIFIED JUSTICE: Pretty much so, and that those same witnesses who were called to testify, not all of them --

MR. CLARK: Uh-huh.

UNIDENTIFIED JUSTICE: -- but those who did testify, all recanted.

MR. CLARK: Yes, Your Honor.

UNIDENTIFIED JUSTICE: And they all recanted essentially saying that they were coerced into making these statements against the defendant by these police

officers.

MR. CLARK: Yes, Your Honor.

UNIDENTIFIED JUSTICE: That issue was entirely in front of the jury.

MR. CLARK: Yes, Your Honor.

UNIDENTIFIED JUSTICE: How would this purported relevant evidence that took place allegedly, none of -- most of which, the overwhelming majority of which have never been sustained by anyone --

MR. CLARK: Your Honor --

UNIDENTIFIED JUSTICE: -- how would that all change.

MR. CLARK: Your Honor, this is actually not a novel situation. We think that this case fits squarely within, as I mentioned, Tyler and Reyes. In both cases allegations of police misconduct were before the jury but without the supporting evidence, and this Court as well in People v. Mitchell said that -- let me get the exact quote here, "Any evidence of prior misconduct by the detectives, testifying detectives, significantly shifts the balance of credibility against those

detectives, and that's exactly the point here.

The recanted -- the witnesses who were recanting already had questionable credibility on the basis of those recantations. The fact that there was no supporting evidence of the police misconduct at the trial is -- is, I believe, dispositive here of the fact that had that evidence been presented to the jury, it would have made a different credibility determination, and the jury's credibility determination is all that supports Mr. Jackson's conviction.

UNIDENTIFIED JUSTICE: At what -- at what point is the post-conviction judge supposed to make a determination that what you think is -- is probative and impeaching of the officer's testimony not relevant, because if -- if a complaint was made five years after this incident that was not sustained, and we don't even know what the complaint was about, even though it may have been against an officer, what basis does that give any court to say, oh, that

was really important information that the defendant should have had available to him. When do you make that decision?

MR. CLARK: So I can -- I sense Your Honor's concern about relying on the CR's, and I admit that at this stage we have less information about them than we would like. I think it's an entirely different situation with the civil suits that had been brought against these officers.

For example, I think People v -- I'm sorry, Bridewell v. Eberle, which we cite in our papers, is a very similar factual situation in which Det. Forberg, who was one of the primary detectives, one of the arresting officers in this case, was sued in a civil -- in a civil case along with other officers who had been involved.

The allegations were that the suspect was held for more than 63 hours before being brought before a judge, a witness -- two witnesses were held for extended periods of time, coerced into giving statements that were later recanted,

and eventually charges three years later were dropped against the suspect.

Now, I recognize that that decision, it was a federal decision, resulted in a dismissal, but that's because there was a prior class action suit that the plaintiffs should have been part of. The allegations --

UNIDENTIFIED JUSTICE: What, a Gerstein hearing.

MR. CLARK: I'm sorry.

UNIDENTIFIED JUSTICE: Is that under Gerstein.

MR. CLARK: I'm sorry, I'm not aware.

UNIDENTIFIED JUSTICE: Gerstein, he was holding people for more than 42 hours or 48 hours without charging.

MR. CLARK: It must have been, Your Honor. I -- the decision didn't actually reference what the case had been, however, the -- both sides, the detective's side and the plaintiff admitted to these facts.

This is troubling conduct,

I believe, and it's exactly the type of conduct that we've alleged here. Had that been in front of the jury, I think it would very likely have made a difference, especially keeping in mind that the relatively little evidence of guilt that had been presented at trial and under recent Illinois Supreme Court case, People v. Coleman, we should consider the conclusiveness of the evidence presented in a post-conviction petition against the evidence that was adduced at trial.

I think we're balancing the -- the evidence presented against Mr. Jackson with the evidence that he's presented in his motion, whether it's the CR's, whether it's the civil complaints, whether it's the information we have about the -- from the DOJ report about the veracity of the dispositions of the CR's.

I think balancing all that information and keeping in mind that at this point all Mr. Jackson is seeking is leave to file successive petition. He still must make a substantial showing of

constitutional violation at the second stage and still must get to an evidentiary hearing at which point he would present evidence before he would be granted a new trial.

And even at that stage the Court's not to redetermine his guilt or innocence, but rather simply to determine whether or not he's made a sufficient showing of -- of probability of a different result on retrial that would grant him the right to have a retrial.

So I think the circuit court put -- put the cart well in front of the horse here. The circuit court here should have looked at Mr. Jackson's petition, his allegations of misconduct, his supporting evidence of misconduct, and should have docketed it for a second-stage proceeding, which is what we would ask the Court to do here today.

And unless there are any other questions, I would yield the rest of my time. Thank you very much.

UNIDENTIFIED JUSTICE: Thank you.

Mr. Clark.

MR. WALTERS: May it please the Court. The standard that was before this Court, and -- before this Court and also before Judge Clay is whether the defendant made a credible claim.

UNIDENTIFIED JUSTICE: Excuse me, I misspoke, Mr. Walters.

MR. WALTERS: Correct.

It's whether the defendant made a credible claim of actual innocence, and the Supreme Court --

JUSTICE MIKVA: Or cause and prejudice. He doesn't --

MR. WALTERS: Or cause and prejudice, that's true, but I would -- I'm directing the first part of this towards actual innocence, because that's been the main thrust of defendant's presentation both below and in his briefs. I'm going to start there, but I will also address cause and prejudice.

Now, with respect to cause and prejudice, the -- the standard is well-known. It's -- it's set out in People

versus Edwards by our Illinois Supreme Court, and that is that the evidence that the defendant presents is the burden is on the defendant to present evidence that raises the probability that it is more likely than not that no reasonable juror would have convicted the defendant in light of the new evidence. That's the standard.

This is not a first-stage standard. This is not a low-threshold gist or arguable -- arguableness sort of the standard. This is a standard the defendant must meet in order to proceed on a successive post-conviction petition, and there are very good policy reasons behind that.

Now, with respect to the -- the evidence that defendant has presented, his documentation, it does not -- it is totally insufficient. It does not meet that standard, so Judge Clay's ruling ultimately was correct. Defendant --

JUSTICE MIKVA: Was she really focused on the affidavits which go much -- which are really not about the police

misconduct, correct?

MR. WALTERS: Correct.

JUSTICE MIKVA: That's where her focus was, and then she focused on the laws, but she really didn't focus on People versus Harris or the case that your opposing counsel just mentioned in which there were findings, there were stipulations that these same detectives actually did keep people 63 hours, kept the witness somewhere until she peed in her pants.

That really happened. There's a finding that that happened. Why wouldn't where -- you know, where it's so closely balanced, as this case was, with people telling one story one time and a different story another time, why wouldn't that be prejudice? Why wouldn't that suggest that it could have come out the other way if they knew these cops had done the same thing in other cases?

MR. WALTERS: Well, I think particular attention to Judge Leinenweber's ruling in -- that's Bridewell versus

Eberle. There's actually a series of --

JUSTICE MIKVA: Right, but I'm not talking about his ruling, I'm talking about the stipulation that the parties did in that case. They stipulated to this stuff.

MR. WALTERS: Well, let me be very clear about this. It was a motion for summary judgment, so the facts had to be taken as pled, but I guess one thing --

JUSTICE MIKVA: It says it's a stipulation is what it says in the opinion.

MR. WALTERS: Well --

JUSTICE MIKVA: Parties stipulated. Nobody's saying -- it's a motion for summary judgment, so you put in evidence, you put in stipulations, it's not taking allegations as true.

MR. WALTERS: Here's something else I want to point out, though. Jury -- Judge Leinenweber specifically said that there was -- there was conflicting evidence on that point. He said that the police said --

JUSTICE MIKVA: I'm sorry, the following facts on which the parties agreed

unless otherwise indicated.

MR. WALTERS: Unless otherwise indicated, that's the (Inaudible.)

JUSTICE MIKVA: And there's nothing indicating that there's any disagreement on Bridewell was interrogated for 63 hours. "Rhodes was questioned in a windowless room for many hours without a bathroom break and at one point urinated in the interrogation room."

Nothing that suggests there's any question about either of those things.

MR. WALTERS: In that paragraph.

JUSTICE MIKVA: Yeah.

MR. WALTERS: But with respect --

JUSTICE MIKVA: Is there somewhere else that I haven't seen?

MR. WALTERS: With respect, Judge Leinenweber, it may not be that particular ruling, there was -- there was a series of three.

JUSTICE MIKVA: Did you cite this in your brief? Do you want -- do you need this --

MR. WALTERS: I believe I did.

JUSTICE MIKVA: Okay.

MR. WALTERS: I'm not sure if I cited that particular -- that particular point. I know it's there. I know --

JUSTICE MIKVA: Okay. What do you say is there.

MR. WALTERS: That Judge Leinenweber indicated that there was -- there was conflicting evidence on that point, that the police said that they gave her bathroom breaks.

JUSTICE MIKVA: They may have given her bathroom breaks at some point, does that mean she was held anyway.

MR. WALTERS: The 63 hours.

JUSTICE MIKVA: I will review your brief.

MR. WALTERS: The 63 hours.

JUSTICE MIKVA: Okay.

MR. WALTERS: Um, and with respect to that, Judge -- Judge Leinenweber at the time, in view of all that evidence, still found that there was no cause of action, that the defendant had failed to state a claim.

JUSTICE MIKVA: That's not the issue before us. We don't care whether there's cause of action in that case or not. What we care is if these police officers, if there's evidence, as opposed to allegations, evidence that we think police officers acted in the way that these witnesses say they acted in this case.

If there's evidence of that, that could tip it, could it not?

MR. WALTERS: With respect, that evidence has to be substantiated.

JUSTICE MIKVA: Yes.

MR. WALTERS: There has to be something to it.

JUSTICE MIKVA: The burden is on them, totally.

MR. WALTERS: It can't just -- it can't just be a mere allegation. As the Supreme Court has set out in the Coleman case, Dedrick Coleman that I cited. It's cited in the Nelson case, there's a series of cases, Porter Bowens, Cacini that I cited to.

All of them require there be some

substantiation, and this is with respect to both the allegations regarding civil lawsuits and the OPS complaints. There has to be something which substantiates it.

So there was -- what -- regardless of whether there was a stipulation, the point is that in that particular case Judge Leinenweber made a finding that didn't -- that didn't substantiate that there was a -- a illegal coercion, illegal police conduct in that case, and that was affirmed by the Seventh Circuit.

JUSTICE MIKVA: Okay. But there's no finding that what they say happened didn't happen by Judge Leinenweber.

MR. WALTERS: That's true. That's true.

JUSTICE MIKVA: It may not have risen to the level he was looking for. They're not trying to prove a civil case against these police officers in this case, they're trying to say the way these witnesses say these police acted, boy, they acted like that a lot or they acted like that in other cases.

That's all they're trying to do, and if they can make that showing, don't you think that could change the outcome here, could.

MR. WALTERS: No, not on -- not on the facts of this case.

JUSTICE MIKVA: Because?

MR. WALTERS: Not given all the other evidence that we had.

JUSTICE MIKVA: All what other evidence? What -- there is no other evidence. The evidence is that the witnesses said one thing to the police, something different at trial. They said, "The reason we said that to the police is the police coerced us." Is there any other evidence?

MR. WALTERS: Yes, there is.

JUSTICE MIKVA: What am I missing?

MR. WALTERS: Well, for one thing, there was evidence that they were intimidated to flip their testimony by the defendant.

JUSTICE MIKVA: What was the evidence? I know that was the theory, but

what was the evidence of that?

MR. WALTERS: That was in -- in Shemika Mason's statement, that was in Vernon Clay's statement. Shemika mentioned that defendant himself came over to Quina Davis' house right after -- I think the night after the shooting. Shemika was there, Brandy Butler, another one of the witnesses, was there.

JUSTICE MIKVA: This was all in the statements they gave the police initially.

MR. WALTER: Yes.

JUSTICE MIKVA: Okay. Okay. They told the police -- their story is they told the police initially exactly what the police wanted them to tell them, and then they said later, that we only told them that because we were intimidated.

Is there anything else? Is there any other evidence in this case that -- that pins this on the defendant?

MR. WALTERS: There's evidence that corroborates the witnesses.

JUSTICE MIKVA: What is that? There were shots fired. Everybody knows there

were shots fired, there was somebody killed.

MR. WALTERS: Right.

JUSTICE MIKVA: What is the corroborating evidence that it was the defendant?

MR. WALTERS: Well, there was -- there was evidence that this was a gang-motivated shooting, and that defendant belonged to the rival gang of the other victim.

JUSTICE MIKVA: Okay. Okay. So do a lot of people, I'm afraid.

MR. WALTERS: And this case was passed on several times, the sufficiency of the evidence was passed on several times (Inaudible.)

JUSTICE MIKVA: One time.

MR. CLARK: On -- well, and in habeas corpus review as well.

JUSTICE MIKVA: I think that was really on a different issue, but, yeah, okay, I'm not saying the evidence is insufficient, I'm just saying it all comes down to the cops either did what these

people say or they didn't. That's really becomes the issue in a lot of ways, because if the cops did what these people say, then there's really no evidence to convict this defendant.

MR. WALTERS: Yeah, but the bottom line here is that, whether it's civil suits or OPS complaints, even -- even the Bridewell case, and as I said, it's not substantiated, and that makes a difference.

It's an important fact. Because looking at these cases like Coleman and Porter Bowens and Cacini, it matters whether the officers face discipline or whether -- whether there was no finding in the case.

So based on the law, the fact that Judge Leinenweber found the cause of action, that it was affirmed by the Seventh Circuit Court of Appeals, indicates that that's not a case that can be used to demonstrate bias on the part of the officers. It can't be used to impeach them.

UNIDENTIFIED JUSTICE: Was there

any -- was there any restriction on the cross-examination of the recanting witnesses as to their treatment by the police officers, was the defendant allowed to explore their treatment in front of the officers to explain or to highlight their recantations.

MR. WALTERS: My recollection was that was -- that was their trial testimony, and they were committed to testify to what they were saying was now the case at trial.

UNIDENTIFIED JUSTICE: So presumably, whatever mistreatment or maltreatment they contend they received that evening as the reason for the recantations, that was all brought out for the jury?

MR. WALTERS: Right, and that brings up another interesting point. With respect to Quina Davis' affidavit, that one affidavit does go somewhat to this police misconduct issue.

Now, Quina Davis filed an OPS complaint against -- against two of the detectives, and not all of them. Only

detective -- Detectives Forberg and Foster, and that -- that complaint went to alleged harassment, meaning that the police doggedly and persistently tried to contact an eyewitness to a murder, and they didn't give up simply because she kept hiding in the attic and wouldn't talk to them.

What's -- what's glaring -- what's glaring in its omission, though, from Quina Davis' OPS complaint, is she does not complain about police misconduct in that OPS complaint, which was made at this time, which was made in 2001 at the time of this trial.

Fast forward to her affidavit, which is -- which is submitted somewhere around 2016, I believe, 2015, 2016, 2017, in that neighborhood, this is the first time that she's -- she's raising issue of how she was improperly or the police officers attempted to improperly influence her.

Now, in addition to that, there were a number of witnesses that these police officers talked to that were not allegedly improperly influenced. The police never

got a statement out of Mario Brown. They never got a statement out of Michael or Stanley Watson. They never got a statement out of petitioner, and apparently they -- clearly, they never got a statement out of Quina Davis.

So this is not -- this is not a sort of overwhelming presence of police overbearing interrogation that -- that is creating this situation. It's clear that they -- that the police talked to a number of people and did not coerce them into making statements that they didn't want to make.

So there -- therein lies another issue of law that -- that defendant has brought up that we need to consider, and that is that at this stage, yes, well-pled facts are taken as true, but there's a caveat in that, a very important one, and that is unless they are rebutted by the report, and in this case there are contradictions, there are things that rebut the complaints of police misconduct in this case.

JUSTICE MIKVA: The fact that they didn't -- they didn't do this to everybody is the rebuttal that they did it to the people that say they did it to them? I -- I don't understand what you say is rebuttal.

MR. WALTERS: I would -- I would use Occam's razor in this case. The -- Occam's razor, well known, you probably all know it, is the simplest explanation is best. It's still used today in philosophy and in science.

The simplest examination here is that defendant was the one that intimidated these witnesses, and the jury already heard all of this. The -- the part that has more moving parts in it is defendant's claim that the police somehow intimidated some witnesses but not others. That's not the simplest explanation for what happened here.

JUSTICE MIKVA: But what -- what about the fact that the victim, the only living victim said that's not him, doesn't look anything like him, right?

MR. WALTERS: He did say that, but he also identified the defendant's car as being on the scene, and said the shooter got out of the defendant's car.

JUSTICE MIKVA: He said the shooter got out of the car a month before. That's what he said. That's what the police officer said he said, a month before the shooting he saw the shooter get out of that car, correct? Isn't that -- isn't that correct?

MR. WALTERS: You may be right. You may be right. I don't --

JUSTICE MIKVA: A month before.

MR. WALTERS: I don't -- I don't want to argue with you, you may be right.

JUSTICE MIKVA: And like you said, there -- it seems to be pretty un -- not really an issue that there are vice lords, they probably all know each other, right?

MR. WALTERS: On one side they're vice lords, on the other side (Inaudible.)

JUSTICE MIKVA: Right, they're talking about the --

MR. WALTERS: And there is a

tendency to not want to address these issues in court and rather to address them on the street.

JUSTICE MIKVA: Right, but I'm just saying, the only person who really is -- has nothing to gain here, nothing -- not intimidated by the police or possibly by the defendant, the victim, says that's not him, doesn't look anything like him, correct?

MR. WALTERS: He does say that, but again, gang members tend to not to -- even -- even in rival gang situations, they tend not to testify against each other. That's a real-world problem that we have to deal with.

UNIDENTIFIED JUSTICE: Seeing that you had a number of questions thrown at you, are there any other issues or points you want to address before your time is completed?

MR. WALTERS: Well, Justice Mikva pointed out that defendant has raised cause and prejudice. I just -- I would just quickly make the point that essentially for

the same reasons, that the evidence is not new, it's cumulative, and that it -- it is not of such a conclusive nature that it would -- that it would change the outcome.

For the same reasons that it doesn't meet the actual innocence test, it doesn't rise to the level of -- of the cause and prejudice test, and I realize it's worded differently, but certainly the same things need to be shown, new evidence that -- that the defendant was not able to get to previously and that there was prejudice.

JUSTICE MIKVA: But it doesn't need to be free-standing, right? And that to me is the difference.

MR. WALTERS: To meet cause and prejudice.

JUSTICE MIKVA: For cause and prejudice.

MR. WALTERS: Correct.

JUSTICE MIKVA: It can go right to what they were fighting about at trial, which is which story should we believe, right?

MR. WALTERS: That's true.

JUSTICE MIKVA: And that's what most of their evidence goes to is which story should be believed, right?

MR. WALTERS: Yes, yes.

JUSTICE MIKVA: Okay.

MR. WALTERS: That (Inaudible) -- the requirement that the evidence actually go to show that it exonerate and it vindicate is not a requirement in cause and prejudice, but as I said before, for all the -- for all the reasons that I've outlined, it doesn't meet the cause and prejudice test in this case.

Respectfully, the People request that this Court affirm defendant's -- I'm sorry, affirm the ruling below, denying leave to file a successive petition, especially given the fact that successive petitions are -- are roundly disfavored.

UNIDENTIFIED JUSTICE: Thank you.

Mr. Clark, briefly.

MR. CLARK: I just have one point I'd like to make on rebuttal, and that is that the only evidence in the record that

Mr. Jackson had any gang affiliation whatsoever are the statements that we claim were coerced, and with that I would yield the rest -- or I guess I conclude and would ask that the Court reverse the decision below and remand Mr. Jackson's petition for further proceedings. Thank you, Your Honors.

UNIDENTIFIED JUSTICE: Thank you. I would like to thank the parties for their briefing on this matter. We'll take the matter under advisement. The Court stands in recess.

(End of recording.)

CERTIFICATE

- - -

I, Matthew J. Haas, Court Reporter and Transcriptionist, do hereby certify that I was authorized to and did listen to and stenographically transcribe the foregoing recorded proceedings and that the transcript is a true record to the best of my professional ability.

Dated this 18th day of July, 2018.



MATTHEW J. HAAS
Court reporter

No. 1-17-1773

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Petitioner-Appellant.	)	Appeal from Cook County Circuit Court No. 01-CR-17492 Honorable Evelyn B. Clay, Presiding Post-Conviction Proceeding Appellant In Custody Date of Ruling Appealed June 15, 2017 Notice of Appeal Filed June 28, 2017

CERTIFICATE OF COMPLIANCE OF REPLY BRIEF IN SUPPORT OF PETITIONER-APPELLANT'S PETITION FOR REHEARING

I certify that this brief conforms to the requirements of Rules 341(a), (b) and Rule 367. The length of this brief, excluding the pages 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 10 pages.

Date: December 13, 2018

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No. 1-17-1773

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Petitioner-Appellant.	)	Appeal from Cook County Circuit Court No. 01-CR-17492 Honorable Evelyn B. Clay, Presiding Post-Conviction Proceeding Appellant In Custody Date of Ruling Appealed June 15, 2017 Notice of Appeal Filed June 28, 2017

NOTICE OF FILING

TO: Cook County State's Attorney Office, Criminal Appeals Division
Richard J. Daley Center
50 W. Washington Street, Third Floor
Chicago, IL 60602
eserve.criminalappeals@cookcountyil.gov

PLEASE TAKE NOTICE that on the 13th day of December 2018, I filed electronically the Reply Brief in Support of Petitioner-Appellant's Petition for Rehearing in the above captioned matter with the Clerk of the Appellate Court of the State of Illinois, First Judicial District, a copy of which is hereby electronically served upon you.

Date: December 13, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December 2018, a true and correct copy of the Reply Brief in Support of Petitioner-Appellant's Petition for Rehearing, filed in the above-captioned matter, and its attendant Notice of Filing were sent via the Court's electronic filing system to:

Cook County State's Attorney Office, Criminal Appeals Division
Richard J. Daley Center
50 W. Washington Street, Third Floor
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I further hereby certify that on this 13th day of December 2018, a true and correct copy of the Reply Brief in Support of Petitioner-Appellant's Petition for Rehearing, filed in the above-captioned matter, and its attendant Notice of Filing were sent via electronic mail to:

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APPENDIX 11

RECORD FROM

Appellate Court, First District

TO

Supreme Court

CIRCUIT COURT NO. 01CR17492

APPELLATE GEN. NO. 1-17-1773

SUPREME COURT GEN. NO. 124818

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff-Appellee

vs.

KEVIN JACKSON,

Defendant-Appellant

Form 16

E-FILED
9/27/2019 12:44 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

SUBMITTED - 6746810 - Matthew Irvin - 9/27/2019 12:44 PM

Case Information: 1-17-1773			
Court:	Appellate Court - 1st District	**Filed:**	06/28/2017
Classification:	Appeal - Notice of Appeal - Criminal	**Case Status:**	Supreme Court Docket
Short Title:	People v. Jackson, Kevin	**Rule:**	606
Full Title:	PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Defendant-Appellant.	**Trial Court Case Number:**	01CR17492
County/Agency:	Cook County Circuit Court	**Related Case (s):**	1-04-1784, 1-07-1680, 102613, 108564, 124818
District:	1st	**Associated Case(s):**	124818
Circuit:	Cook	**Consolidated Case(s):**	
Recusal:		**Track:**	
Division:	6th		
	Panel Assigned		

- Case Notes

Entry Date	Priority	Notes	User	Modified
Authorized Court Users				
05/15/2018 12:24 PM	Normal	Brandon Clark is on MDL because he has separated from Pillsbury. They will be filing a motion to substitute counsel ASAP	msager	
04/16/2018 11:08 AM	Normal	Left Mr. Clark a message informing him that we were rejecting his ARB because there was no yellow cover and he had until 4/20/18 to resubmit the brief.	eswain	
10/18/2017 03:33 PM	Normal	Attorney is aware that he needs a motion for supplemental record. Supp is in queue	sdenova	sdenova: 10/18/2017
08/31/2017 10:44 AM	Normal	Spoke with AT law firm regarding ROA--needs motion.	sdenova	
07/24/2017 02:11 PM	Normal	Pillsbury Winthrop - Brandon Clark (ARDC #6317966)	msager	

- Milestone Summary

Ready:	05/02/2018
Submitted:	05/02/2018
Disposition:	Opinion Filed
Disposition Date:	09/28/2018
Disposition Decision:	Affirmed

- Trial Court Information

Cook County Circuit Court

Case(s): 01CR17492

Judgment(s):	Clay, Evelyn B. - 06/15/2017

- Panel Information

No records were found.

Justice/Judge Name	Replaced Justice/Judge Name	Date Created
Mikva, Mary Lane (Author)		05/02/2018
Harris, Sheldon A.		05/02/2018
Pierce, Daniel J.		05/02/2018

- Party Information

Role	Party Name	Former	Lead	Dist. List	Representation	Address/Contacts
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			Y	N	Pillsbury Winthrop Shaw Pittman LLP	1200 Seventeenth St NW Washington DC 20009 Work Phone: 202-663-8000 Work Fax: 202-663-8007 Primary E-Mail: brandon.clark@pillsburylaw.com
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Other Participants

- Financials By Case Participant

Name	Role	Fee Type	Date	Total	Status
Clark, Brandon Christopher	Appellant				
Pillsbury Winthrop Shaw Pittman LLP	Appellant	Docketing	07/26/2017	$50.00	Paid
State's Attorney Cook County	Appellee	Appearance	07/24/2017	$0.00	No Fee

- Record Information

Record Information

Filed Date	Record Type	Record Description	Access	Location

10/26/2017	Supplemental Record	1 vol	Internal	Electronic File
11/08/2017	Supplemental Record	1 vol	Internal	Electronic File

Checkouts

Record Description	Comments	Checked Out To	Date Checked Out	Date Checked In	Added/Edited
No records were found.					

- Ticklers

Due Date	Original Due Date	Status	Tickler	Due From
11/02/2018	11/02/2018	Overdue	Release for Publication	
03/29/2019	03/29/2019	Overdue	Release for Publication	
03/29/2019	03/29/2019	Overdue	Release for Publication	

- Brief(s) Docket Entries

Document Description	Filing Date
Briefs - Rehearing - Reply Brief Filed (PROSKAUER ROSE & BROOKS TAYRULIS)	12/13/2018
Briefs - Appellant Reply Brief Filed	04/16/2018
Briefs - Appellee Brief Filed	03/30/2018
Briefs - Appellant Brief Filed (Pillsbury Winthrop)	12/22/2017

- Docket Entries

Document Description	Filing Date	Docket Entry Type	Docket Entry Subtype
• Supreme Court - PLA - Notice of PLA Allowed	09/25/2019	Supreme Court - PLA	Notice of PLA Allowed
• Supreme Court - PLA - Notice of PLA Filed (124818).	05/03/2019	Supreme Court - PLA	Notice of PLA Filed
• Disposition - Post Disposition - Separate Opinion Upon Denial of Rehearing	03/29/2019	Disposition - Post Disposition	Separate Opinion Upon Denial of Rehearing
• Correspondence - Decision Notification Friday March 29, 2019	03/28/2019	Correspondence	Decision Notification
• Petition for Rehearing * - Petition for Rehearing Filed (PROSKAUER ROSE) (BROOKS TARULIS TIBBLE)	10/19/2018	Petition for Rehearing *	Petition for Rehearing Filed
• Petition for Rehearing * - Petition for Rehearing Denied Justice Mikva dissents for the reasons stated in her separate opinion upon denial of rehearing.	03/29/2019	Petition for Rehearing *	Petition for Rehearing Denied
• Briefs - Rehearing - Reply Brief Filed (PROSKAUER ROSE & BROOKS TAYRULIS)	12/13/2018	Briefs - Rehearing	Reply Brief Filed
• Petition for Rehearing * - Answer to Petition for Rehearing Filed (SA)	11/29/2018	Petition for Rehearing *	Answer to Petition for Rehearing Filed
• Order IT IS HEREBY ORDERED The State has 21 days from the date this order is entered to file an answer to the Petition for Rehearing.Mr Jackson has 14 days from the due date of the State's answer to file a reply.	11/08/2018	Order - Responding Order	Other

• Paper Copy - Paper Copy Received	10/22/2018	Paper Copy	Paper Copy Received
• 10 - Motion - Supplement *Common law - Record instanter with Newly Obtained Evidence of Police Misconduct He Was unable To Obtain Previously Through Fault Of His Own (PROSKAUER ROSE)(BROOKS TARULIS) NO CERTIFIED RECORD)	10/19/2018	Motion - Supplement *	Record
• Order - Responding Order - Denied	11/08/2018	Order - Responding Order	Denied
• Response * - Response Filed (SA)	10/23/2018	Response *	Response Filed
• Disposition * - Opinion Filed	09/28/2018	Disposition *	Opinion Filed
• Disposition - Post Disposition - Opinion Released	04/17/2019	Disposition - Post Disposition	Opinion Released
• Correspondence - Decision Notification Friday September 28, 2018	09/25/2018	Correspondence	Decision Notification
• 9 - Motion - Leave to File - to cite previously unavailable authority at oral argument.	06/14/2018	Motion - Leave to File	Other
• Order - Responding Order - Allowed	06/19/2018	Order - Responding Order	Allowed
• 8 - Motion - Substitute - Attorney (PROSKAUER ROSE LLP)	05/16/2018	Motion - Substitute	Attorney
• Order - Responding Order - Allowed	05/22/2018	Order - Responding Order	Allowed
• Call of the Docket - Oral - Oral Argument Scheduled Wednesday June 27, 2018 1:45PM	05/09/2018	Call of the Docket - Oral	Oral Argument Scheduled (Date & Time)
• Call of the Docket - Oral - Oral Argument Held	06/27/2018	Call of the Docket - Oral	Oral Argument Held
• Call of the Docket - Submitted	05/02/2018	Call of the Docket	Submitted
• Call of the Docket - Case Ready	05/02/2018	Call of the Docket	Case Ready
• Briefs - Appellant Reply Brief Filed	04/16/2018	Briefs	Appellant Reply Brief Filed
• Paper Copy - Paper Copy Received	05/10/2018	Paper Copy	Paper Copy Received
• Call of the Docket - Oral Argument Requested	04/16/2018	Call of the Docket - Oral	Oral Argument Requested
• Briefs - Appellee Brief Filed	03/30/2018	Briefs	Appellee Brief Filed
• 7 - Motion -(1st) Extension of Time * - Appellee Brief to April 6, 2018 (SA)	01/30/2018	Motion - Extension of Time *	Appellee Brief
• Order - Responding Order - Allowed	02/08/2018	Order - Responding Order	Allowed
• Briefs - Appellant Brief Filed (Pillsbury Winthrop)	12/22/2017	Briefs	Appellant Brief Filed
• Paper Copy - Paper Copy Received	05/10/2018	Paper Copy	Paper Copy Received
• Call of the Docket - Oral - Oral Argument Requested	12/26/2017	Call of the Docket - Oral	Oral Argument Requested
• 6 - Motion - Extension of Time * 2nd extension- Appellant Brief to January 1, 2018 (PILLSBURGY WINTHROP)	11/20/2017	Motion - Extension of Time *	Appellant Brief
• Order - Responding Order - Allowed	11/29/2017	Order - Responding Order	Allowed
• Record - ! Vol Supplement Record Filed	11/08/2017	Record	Record on Appeal Filed

• 5 - Motion - Supplement * - second record (HERE) (PILLSBURG WINTHROP)	10/30/2017	Motion - Supplement *	Record
• Order - Responding Order - Allowed	11/08/2017	Order - Responding Order	Allowed
• Record - 1 vol sup record [SERVED AT/AE 10/31]	10/26/2017	Record	Record on Appeal Filed
• 4 - Motion - Supplement * - Record (HERE) (PILLSBURG WINTHROP)	10/18/2017	Motion - Supplement *	Record
• Order - Responding Order - Allowed	10/26/2017	Order - Responding Order	Allowed
• 3 - Motion - Extension of Time * - Appellant Brief to November 27, 2017 (PILLSBURY WINTHROP)	10/13/2017	Motion - Extension of Time *	Appellant Brief
• Order - Responding Order - Allowed	10/26/2017	Order - Responding Order	Allowed
• Record - 1 of 1 CLR; 1 of 1 ROP [SERVED 9/20]	09/18/2017	Record	Record on Appeal Filed
• Record - 1 of 1 SECURED [SERVED 9/20]	09/18/2017	Record	Record on Appeal Filed
• 2 - Motion - Record/Exhibit - Record on Appeal to 60 Days (PILLSBURY WINTHROP)	09/06/2017	Motion - Record/Exhibit	Record on Appeal
• Order - Responding Order - Allowed To October 27, 2017	09/14/2017	Order - Responding Order	Allowed
• Docketing Statement - Docketing Statement Filed	07/27/2017	Appearance	Entry of Appearance
• 1 - Motion - Extension of Time *to file - Docketing Statement 60 DAYS (PILLSBURY ,WINTHROP)	07/26/2017	Motion - Extension of Time *	Docketing Statement
• Order - Responding Order - Denied as Moot Appellant filed his docketing statement on July 27, 2017,	08/10/2017	Order - Responding Order	Denied as Moot
Order Entered By: Connors, Maureen E.			
• Notice of Appeal - Notice of Appeal Filed in AC	07/24/2017	Notice of Appeal	Notice of Appeal Filed in AC
• Notice of Appeal - Notice of Appeal Filed in TC	06/28/2017	Notice of Appeal	Notice of Appeal Filed in TC

- Motions for Extension of Time

Document Description	Filing Date	Filed By	On Behalf Of
• 7 - Motion -(1st) Extension of Time * - Appellee Brief to April 6, 2018 (SA)	01/30/2018	State's Attorney Cook County	People
• Order - Responding Order - Allowed	02/08/2018		
• 6 - Motion - Extension of Time * 2nd extension- Appellant Brief to January 1, 2018 (PILLSBURGY WINTHROP)	11/20/2017	Pillsbury Winthrop Shaw Pittman LLP	Jackson, Kevin
• Order - Responding Order - Allowed	11/29/2017		
• 3 - Motion - Extension of Time * - Appellant Brief to November 27, 2017 (PILLSBURY WINTHROP)	10/13/2017	Pillsbury Winthrop Shaw Pittman LLP	Jackson, Kevin
• Order - Responding Order - Allowed	10/26/2017		
• 1 - Motion - Extension of Time *to file - Docketing Statement 60 DAYS (PILLSBURY ,WINTHROP)	07/26/2017	Pillsbury Winthrop Shaw Pittman LLP	Jackson, Kevin
• Order - Responding Order - Denied as Moot Appellant filed his docketing statement on July 27, 2017,	08/10/2017		

NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

Tom

FIRST DISTRICT
FIRST DIVISION
September 28, 2018

No. 1-17-1773

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 01-CR-17492
	)	
KEVIN JACKSON,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.
	)	

PRESIDING JUSTICE MIKVA delivered the judgment of the court, with opinion.
Justices Pierce and Harris concurred in the judgment and opinion.

OPINION

¶ 1 Following a jury trial, defendant Kevin Jackson was convicted of first degree murder and aggravated battery with a firearm, convictions this court affirmed on direct appeal. The State's case rested on the prior inconsistent statements of three eyewitnesses. By the time of trial, each of those witnesses had recanted, telling the jury that their previous statements identifying Mr. Jackson as the shooter were the result of police coercion. Mr. Jackson now appeals from the denial of his motion seeking leave to file a successive postconviction petition, which is supported by documents he contends establish a pattern and practice of misconduct by the group of detectives responsible for the investigation that led to his trial and conviction. Mr. Jackson argues that the circuit court incorrectly determined that this new evidence of a pattern and

practice of police misconduct was insufficient to establish either a freestanding claim of actual innocence or to make the threshold showing of cause and prejudice otherwise necessary to file a successive petition. He asks us to reverse the circuit court's order and to remand this matter either for a second-stage hearing, to determine if there is a substantial basis for his claimed constitutional violations, or for a third-stage evidentiary hearing, on the basis that he has already made such a showing.

¶ 2 For the reasons that follow, we affirm the circuit court's order denying Mr. Jackson leave to file his successive petition. The new evidence that Mr. Jackson presents does not support a freestanding claim of actual innocence. And although we are mindful of the difficulties faced by defendants seeking to uncover and document police misconduct, we are unable to conclude that Mr. Jackson has met the high bar here of showing both cause and prejudice. The documentation offered in support of his motion—which we have scrutinized with care—fails to draw sufficient connections between the specific acts of police coercion alleged in this case and a pattern and practice of similar misconduct by the same officers.

¶ 3 I. BACKGROUND

¶ 4 At approximately 1:30 a.m. on May 6, 2001, Ernest Jenkins drove his car to a Citgo gas station on the corner of Damen Avenue and 55th Street in Chicago. The car's passengers—Michael Watson and Michael's nephew, Stanley "Meechie" Watson—exited the vehicle to pump and pay for gas. Shots rang out, and Michael and Mr. Jenkins were both struck. Michael survived, but Mr. Jenkins died of his injuries later that same day. Following a police investigation, Mr. Jackson was arrested on June 19, 2001. In July 2001 he was indicted by a grand jury on multiple counts, including first degree murder and aggravated battery with a firearm.

¶ 5 The evidence presented at trial was summarized in this court's order affirming Mr. Jackson's convictions on direct appeal (*People v. Jackson*, 364 Ill. App. 3d 1050 (2006) (table) (unpublished order under Supreme Court Rule 23), and that summary has been largely adopted by both the circuit court in its postconviction orders and the State in this appeal. However, we have restated many of the facts here because we believe that some of the details that are omitted from that Rule 23 order are relevant to showing how close the evidence was at trial.

¶ 6 A. Evidence Presented at Trial

¶ 7 At trial, the State's theory of the case was that the shooting was a turf dispute involving members of rival gangs. According to the State, Mr. Jackson, known in the neighborhood as "Googie" or "Googy," was a Vice Lord who shot at Meechie Watson, a Gangster Disciple, because the gas station Meechie stopped at was in Vice Lord territory and because, while at the gas station, Meechie talked to Mr. Jackson's girlfriend, Quiana (sometimes referred to as Quina) Davis. Although Meechie escaped unharmed, Michael Watson and Ernest Jenkins, finding themselves between Mr. Jackson and his target, were both shot, and Mr. Jenkins was killed.

¶ 8 To support its theory, the State relied on the signed statements of four eyewitnesses—Brandy Butler (also known as Brandy Grant or Brandi Grant), Vernon Clay, Manuel "Manny" Stewart, and Shemika Mason—which were admitted into evidence pursuant to section 115-0.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.1 (West 2000)). That section of the Code provides that prior inconsistent statements are substantively admissible if the witness is subject to cross-examination at trial and the statements were made from personal knowledge and were written or signed by the witness. In their statements, each of these witnesses identified Mr. Jackson as the shooter and indicated that he or she was treated well by the police and not promised anything in exchange for signing a statement. Three of the witnesses—Ms.

Butler, Mr. Clay, and Mr. Stewart—also testified before a grand jury, where they confirmed the accuracy and truthfulness of their signed statements.

¶ 9 At trial, however, none of these witnesses identified Mr. Jackson as the shooter. They instead each testified that they had been threatened and coerced by detectives into signing the statements and giving the grand jury testimony implicating Mr. Jackson. No forensic evidence connected Mr. Jackson to the crime, and Michael Watson, the surviving victim and the only other eyewitness to the shooting who testified at trial, stated unequivocally that Mr. Jackson looked nothing like the man who shot him.

¶ 10 These prior statements, refuted on the stand by the witnesses who gave them, were the evidence of Mr. Jackson's guilt that was presented at trial. The trial testimony of each of the witnesses, and how it differed from their pretrial statements, is discussed below.

¶ 11 1. The Recanting Witnesses

¶ 12 a. Brandy Butler

¶ 13 In her signed pretrial statement given to the police and Assistant State's Attorney (ASA) Colleen Daly and in her grand jury testimony, Ms. Butler stated that on May 6, 2001, Manny Stewart drove her, Mr. Jackson, Quiana Davis, and Mario Brown to the Citgo gas station in a car Mr. Stewart and Mr. Jackson owned together. As Ms. Butler exited the vehicle, she saw Meechie Watson, who called out to her and Ms. Davis. Ms. Butler continued into the gas station to make a purchase and, while inside, heard four or five gunshots, looked out the window, and saw Mr. Jackson, a member of the Vice Lords, firing a gun in the direction of Meechie, a Gangster Disciple. Ms. Butler said she then got down on the floor and did not see where anyone went.

¶ 14 At trial, however, Ms. Butler denied that Mr. Jackson was the shooter. She testified instead that she had known Mr. Jackson for "[a] long time," that they had grown up in the same

neighborhood, and that he was "nowhere around" at the time of the shooting. Ms. Butler testified that she arrived at the gas station with Mr. Stewart, Ms. Davis, and Mr. Brown and, as she was standing in line inside the gas station, she heard "ten or more" gunshots and "hit the ground."

¶ 15 Ms. Butler gave the following explanation for how she came to sign her statement identifying Mr. Jackson as the shooter:

> "I just was ready to go because I was harassed. I was everything. I was three months pregnant. I was going through a lot. I'm stressed out still right now to this day 'cause I lied on him. They had me to lie on him. They told—they coerced me, Judge, I promise you. They made this story up. They kept saying Googie did it. He did not do it. He was nowhere around. And I'm not saying that for the simple fact, you know, that I'm scared of anybody. He didn't do it. He was nowhere around. He was not in the car with us. *** The detectives would not listen to me. They was not trying to hear anything. They told us that if we did not say who did that, that it would be crimes on us 'cause we was there that night at the gas station. And I was just ready to go. And I'm sorry for what I did and I just signed the statement on you because I was ready to go and they said we was gonna beat that case and I just did it because I have kids. I was there that night. I wish I wasn't there. It was a nightmare.
>
> * * *
>
> A. And I'm suffering now for what I did.
>
> (Witness crying.)
>
> THE COURT: Do you want some water, Miss?
>
> A. No. Thank you, ma'am."

¶ 16 b. Vernon Clay

¶ 17 According to his signed pretrial statement given to Detective Brian Forberg and ASA Lisa Hennelly, Vernon Clay was also at the gas station at the time of the shooting and had walked, not driven, there with Ms. Butler and Ms. Mason. When they arrived, Mr. Clay said they saw Ms. Davis "jumping out of [Mr. Jackson's] car." He explained that Mr. Jackson and Ms. Davis were "fooling around but [we]re not boyfriend and girlfriend." Mr. Clay told police that he and Mr. Jackson were members of the Vice Lords, and at the gas station that night they saw Meechie, a Gangster Disciple, who "started talking to [Ms. Davis] about messing around." Mr. Clay said that he, Ms. Butler, Ms. Mason, Ms. Davis, and Meechie all went into the gas station, while Mr. Jackson and Mr. Stewart remained in their car. Meechie and Ms. Davis were still talking together when the group exited the gas station. It was then that Mr. Clay heard gunshots. He looked up and saw Mr. Jackson fire about eight shots into a parked car and Meechie running away. Mr. Jackson then ran from the scene.

¶ 18 Mr. Clay recounted a similar version of events in his grand jury testimony. Instead of saying that Ms. Davis was getting out of Mr. Jackson's car when Mr. Clay, Ms. Butler, and Ms. Mason arrived, however, he said that Ms. Davis had walked to the gas station with them. Mr. Stewart also said that Meechie loudly sexually propositioned Ms. Davis as the two were talking at the gas station and that the two of them "used to go together." Mr. Stewart said that, after exiting the gas station, he had "turned [his] back" and "walk[ed] across the park" when he heard the gunshots and ran. When asked if he ever looked back to see who was shooting, Mr. Stewart said he did and it was "Googi shooting at Meechie."

¶ 19 At trial, however, Mr. Clay insisted that he was not even present at the gas station for any of these events. He testified that he was sleeping at home at the time of the shooting and did not

know anything about it until he was given details by Detective Forberg at the police station. Mr. Clay explained that he only signed what the police claimed was his pretrial statement to the contrary after he was kept in a room at the police station for a whole day before anyone spoke to him and in custody for a total of three days. He claimed that the police threatened him with imprisonment, said it would "cost [him]" if he did not testify, and threatened to inform everyone on the street that he had cooperated with the police and identified Mr. Jackson as the shooter. At trial, Mr. Clay claimed he never actually gave a statement to Detective Forberg and ASA Hennelly, denied initialing a correction made to the third page of the statement, and denied signing the middle of the fifth page, though he admitted signing the bottom of each page of the statement. He further denied that it was his signature on the back of Mr. Jackson's photograph.

¶ 20 Mr. Clay also claimed that he never read what the police said was his statement, that he only signed it because he thought it was something he needed to sign to get his property returned to him, and that did not realize what he had signed until June 28, 2001, when officers drove him to the courthouse to testify before the grand jury. According to Mr. Clay, at that time they reminded him of "how many times [he] was convicted, how many cases [he] was fighting" and instructed him to say "yes" to every question or he "would never see the streets again." Mr. Clay denied telling Detective Forberg that he feared gang retaliation or that Mr. Jackson had warned him not to speak to the police.

¶ 21 c. Shemika Mason

¶ 22 Ms. Mason's signed pretrial statement, given to ASA Daly and read into the record at trial by Ms. Daly, identified "Kevin Johnson who was nicknamed Googi" as the shooter. This was apparently a transcription error, as everyone involved in this case has treated the statement as referring to Mr. Jackson. Ms. Mason said in her statement that Mr. Stewart drove her,

"Googi," Ms. Butler, and Ms. Davis to the Citgo gas station on the night of the shooting. Ms. Mason and Ms. Butler went into the gas station and Ms. Davis stayed outside, talking to a Gangster Disciple member named Meechie. Mr. Stewart and Googi remained seated in the front of the vehicle. Ms. Mason said that, when she left the gas station, Googi was standing near an alley with a gun in his hand, and she saw him fire in Meechie's direction four or five times. In her statement Ms. Mason also said that Googi later warned them not to talk to the police about what had happened.

¶ 23 At trial, however, Ms. Mason testified that she was not even at the gas station during the shooting. She denied telling police that she went there with Ms. Davis and Ms. Butler or that she saw Mr. Jackson at the gas station talking to Meechie. She further denied that, after the shooting, Mr. Jackson instructed her, Ms. Butler, and Ms. Davis not to talk to the police.

¶ 24 Ms. Mason testified that she was interrogated by the police all night before meeting with an assistant state's attorney who wrote out her statement, that the police were "telling [her] what they wanted [her] to say," that she "had a warrant at the time" and "was running from the police," and that they promised her that if she "went along with what they want[ed her] to say," they would "take care of [her outstanding] warrant." Ms. Mason told the jury she signed the statement simply because she did not want to go to jail. She denied telling the police either that she went to the Citgo gas station with Ms. Davis, Ms. Butler, Mr. Stewart, and Mr. Jackson to purchase cigars or that she saw Mr. Jackson there talking to Meechie. Ms. Mason also testified that she did not remember telling ASA Daly about Mr. Jackson's gang membership, about a conversation between Ms. Davis and Meechie at the gas station, or that she saw Mr. Jackson shoot in Meechie's direction. She also denied telling ASA Daly that Mr. Jackson later warned Ms. Mason, Ms. Butler, and Ms. Davis not to talk to the police about what happened.

¶ 25 Ms. Mason was not called as a witness to testify before the grand jury.

¶ 26 d. Manuel Stewart

¶ 27 In his signed pretrial statement given to Detective John Clisham and ASA Hennelly, Manny Stewart, Mr. Jackson's cousin, stated that he and Mr. Jackson drove to the Citgo gas station together on the night of the shooting—in a car that the two of them owned together and had shared for "two years at the most"—with Ms. Davis, Ms. Butler, and Mr. Stewart's brother, Mr. Brown. Mr. Stewart stated that he and Mr. Jackson were both members of the Vice Lords and that, at the gas station, they saw Meechie, a member of the rival Gangster Disciples, talking to Ms. Davis. According to Mr. Stewart's statement, Mr. Jackson noticed Meechie just as Mr. Jackson was crossing the street to talk to a man named Ernie. Mr. Stewart said that other people were around and people were getting in and out of his car. After a couple of minutes, he heard a gunshot, turned around, and saw Mr. Jackson shooting into a parked car, at which point Mr. Stewart drove away from the gas station. Mr. Stewart gave a similar account implicating Mr. Jackson in the shooting to the grand jury.

¶ 28 At trial, Mr. Stewart denied this version of events, testifying instead that he was at the gas station with only Mr. Brown, Ms. Butler, and Ms. Davis. Mr. Stewart said that he saw Ms. Davis talking to Meechie, heard gunshots, and drove away from the gas station with Mr. Brown. Mr. Stewart testified that he saw the shooter as he drove away and that it was not Mr. Jackson but rather was an individual named Rick Party, whom Mr. Stewart had initially told the police was the shooter. Mr. Stewart agreed that he was taken somewhere to see a polygraph examiner but—following an objection by defense counsel to this line of questioning that was sustained by the circuit court—was prevented from providing any details about that encounter.

¶ 29 Mr. Stewart told the jury that he lied when he implicated Mr. Jackson, both in his

statement and in his testimony before the grand jury. When asked why, Mr. Stewart explained:

> " A. 'Cause they scared me. They said they was gonna lock me up for it or whatever.
>
> Q. They said they were going to lock you up for the murder?
>
> A. Yes, sir.
>
> * * *
>
> A. 'Cause I thought they was gonna pin the murder on me and they really wanted me to put it on him, sir. They had already had two other statements that was signed with him saying he did it.
>
> * * *
>
> *** I wasn't thinking about nobody else [*sic*] life, I was just thinking about myself."

¶ 30 2. Other Prosecution Witnesses

¶ 31 The State also called the surviving victim, Michael Watson, who testified unequivocally that Mr. Jackson was not the shooter. Michael testified that as he, Mr. Jenkins, and Meechie pulled into the Citgo gas station, he warned Meechie that they were in Vice Lord territory, but Meechie would not listen and headed toward the gas station to pay for the gas. When Michael exited the car to pump the gas, Meechie told him that a Vice Lord was coming their way. Michael testified that he looked up and saw his shooter from a distance of about 120 feet, describing him as a small, thin, African-American male, weighing around 120 pounds, whom Michael had never seen before. When asked if he recognized Mr. Jackson, Michael said, "I never seen that young man before" and he "don't look nothing like the guy 'cause the guy who shot me, when I say black, I mean he's a black person, but he was dark, dark black."

¶32 In addition to these occurrence witnesses, the State called several of the officers and two of the assistant state's attorneys who worked on the case.

¶33 Detective Kevin Howley testified that when he interviewed Mr. Stewart, Mr. Stewart told him that he saw Mr. Jackson shoot the victims and that he had only previously implicated an individual named Rick Party to protect Mr. Jackson.

¶34 Forensic investigator Robert Tovar testified that he recovered six cartridge cases from near Mr. Jenkins's car and a fired bullet from the floor of the car. Dr. Adrienne Segova testified regarding Mr. Jenkins's cause of death: multiple gunshot wounds caused by bullets traveling from left to right through his body.

¶35 Detective Forberg testified that, after interviewing the surviving victim, Michael Watson, Detective Forberg and his partner, Detective John Foster, began looking for a car Michael had described to them—a "box-style Chevy with tan doors and primer painting" at the front and rear of the vehicle. Police found a car matching that description on May 18, 2001, 12 days after the shooting and approximately two blocks from where the shooting occurred. When they found the car it was occupied by Mr. Jackson and Mr. Brown. Michael Watson was brought in to view a photo array containing photos of both individuals but said that neither of them was the shooter. Michael did, however, identify a picture of the car that Mr. Jackson and Mr. Brown were found in as the vehicle he had described to police. He told them that he had seen the shooter sitting in the same car outside a liquor store approximately one month prior to the shooting. The photo of the car that police showed Michael was the same photo identified at trial by Mr. Stewart and Ms. Butler as the car that Mr. Stewart and Mr. Jackson shared, which Mr. Stewart used to drive himself, Ms. Davis, Ms. Butler, and Mr. Brown to the Citgo gas station on the night of the shooting.

¶ 36 Most of the rest of the State's case was an attempt to convince the jury to believe the initial statements of the recanting witnesses, rather than their trial testimony. Detective Forberg recounted his interrogations of Mr. Clay and read Mr. Clay's statement into the record. According to Detective Forberg, Mr. Clay initially identified a fellow Vice Lord named Norman Mcintosh as the shooter but later changed his story, saying that Mr. Jackson was the shooter and had arrived at the gas station with Ms. Davis and Mr. Stewart.

¶ 37 Detective Forberg denied that Mr. Clay was forced to stay overnight at the police station and claimed that, instead, Mr. Clay had asked to stay there, telling the officers that he feared gang retaliation. Detective Forberg said, "I don't think he was happy about spending the night with us," but also that Mr. Clay never asked to leave because "[i]t was explained to him that the information that he conveyed to [the officers] needed to be checked out and he understood that [they] had to check out what he had told [them]."

¶ 38 Detective Clisham testified that, once he was informed of some things that Mr. Stewart had already told Detective Kevin Howley, he interrogated Mr. Stewart himself. Detective Clisham confirmed that what Mr. Stewart told him corresponded to Mr. Stewart's signed statement, which the detective then read into the record. When asked what happened next, Detective Clisham stated:

> "A. Um—Stewart was informed that he would be going to the—asked if he wanted to go to the Grand Jury the next morning. He stated that—um—he'd go. Basically, he wasn't too happy about it; but he said he'd stick around and go."

According to Detective Clisham, Mr. Stewart initially falsely identified the shooter to detectives as a member of the Vice Lords known as Rick Party in order to protect Mr. Jackson. However, he later told Detective Clisham that Mr. Jackson was the shooter.

¶ 39 ASA Daly testified that, after meeting Detectives Foster and Forberg, she wrote out the statements of Ms. Mason and Ms. Butler. In each case, she first met alone with the witness to confirm that the witness had not been mistreated, threatened, or promised anything in exchange for the statement, then read the statement back to the witness, giving the witness an opportunity to make any necessary changes. Ms. Daly then read the statements into the record. On cross-examination, Ms. Daly acknowledged that she had no idea how long Ms. Mason and Ms. Butler were questioned before she arrived to take their statements.

¶ 40 ASA Lanahan testified that she met with Mr. Stewart, Ms. Butler, and Mr. Clay before each of them provided testimony before the grand jury. She reviewed with each witness his or her prior written statement and confirmed that it was correct, was not given while under the influence, and was not the result of threats or promises. Ms. Lanahan testified that, while questioning the witnesses before the grand jury, she again had occasion to show them their prior written statements. Ms. Lanahan then read the witnesses' grand jury testimony into the trial record in this case.

¶ 41 Mr. Jackson called no witnesses to testify and elected not to testify on his own behalf.

¶ 42 3. Closing Arguments and Verdict

¶ 43 In its closing argument, the State encouraged the jury to believe the prior inconsistent statements made by the recanting witnesses over their trial testimony, pointing out that several of those statements were corroborated by the witnesses' testimony before the grand jury, which the prosecutor explained was "a secret proceeding done outside the presence of police." The prosecutor also stressed how powerful those incriminating statements were, coming as they did from Mr. Stewart, who was Mr. Jackson's cousin; his friends, Ms. Mason and Ms. Butler; and his fellow gang member, Mr. Clay. He then urged the jury to conclude that the witnesses had

changed their stories at trial because they were afraid to testify against Mr. Jackson, a known gang member, while he was in the same room with them:

> "Do you really expect those witnesses to come into this courtroom, as the defendant sits here looking at him or at them, do you really expect those witnesses to be able to point to the defendant and tell you that he's the shooter, that he's the killer? Of course not. Use your common sense."

¶ 44 Defense counsel, in turn, urged the jury to believe the witnesses when they testified that they had been coerced into naming Mr. Jackson as the shooter, arguing that the detectives "wanted to sweat these people." He reminded the jury that all of the witnesses "had stuff hanging over their heads" and that the assistant state's attorney who arrived later to take down their statements was not there for the many hours the detectives held the witnesses without charging them with anything.

¶ 45 In rebuttal, the prosecutor mocked the accusations of witness coercion ("[C]an you believe it, ladies and gentleman? Poor, poor Kevin Jackson. Brian Forberg is after you."), saying that he felt sorry for Detectives Forberg and Foster, and would not want to have their jobs because "[n]ot only do you have to deal with the people you saw on the witness stand and guys like this [apparently referring to Mr. Jackson or his counsel], but you've got to come into court and get smashed by people who aren't even paying attention to what you're doing or trying to do, which is investigate a crime. Your reputation has to get sullied by people that aren't even paying attention." The prosecutor also stressed how difficult it was for the detectives to do their jobs when confronted with untruthful witnesses:

> "And it's not because they're trying to harass people or do bad things. It's because, unlike normal folks, some of these folks that you have seen and heard

from, ladies and gentlemen, the truth is not the first thing that comes to their lips. It's not forced out of them, but you have to make them understand that you know what you're talking about, you know what happened out there on 55th and Damen, or you had a good idea."

¶ 46 The prosecutor again urged the jury to conclude that the witnesses' earlier statements were not the product of police coercion but rather that the witnesses recanted those statements at trial because they were intimidated by Mr. Jackson and the Vice Lords:

"Folks, I've got to tell you something. When these people were up here on the witness stand and they were crying and they were complaining about how the police locked them up and how this never happened and how this was all a lie, putting a case on Googy, they weren't talking for you. They weren't talking for you one bit. They were talking for this guy [Mr. Jackson] and the Conservative Vice Lords out there at 55th and Damen.

* * *

Can you imagine what will happen to them? Can you imagine what will happen to them if the Vice Lords find out they came in here and put it on him and said what he did?"

¶ 47 The jury deliberated for approximately seven hours that same day. At some time after 9 p.m., the jury submitted the following questions to the circuit court: "What is the law for hung jury? How long do we stay tonight? Is there a time limit? How do we sleep?" Defense counsel, noting that the jurors had been "arguing very loudly," asked the court to declare a mistrial. The court, confirming that "you [could] hear, without the specifics, vigorous discussion [was] going on," noted that the jurors were at least still talking and sequestered them for the evening.

¶ 48 The next day, July 25, 2003, the jury reached a verdict, finding Mr. Jackson guilty of the first degree murder of Mr. Jenkins and the aggravated battery with a firearm of Michael Watson.

¶ 49 At that point the court made a record of some previous questions the jury had asked, including, "We are ten to two and nobody is changing their mind. What do we do?" In response to that question, the jury had again been told to continue its deliberations. The jurors also asked to have read back to them the court's preliminary comments to the venire about using their common sense, but that request was denied.

¶ 50 The circuit court denied Mr. Jackson's motion for a new trial and sentenced him to concurrent prison terms of 45 years and 6 years. In affirming Mr. Jackson's conviction and sentence on direct appeal, we (1) held that the prosecutor's statements in closing argument regarding likely gang intimidation as an alternative explanation for why the recanting witnesses changed their stories were within the bounds of proper argument; (2) held that the prior inconsistent statements and grand jury testimony of the recanting witnesses was properly admitted as substantive evidence under section 115-10.1 of the Code (725 ILCS 5/115-10.1 (West 2000)); (3) agreed with a line of cases holding that prior inconsistent statements, alone, may sustain a conviction; and (4) rejected another line of cases holding that, without some independent corroboration, such statements are insufficient to support a finding of guilt. *Jackson*, slip order at 11, 15, 19, 25 (2006).

¶ 51 B. Postconviction Proceedings

¶ 52 On March 16, 2007, Mr. Jackson filed a *pro se* petition for postconviction relief, arguing that his trial counsel was ineffective in several respects, including for failing to call Ms. Davis or Mr. Brown as witnesses, and that his appellate counsel was ineffective for failing to raise the failures of his trial counsel on direct appeal. Relying on the testimony of the recanting witnesses

that their initial identifications had been coerced, Mr. Jackson also argued that he was denied a fair trial because the State knowingly used perjured statements to convict him. On May 25, 2007, the circuit court denied Mr. Jackson's request for counsel and summarily dismissed his petition as frivolous and without merit.

¶ 53 On June 2, 2017, Mr. Jackson, this time represented by counsel, sought leave to file a second postconviction petition, based on new evidence that he argued demonstrated his actual innocence or, in the alternative, met the threshold showing of cause and prejudice necessary for the filing of a successive petition. Mr. Jackson attached to his petition a number of documents he argued established a pattern and practice of police misconduct by the detectives involved in this case—Detectives Brian Forberg, John Foster, John Clisham, Edwin Kaup Jr., David Kowalski, Robert Bartik, and Kevin Howley—whom he referred to as "The Seven." The documentation included logs of citizen complaint reports (CR logs) alleging police misconduct and documents relating to a complaint made by Ms. Davis that officers harassed her. Mr. Jackson also referenced publicly available news articles and documents in civil suits relating to claims that certain detectives had coerced suspects and witnesses into giving false statements on other occasions. These documents purporting to show an alleged pattern and practice of police misconduct are discussed in more detail in our analysis.

¶ 54 Mr. Jackson also included with his motion three new affidavits, signed by Manny Stewart, Brandy Butler (signed as Brandi Grant), and Quiana Davis. In his affidavit, Mr. Stewart attested that he "saw a dark black man, who [he] knew as Rick Party, shooting" and immediately drove away from the gas station. When Mr. Stewart arrived home, he went to his room downstairs, which was next to Mr. Jackson's room, and noticed that the door was closed. Mr. Stewart believed Mr. Jackson had gone to bed earlier that night, before Mr. Stewart left the

house. Mr. Stewart then explained in some detail how he came to sign his initial statement at the police station, concluding by stating that Kevin Jackson was not the shooter and that Mr. Stewart only signed a statement implicating Mr. Jackson because he was "scared of the threats the police made."

¶ 55 In her affidavit, Ms. Butler stated that while she was in the Citgo gas station, she looked out the window and saw a man running with a gun in his hand, she "recognized [the] man from the neighborhood and it was not Kevin Jackson," the "shooter's skin was darker than Kevin's, the shooter's hair was braided and Kevin's was not, and the shooter was skinnier than Kevin." Ms. Butler likewise explained in detail how she came to sign her initial statement implicating Mr. Jackson.

¶ 56 Finally, in her affidavit, Quiana Davis stated that she had not testified before the grand jury and was not called to testify at Mr. Jackson's trial. Ms. Davis said that, on the morning of the shooting, she and Ms. Butler were celebrating a friend's birthday when they asked Mr. Stewart and Mr. Brown to take them to the Citgo gas station. Ms. Davis saw Meechie coming out of the store, knew it was dangerous for him to be in a rival gang's territory, and got back in the car. Ms. Butler, however, had already gone into the gas station. When the shooting began, Ms. Davis said that she got out of the car and started running. She saw Mr. Stewart and Mr. Brown drive away and also got a look at the shooter, who she said ran right by her and "was dark-skinned." Ms. Davis said she recognized the man "as someone from the neighborhood *** and certainly not Kevin Jackson," whom she grew up with and would have recognized if she had seen him. Realizing Ms. Butler was still at the gas station, Ms. Davis returned and the two called the police.

¶ 57 Ms. Davis said that she and Ms. Butler were picked up, separately interrogated, and gave

separate statements to the police that night. According to Ms. Davis, Detective Foster came to her home to interrogate her further about a week later and, a week after that, took her back to the police station, where she was interrogated for three days. Ms. Davis said the officers kept insisting that Mr. Jackson was the shooter and that Meechie had been flirting with her at the gas station, making Mr. Jackson jealous. She said "they just kept insisting that was the way it happened and pressur[ing] [her] to confirm their theory, no matter how many times [she] told them they were wrong." Ms. Davis offered to take a lie detector test and was told by Detective Foster that she had failed the test. She said "Detective Foster and the other detective yelled at [her], cursed at [her], called [her] a liar, and made [her] feel threatened and scared."

¶ 58 Ms. Davis explained how the detectives attempted to coerce her:

> "37. Throughout my three days in custody, the police threatened me in several ways. They told me they would charge me as an accessory to the murder, they told me that they would not let me go home again, and they told me my daughter could be taken away and that I would never see her again. I knew they did not have anything on me, because I had done nothing wrong. But it was still scary to have them threaten me like this and it upset me a lot.
>
> 38. After they let me go, the police continued to harass me. They came by my house at all hours of the day and night looking for me *** they came so often that my mom made me move out *** I had to move out of my home with my one-year old daughter and essentially go into hiding at my sister's house to avoid their harassment.
>
> * * *
>
> 45. I refused to give a statement naming Kevin as the shooter because he

was not the shooter. And unlike Brandi, Shemika and Vernon, who all had outstanding warrants against them during the timeframe of the investigation or had other serious things in their background, I did not have either a warrant against me or anything serious in my background, so the police were not able to threaten and intimidate me the way they did them."

¶ 59 Ms. Davis said that she did not hear about the case for a while after that, probably in part because she moved out of the neighborhood, but that "[e]ventually, [she] was told that [her] testimony would not be needed during [Mr. Jackson's] trial."

¶ 60 II. JURISDICTION

¶ 61 The circuit court denied Mr. Jackson leave to file his successive postconviction petition on June 15, 2017, and Mr. Jackson timely filed his notice of appeal on June 28, 2017. We have jurisdiction over this appeal pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 606 and 651, governing criminal appeals and appeals from final judgments in postconviction proceedings (Ill. S. Ct. R. 606 (eff. Dec. 11, 2014); R. 651(a) (eff. Feb. 6, 2013)).

¶ 62 III. ANALYSIS

¶ 63 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)) establishes procedures by which an incarcerated person may challenge his conviction or sentence by establishing that he suffered a substantial deprivation of constitutional rights in the proceedings resulting in that conviction. *Id.* § 122-1(a)(1). Postconviction proceedings in non-death penalty cases occur in three stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). At the first stage, the circuit court determines, without input from the State, whether a petition is frivolous or patently without merit. *Id.*; 725 ILCS 5/122-2.1(a)(2) (West 2016). At the second

stage, the circuit court appoints counsel to represent the defendant and, if necessary, to file an amended petition; at this stage, the State must either move to dismiss or answer the petition. *Gaultney*, 174 Ill. 2d at 418; 725 ILCS 5/122-4, 122-5 (West 2016). Only if the petition and accompanying documentation make a substantial showing of a constitutional violation does the defendant then proceed to the third stage, an evidentiary hearing on the merits. *People v. Silagy*, 116 Ill. 2d 357, 365 (1987); 725 ILCS 5/122-6 (West 2016).

¶ 64 "A postconviction proceeding is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings." *People v. Petrenko*, 237 Ill. 2d 490, 499 (2010). Its scope is limited to constitutional issues that were not, and could not have been, previously adjudicated. *People v. Whitfield*, 217 Ill. 2d 177, 183 (2005). Thus, the consideration of issues already decided by a reviewing court is barred by the doctrine of *res judicata*, and issues that could have been raised on direct appeal but were not are forfeited. *Id.*

¶ 65 In keeping with these principles, the Act contemplates the filing of only one postconviction petition. *People v. Ortiz*, 235 Ill. 2d 319, 328 (2009). Claims not raised in the original or an amended petition are generally forfeited. 725 ILCS 5/122-3 (West 2016).

¶ 66 This statutory bar is relaxed in two limited circumstances. Leave to file a successive postconviction petition will be granted when a petitioner either "assert[s] a freestanding claim of actual innocence based on newly discovered evidence" (*Ortiz*, 235 Ill. 2d at 331) or satisfies both prongs of the cause-and-prejudice test, *i.e.*, "demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice result[ing] from that failure" (725 ILCS 5/122-1(f) (West 2016) (codifying the test established by our supreme court in *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002))).

¶ 67 Although decisions granting or denying leave of court are generally reviewed for an

abuse of discretion, our supreme court has held that "the cause and prejudice determination is a question of law to be decided on the pleadings and supporting documentation submitted to the court by the defendant-petitioner." *People v. Bailey*, 2017 IL 121450, ¶ 24. Our review is therefore *de novo*. *People v. Wrice*, 2012 IL 111860, ¶ 50.

¶ 68 Mr. Jackson argues that the circuit court should have granted him leave to file a successive petition because he made a *prima facie* showing of both actual innocence and cause and prejudice. We address each of these claims in turn.

¶ 69 A. Actual Innocence

¶ 70 Mr. Jackson's primary focus on appeal, as it was in the circuit court, is on his claim of actual innocence—and on his argument that new evidence of a pattern and practice of police misconduct supports such a claim. We must reject this argument. To set forth a colorable claim of actual innocence in a successive postconviction petition, the petitioner's "request for leave of court and his supporting documentation [must] raise the probability that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." *People v. Edwards*, 2012 IL 111711, ¶ 31. Newly discovered evidence relied upon merely "to *supplement* an assertion of a constitutional violation with respect to [the] trial" does not constitute a "free-standing claim of innocence." (Emphasis added.) (Internal quotations marks omitted.) *People v. Hobley*, 182 Ill. 2d 404, 443-44 (1998); see also *People v. Collier*, 387 Ill. App. 3d 630, 636 (2008) (noting that " 'actual innocence' is not within the rubric of whether a defendant has been proved guilty beyond a reasonable doubt. [Citation.] Rather, the hallmark of 'actual innocence' means 'total vindication,' or 'exoneration.' ").

¶ 71 In *Hobley*, 182 Ill. 2d at 444, our supreme court rejected the argument that newly discovered evidence of "a pattern and practice of police torture" supported a freestanding claim

of actual innocence, finding instead that the defendant in that case sought "to supplement [his] assertion *** that his confessions were coerced and involuntary and that the introduction of th[o]se confessions violated his constitutional rights." Mr. Jackson's claim of actual innocence based on newly discovered evidence of a pattern and practice of police misconduct fails for the same reason.

¶ 72 Mr. Jackson also argues that he has demonstrated actual innocence on the basis of the three new affidavits presented with his motion for leave to file a second petition—from Mr. Stewart, Ms. Butler, and Ms. Davis. To support a claim of actual innocence, evidence "must be newly discovered; material and not merely cumulative; and of such conclusive character that it would probably change the result on retrial." (Internal quotation marks omitted.) *Ortiz*, 235 Ill. 2d at 333. Newly discovered evidence is "evidence that has been discovered since the trial and that the defendant could not have discovered sooner through due diligence." *Id.* at 334. Evidence is material if it is probative of the defendant's innocence. *People v. Coleman*, 2013 IL 113307, ¶ 96. It is cumulative when it adds nothing to what was already before the jury. *Ortiz*, 235 Ill. 2d at 335.

¶ 73 The new affidavits provided by Mr. Stewart and Ms. Butler are consistent with the testimony they provided at trial. Both of these witnesses testified that Mr. Jackson was not the shooter and that their prior statements to the contrary were coerced by the detectives who interrogated them. To the extent that the new affidavits provide some additional details regarding the person the witnesses claim was the actual shooter or the manner in which the witnesses say they were coerced by the police, those additional supporting details do not constitute evidence "of such conclusive character that it would probably change the result on retrial." (Internal quotation marks omitted.) *Id.* at 333. Nor do those additional details constitute evidence that Mr.

Jackson "could not have discovered sooner through due diligence." *Id.* at 334.

¶ 74 Ms. Davis's affidavit, however, is not cumulative of the testimony offered at trial by other witnesses. Evidence is only cumulative if it "adds nothing to what was already before the jury." *Id.* at 335. This case turned on credibility determinations. The testimony of another eyewitness, who knew Mr. Jackson well, who would have recognized him, and who did not identify him but instead described someone else as the shooter, would have added something new to the evidence before the jury. And, unlike the other witnesses, Ms. Davis never signed a statement implicating Mr. Jackson as the shooter.

¶ 75 The question remains, however, whether Ms. Davis's affidavit constitutes newly discovered evidence. We first reject the notion, which appears to have been adopted by the circuit court, that we should focus on whether the *information* Ms. Davis now offers is newly discovered. The trial court pointed to the fact that it is not new information to Mr. Jackson that he was not the shooter and that the police were trying to coerce witnesses into saying that he was. Our supreme court has made clear that a claim of actual innocence based on the testimony of an additional eyewitness previously unknown to the defendant constitutes a new "claim" of actual innocence. *Id.* at 333-35. To hold otherwise would prevent innocent defendants, necessarily aware of their own innocence, from ever asserting claims of actual innocence based on newly discovered evidence supporting their exoneration.

¶ 76 However, newly discovered evidence offered in support a claim of actual innocence must also be evidence "that the defendant *could not* have discovered sooner through due diligence." (Emphasis added.) *Id.* at 334. Ms. Davis states in her affidavit that she had to "go into hiding," was "on the run" to avoid police harassment, and eventually moved away from her neighborhood, indicating that it may not have been a simple matter for defense counsel to locate

and speak with her before trial. As the State points out, however, the unsigned affidavit of Ms. Davis that Mr. Jackson attached to his initial postconviction petition indicates that she *was* in contact with an investigator for the public defender's office before Mr. Jackson's trial ("I also talked to Kevin Jackson['s] investigator Mary Clements, [about] exactly what happen the night of the shooting, she explained to me that I'll be subpoena[ed] to testify in Kevin's trial."). And Ms. Davis's new, signed affidavit indicates that counsel ultimately told her that her testimony was not needed at trial ("Eventually, I was told that my testimony would not be needed during Kevin's trial. *** [T]he next time I recall hearing anything about Kevin's case was when he was sentenced."). Under these circumstances, Mr. Jackson has not shown that he could not have discovered Ms. Davis's exonerating testimony sooner through due diligence.

¶ 77 We agree with the circuit court that Mr. Jackson failed to satisfy his burden of showing that the material, noncumulative evidence of his innocence he has raised at this point could not have been discovered by him prior to trial. His motion for leave to file a second petition was thus properly denied as to his claim of actual innocence.

¶ 78 B. Cause and Prejudice

¶ 79 We next consider whether the documentation relied on by Mr. Jackson—though insufficient to support a freestanding claim of actual innocence—was nevertheless sufficient to support allegations of cause and prejudice based on a pattern and practice of police coercion. Mr. Jackson argues that because the trial evidence itself was so weak, any evidence that the officers in this case had engaged in coercive conduct similar to that alleged by the four recanting witnesses would have changed the outcome of the trial.

¶ 80 There are at least two possible avenues for the introduction of such evidence. A defendant might seek to introduce evidence of prior police misconduct to impeach a testifying

officer at trial. See *People v. Almodovar*, 2013 IL App (1st) 101476, ¶ 74 (finding it "plausible that a finder of fact could view the evidence of [a detective's] pattern of misconduct as leveling the playing field between [the detective] and [a recanting witness] in terms of credibility"). Alternatively, such evidence might be presented before trial, at a hearing on a motion to bar a recanting witness's prior statement. *Cf. People v. Reyes*, 369 Ill. App. 3d 1, 19 (2006) (concluding that "if even a fraction of the allegations" of misconduct against a detective had been presented before trial, "it appear[ed] likely that [the detective's] credibility would have been damaged and [the] defendant's confessions would have been suppressed"); *People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 66 (noting that it is a due process violation for a conviction to be based on testimony the police know is false).

¶ 81 We turn first to whether Mr. Jackson had cause for not seeking to present this evidence sooner. "[A] prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings ***." 725 ILCS 5/122-1(f) (West 2016). We have held that "[a] defendant's lack of evidence that an officer has committed misconduct in circumstances similar to those of the defendant can serve as cause for failing to fully raise that claim in prior proceedings." *People v. Jones*, 2017 IL App (1st) 123371, ¶ 181 (citing *Almodovar*, 2013 IL App (1st) 101476, ¶¶ 64-68). Here, alleged misconduct by some of the detectives in this case has come to light after Mr. Jackson filed his initial postconviction petition in 2007. The news articles attached to his petition were not written until 2013 and 2014, and the filings and decisions in the civil cases that Mr. Jackson has attached all date from 2009 or later. The CR logs, some of which refer to complaints made before Mr. Jackson's trial, are accompanied by correspondence and litigation documents showing that, after considerable efforts, Mr. Jackson's counsel only recently obtained them. Mr. Jackson has clearly

shown cause, in terms of an inability to present these recently obtained documents alleging police misconduct in an earlier proceeding.

¶ 82 The question then is whether Mr. Jackson has yet made a *prima facie* showing of prejudice. A defendant shows prejudice "by demonstrating that [a] claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." 725 ILCS 5/122-1(f) (West 2016). Mr. Jackson argues that evidence of a pattern and practice of police misconduct by the detectives in this case would have allowed him to more fully challenge both the prior inconsistent statements of the recanting witnesses and the State's claim that those statements were truthful, while the recantations at trial were not.

¶ 83 The State does not dispute that if these witnesses falsely identified Mr. Jackson as the shooter because they were coerced to do so, that would constitute a due process violation. Nor does the State dispute that evidence establishing that these officers engaged in a pattern of coercion that was similar to what the witnesses said occurred here could support such a claim. Although this court found on direct appeal that the State's evidence was sufficient to support a finding of guilt (*Jackson*, slip order at 16 (2006)), we agree with Mr. Jackson that evidence of past witness coercion by the same officers involved here may well have made a difference in the outcome of this case, particularly where there was no evidence, other than the recanting witnesses' inconsistent statements, tying Mr. Jackson to the shooting and the surviving victim clearly and consistently testified that Mr. Jackson was not the shooter. Such evidence would have flown in the face of the State's closing arguments, in which the prosecutor mocked the recanting witnesses' stories of coercion and invited the jury to share in his outrage that honest, hard-working officers could be subjected to baseless accusations of misconduct when they were

simply trying to do their jobs. Given the nature of the determination the jury was asked to make, we find it likely that evidence of a relevant pattern and practice of the same or similar conduct by the same detectives could have led the jury to conclude that there was reasonable doubt of Mr. Jackson's guilt.

¶ 84 At this point, however, the documentation that Mr. Jackson has been able to marshal in support of his motion fails to connect any new evidence of police misconduct to what happened in his own case. As an initial matter, although Mr. Jackson refers to the detectives who played the largest roles in this case, collectively, as "The Seven," he has provided no evidence that they worked together in other cases to coerce witnesses. Indeed, the news articles and documents from various civil suits that Mr. Jackson relies on indicate that these detectives did *not* routinely investigate crimes together as a team. Mr. Jackson has not argued that the detectives acted in concert, pursuant to an express or implied agreement to coerce witnesses, or advanced any other argument for why alleged wrongdoing by one of the detectives should be considered relevant to any of the other detectives. See *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 65 (1994) (recognizing that "once [a] conspiracy is formed, all of its members are liable for injuries caused by any unlawful acts performed pursuant to and in furtherance of the conspiracy"). Nor has he made supported allegations of a systemic pattern of witness coercion infecting an entire investigatory unit or department. See *People v. Patterson*, 192 Ill. 2d 93, 145 (2000) (noting that a report of the Chicago Police Department's office of professional standards concluded that torture like that alleged by the defendant in that case was "systemic and methodical at Area 2 under the command of [Lieutenant Jon] Burge"). In short, Mr. Jackson has given us no reason to attribute alleged bad acts by certain members of "The Seven" to the group as a whole, or even to some subset or partnership within the group.

¶ 85 We must therefore consider the alleged actions of each detective separately, finding other instances of misconduct by a particular officer to be relevant to Mr. Jackson's claim of prejudice only if those actions are similar to the misconduct the recanting witnesses in this case accused *that* officer of engaging in. See *People v. Nicholas*, 2013 IL App (1st) 103202, ¶ 40 (concluding that a defendant established prejudice where his claim that officers beat him into making a false confession was "strikingly similar *** as to the time period, location, manner, method, participants and the role of the participants" to prior acts of torture a special prosecutor found had taken place in other cases). We have carefully examined the details surrounding the other instances of alleged misconduct that Mr. Jackson cites in his motion for leave to file a successive petition and find that they fail to align in any meaningful way with what the witnesses in this case say those same officers did to them. We address the specifics officer by officer.

¶ 86 The only documents relating to other alleged misconduct by any of the three officers who interviewed Mr. Stewart and Ms. Davis (Detectives Clisham, Kaup, and Kowalski) consist of CR logs listing a handful of complaints filed over the years. These complaints are generally listed by category, with few details from which we can assess the nature of the misconduct reported. Of the 10 entries relating to Detective Clisham, who interrogated Mr. Stewart, all appear to have been either "not sustained" or "unfounded" and none involved the alleged intimidation or coercion of a witness. There is one CR log entry alleging that Detectives Kaup and Kowalski used excessive force to coerce a video confession in August 2002. But those detectives interrogated only Ms. Davis, who never provided any evidence against Mr. Jackson. Thus, these documents purporting to show a pattern and practice of witness coercion by these two detectives cannot be connected to Mr. Jackson's claim that evidence used to convict him was the result of coercion.

¶ 87 Documentation regarding prior conduct by Detective Bartik, in the form of a 2013 newspaper article quoting the testimony of an expert witness who was critical of Bartik's record of pre-test confessions over a five-year period ending in 2003 (see Duaa Eldeib, *Polygraphs and False Confessions in Chicago*, Chi. Trib., Mar. 10, 2013, http://www.chicagotribune.com/news/watchdog/ct-met-polygraph-confessions-20130310-story.html), is likewise not relevant because he questioned only Ms. Davis, who did not testify at trial. No connection has been made between anything Detective Bartik did and Mr. Jackson's conviction.

¶ 88 Mr. Jackson also points to the same news article as evidence of alleged misconduct by Detective Howley. The article quotes another expert witness who criticized Detective Howley's tactic of using a polygraph examination to extract a confession, purportedly in violation of relevant protocols governing such examinations. Here, Detective Howley questioned and administered a polygraph test to Mr. Stewart, who did in fact give a pretrial statement identifying Mr. Jackson. Missing, however, is any suggestion by Mr. Stewart that Detective Howley coerced him into giving a false statement. We understand that Mr. Jackson might not have been allowed to bring this information out at trial, since the trial court judge sustained defense counsel's objection to any testimony about the polygraph examination. But notably, Mr. Stewart's current affidavit also says nothing about his polygraph examination or about Detective Howley.

¶ 89 Turning to the two lead detectives in this case, Detectives Forberg and Foster, we are faced with the opposite situation: ample trial testimony regarding alleged coercion in this case but insufficient documentation supporting an alleged pattern and practice of similar misconduct by these officers. According to the trial testimony of Ms. Butler and Mr. Clay, these detectives held them in police custody for multiple days and coerced them into making their initial statements identifying Mr. Jackson as the shooter by threatening to charge them criminally if

they refused adopt the officers' version of events. Ms. Butler testified that she was warned she would give birth in prison and her child would be taken from her, and Mr. Clay additionally said he was tricked into signing his initial statement, which he thought was something he needed to sign to have his personal property returned to him before he could leave the police station. Ms. Mason similarly testified that she was held overnight by the two detectives and was told that if she went along with what they wanted her to say, an outstanding warrant for her arrest would be "take[n] care of."

¶ 90 Aside from the CR logs, which contain no allegations of witness coercion, Mr. Jackson points to a complaint in a civil suit naming Detectives Forberg and Foster, along with a number of other defendants, and alleging generally that "the defendants" withheld food and water from witnesses and manipulated them into giving false statements, without specifically identifying Forberg or Foster as the perpetrators of this alleged misconduct. Complaint at 4, *Patterson v. City of Chicago*, No. 11 CV 07052, ECF No. 1, (N.D. Ill. 2011). Mr. Jackson also relies on a federal district court opinion granting summary judgment in favor of the defendant police officers in that case, where the court recounted, as part of the "facts on which the parties agree[d]," how Detective Forberg (working with a different partner) obtained statements from witnesses after interrogating them for many hours without bathroom breaks. *Bridewell v. City of Chicago*, No. 08 C 4947, 2012 WL 2458548, at * 1 (N.D. Ill. June 27, 2012). Even taking the allegations in the civil suit as true, this documentation, by itself, is "insufficient to justify further proceedings" (internal quotation marks omitted) (*Bailey*, 2017 IL 121450, ¶ 21). The conduct alleged—coercion by withholding food, water, and bathroom breaks or by "manipulate[ing]" witnesses is similar but not "strikingly similar" to the alleged coercion in this case, which the recanting witnesses made clear was primarily achieved through threats that criminal charges

would be pursued against them if they did not name Mr. Jackson as the shooter. One of the incidents Mr. Jackson offers as indicia of a pattern and practice of misconduct took place five years after the investigation and three years after the trial in this case. And in only one of the cases did the detectives together, as partners, interrogate witnesses, as they did in this case. We are simply unable to conclude that in this successive petition Mr. Jackson has supplied "enough in the way of documentation" to "justify further proceedings" (internal quotation marks omitted) (*id.* ¶ 21) on his claim that he was prejudiced by the inability to present evidence that the detectives in this case engaged in a pattern and practice of similar witness coercion in other cases.

¶ 91 We are well aware that police misconduct, including witness coercion, does occur. We also understand that courts must play a significant role in ensuring that individuals are not wrongfully imprisoned as a result of such tactics. Although the cause-and-prejudice test represents a significant hurdle, successive postconviction petitions are a proper tool for prisoners to raise previously unavailable evidence of police misconduct and to point out similarities between that conduct and what occurred in their cases, as such evidence becomes available. The test is met when a defendant can connect specific misconduct resulting in his conviction to sufficiently similar misconduct by the same officer or officers. If more evidence of misconduct is uncovered—either through proceedings in other cases, news coverage, the ongoing investigation of counsel where a prisoner is fortunate enough to be represented, or because witnesses have come forward with new information—and as patterns of misconduct are established with respect to individual officers or investigatory teams, a petitioner may be able to more closely connect documentation of improper tactics to his own conviction. And as our supreme court has made clear, even a third or fourth petition may be allowed, provided that a petitioner can overcome the

hurdle of showing cause and prejudice. *Edwards*, 2012 IL 111711 ¶ 22.

¶ 92 Here, although Mr. Jackson and his counsel were able to gather a number of documents relating to alleged police misconduct, they have not, at this point, made the necessary connection between the alleged misconduct of any one officer that Mr. Jackson claims led to his conviction and a pattern and practice of sufficiently similar misconduct by that same officer. We must therefore affirm the circuit court's denial of Mr. Jackson's motion for leave to file a successive postconviction petition.

¶ 93 IV. CONCLUSION

¶ 94 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 95 Affirmed.

NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (1st) 171773

FIRST DISTRICT
FIRST DIVISION
September 28, 2018
Rehearing denied March 29, 2019

No. 1-17-1773

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 01-CR-17492 Honorable Evelyn B. Clay, Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court, with opinion.
Justices Pierce and Harris concurred in the judgment and opinion.
PRESIDING JUSTICE MIKVA also dissented upon denial of rehearing, with opinion.

OPINION

¶ 1 Following a jury trial, defendant Kevin Jackson was convicted of first degree murder and aggravated battery with a firearm, convictions this court affirmed on direct appeal. The State's case rested on the prior inconsistent statements of three eyewitnesses. By the time of trial, each of those witnesses had recanted, telling the jury that their previous statements identifying Mr. Jackson as the shooter were the result of police coercion. Mr. Jackson now appeals from the denial of his motion seeking leave to file a successive postconviction petition, which is supported by documents he contends establish a pattern and practice of misconduct by the group of detectives responsible for the investigation that led to his trial and conviction. Mr. Jackson

argues that the circuit court incorrectly determined that this new evidence of a pattern and practice of police misconduct was insufficient to establish either a freestanding claim of actual innocence or to make the threshold showing of cause and prejudice otherwise necessary to file a successive petition. He asks us to reverse the circuit court's order and to remand this matter either for a second-stage hearing, to determine if there is a substantial basis for his claimed constitutional violations, or for a third-stage evidentiary hearing, on the basis that he has already made such a showing.

¶ 2 For the reasons that follow, we affirm the circuit court's order denying Mr. Jackson leave to file his successive petition. The new evidence that Mr. Jackson presents does not support a freestanding claim of actual innocence. And although we are mindful of the difficulties faced by defendants seeking to uncover and document police misconduct, we are unable to conclude that Mr. Jackson has met the high bar here of showing both cause and prejudice. The documentation offered in support of his motion—which we have scrutinized with care—fails to draw sufficient connections between the specific acts of police coercion alleged in this case and a pattern and practice of similar misconduct by the same officers.

¶ 3 I. BACKGROUND

¶ 4 At approximately 1:30 a.m. on May 6, 2001, Ernest Jenkins drove his car to a Citgo gas station on the corner of Damen Avenue and 55th Street in Chicago. The car's passengers—Michael Watson and Michael's nephew, Stanley "Meechie" Watson—exited the vehicle to pump and pay for gas. Shots rang out, and Michael and Mr. Jenkins were both struck. Michael survived, but Mr. Jenkins died of his injuries later that same day. Following a police investigation, Mr. Jackson was arrested on June 19, 2001. In July 2001 he was indicted by a grand jury on multiple counts, including first degree murder and aggravated battery with a

firearm.

¶ 5 The evidence presented at trial was summarized in this court's order affirming Mr. Jackson's convictions on direct appeal (*People v. Jackson*, 364 Ill. App. 3d 1050 (2006) (table) (unpublished order under Supreme Court Rule 23), and that summary has been largely adopted by both the circuit court in its postconviction orders and the State in this appeal. However, we have restated many of the facts here because we believe that some of the details that are omitted from that Rule 23 order are relevant to showing how close the evidence was at trial.

¶ 6 A. Evidence Presented at Trial

¶ 7 At trial, the State's theory of the case was that the shooting was a turf dispute involving members of rival gangs. According to the State, Mr. Jackson, known in the neighborhood as "Googie" or "Googy," was a Vice Lord who shot at Meechie Watson, a Gangster Disciple, because the gas station Meechie stopped at was in Vice Lord territory and because, while at the gas station, Meechie talked to Mr. Jackson's girlfriend, Quiana (sometimes referred to as Quina) Davis. Although Meechie escaped unharmed, Michael Watson and Ernest Jenkins, finding themselves between Mr. Jackson and his target, were both shot, and Mr. Jenkins was killed.

¶ 8 To support its theory, the State relied on the signed statements of four eyewitnesses—Brandy Butler (also known as Brandy Grant or Brandi Grant), Vernon Clay, Manuel "Manny" Stewart, and Shemika Mason—which were admitted into evidence pursuant to section 115-0.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.1 (West 2000)). That section of the Code provides that prior inconsistent statements are substantively admissible if the witness is subject to cross-examination at trial and the statements were made from personal knowledge and were written or signed by the witness. In their statements, each of these witnesses identified Mr. Jackson as the shooter and indicated that he or she was treated well by the police

and not promised anything in exchange for signing a statement. Three of the witnesses—Ms. Butler, Mr. Clay, and Mr. Stewart—also testified before a grand jury, where they confirmed the accuracy and truthfulness of their signed statements.

¶ 9 At trial, however, none of these witnesses identified Mr. Jackson as the shooter. They instead each testified that they had been threatened and coerced by detectives into signing the statements and giving the grand jury testimony implicating Mr. Jackson. No forensic evidence connected Mr. Jackson to the crime, and Michael Watson, the surviving victim and the only other eyewitness to the shooting who testified at trial, stated unequivocally that Mr. Jackson looked nothing like the man who shot him.

¶ 10 These prior statements, refuted on the stand by the witnesses who gave them, were the evidence of Mr. Jackson's guilt that was presented at trial. The trial testimony of each of the witnesses, and how it differed from their pretrial statements, is discussed below.

¶ 11 1. The Recanting Witnesses

¶ 12 a. Brandy Butler

¶ 13 In her signed pretrial statement given to the police and Assistant State's Attorney (ASA) Colleen Daly and in her grand jury testimony, Ms. Butler stated that on May 6, 2001, Manny Stewart drove her, Mr. Jackson, Quiana Davis, and Mario Brown to the Citgo gas station in a car Mr. Stewart and Mr. Jackson owned together. As Ms. Butler exited the vehicle, she saw Meechie Watson, who called out to her and Ms. Davis. Ms. Butler continued into the gas station to make a purchase and, while inside, heard four or five gunshots, looked out the window, and saw Mr. Jackson, a member of the Vice Lords, firing a gun in the direction of Meechie, a Gangster Disciple. Ms. Butler said she then got down on the floor and did not see where anyone went.

¶ 14 At trial, however, Ms. Butler denied that Mr. Jackson was the shooter. She testified

instead that she had known Mr. Jackson for "[a] long time," that they had grown up in the same neighborhood, and that he was "nowhere around" at the time of the shooting. Ms. Butler testified that she arrived at the gas station with Mr. Stewart, Ms. Davis, and Mr. Brown and, as she was standing in line inside the gas station, she heard "ten or more" gunshots and "hit the ground."

¶ 15 Ms. Butler gave the following explanation for how she came to sign her statement identifying Mr. Jackson as the shooter:

> "I just was ready to go because I was harassed. I was everything. I was three months pregnant. I was going through a lot. I'm stressed out still right now to this day 'cause I lied on him. They had me to lie on him. They told—they coerced me, Judge, I promise you. They made this story up. They kept saying Googie did it. He did not do it. He was nowhere around. And I'm not saying that for the simple fact, you know, that I'm scared of anybody. He didn't do it. He was nowhere around. He was not in the car with us. *** The detectives would not listen to me. They was not trying to hear anything. They told us that if we did not say who did that, that it would be crimes on us 'cause we was there that night at the gas station. And I was just ready to go. And I'm sorry for what I did and I just signed the statement on you because I was ready to go and they said we was gonna beat that case and I just did it because I have kids. I was there that night. I wish I wasn't there. It was a nightmare.
>
> * * *
>
> A. And I'm suffering now for what I did.
>
> (Witness crying.)
>
> THE COURT: Do you want some water, Miss?

A. No. Thank you, ma'am."

¶ 16 b. Vernon Clay

¶ 17 According to his signed pretrial statement given to Detective Brian Forberg and ASA Lisa Hennelly, Vernon Clay was also at the gas station at the time of the shooting and had walked, not driven, there with Ms. Butler and Ms. Mason. When they arrived, Mr. Clay said they saw Ms. Davis "jumping out of [Mr. Jackson's] car." He explained that Mr. Jackson and Ms. Davis were "fooling around but [we]re not boyfriend and girlfriend." Mr. Clay told police that he and Mr. Jackson were members of the Vice Lords, and at the gas station that night they saw Meechie, a Gangster Disciple, who "started talking to [Ms. Davis] about messing around." Mr. Clay said that he, Ms. Butler, Ms. Mason, Ms. Davis, and Meechie all went into the gas station, while Mr. Jackson and Mr. Stewart remained in their car. Meechie and Ms. Davis were still talking together when the group exited the gas station. It was then that Mr. Clay heard gunshots. He looked up and saw Mr. Jackson fire about eight shots into a parked car and Meechie running away. Mr. Jackson then ran from the scene.

¶ 18 Mr. Clay recounted a similar version of events in his grand jury testimony. Instead of saying that Ms. Davis was getting out of Mr. Jackson's car when Mr. Clay, Ms. Butler, and Ms. Mason arrived, however, he said that Ms. Davis had walked to the gas station with them. Mr. Stewart also said that Meechie loudly sexually propositioned Ms. Davis as the two were talking at the gas station and that the two of them "used to go together." Mr. Stewart said that, after exiting the gas station, he had "turned [his] back" and "walk[ed] across the park" when he heard the gunshots and ran. When asked if he ever looked back to see who was shooting, Mr. Stewart said he did and it was "Googi shooting at Meechie."

¶ 19 At trial, however, Mr. Clay insisted that he was not even present at the gas station for any

of these events. He testified that he was sleeping at home at the time of the shooting and did not know anything about it until he was given details by Detective Forberg at the police station. Mr. Clay explained that he only signed what the police claimed was his pretrial statement to the contrary after he was kept in a room at the police station for a whole day before anyone spoke to him and in custody for a total of three days. He claimed that the police threatened him with imprisonment, said it would "cost [him]" if he did not testify, and threatened to inform everyone on the street that he had cooperated with the police and identified Mr. Jackson as the shooter. At trial, Mr. Clay claimed he never actually gave a statement to Detective Forberg and ASA Hennelly, denied initialing a correction made to the third page of the statement, and denied signing the middle of the fifth page, though he admitted signing the bottom of each page of the statement. He further denied that it was his signature on the back of Mr. Jackson's photograph.

¶ 20 Mr. Clay also claimed that he never read what the police said was his statement, that he only signed it because he thought it was something he needed to sign to get his property returned to him, and that did not realize what he had signed until June 28, 2001, when officers drove him to the courthouse to testify before the grand jury. According to Mr. Clay, at that time they reminded him of "how many times [he] was convicted, how many cases [he] was fighting" and instructed him to say "yes" to every question or he "would never see the streets again." Mr. Clay denied telling Detective Forberg that he feared gang retaliation or that Mr. Jackson had warned him not to speak to the police.

¶ 21 c. Shemika Mason

¶ 22 Ms. Mason's signed pretrial statement, given to ASA Daly and read into the record at trial by Ms. Daly, identified "Kevin Johnson who was nicknamed Googi" as the shooter. This was apparently a transcription error, as everyone involved in this case has treated the statement

as referring to Mr. Jackson. Ms. Mason said in her statement that Mr. Stewart drove her, "Googi," Ms. Butler, and Ms. Davis to the Citgo gas station on the night of the shooting. Ms. Mason and Ms. Butler went into the gas station and Ms. Davis stayed outside, talking to a Gangster Disciple member named Meechie. Mr. Stewart and Googi remained seated in the front of the vehicle. Ms. Mason said that, when she left the gas station, Googi was standing near an alley with a gun in his hand, and she saw him fire in Meechie's direction four or five times. In her statement Ms. Mason also said that Googi later warned them not to talk to the police about what had happened.

¶ 23 At trial, however, Ms. Mason testified that she was not even at the gas station during the shooting. She denied telling police that she went there with Ms. Davis and Ms. Butler or that she saw Mr. Jackson at the gas station talking to Meechie. She further denied that, after the shooting, Mr. Jackson instructed her, Ms. Butler, and Ms. Davis not to talk to the police.

¶ 24 Ms. Mason testified that she was interrogated by the police all night before meeting with an assistant state's attorney who wrote out her statement, that the police were "telling [her] what they wanted [her] to say," that she "had a warrant at the time" and "was running from the police," and that they promised her that if she "went along with what they want[ed her] to say," they would "take care of [her outstanding] warrant." Ms. Mason told the jury she signed the statement simply because she did not want to go to jail. She denied telling the police either that she went to the Citgo gas station with Ms. Davis, Ms. Butler, Mr. Stewart, and Mr. Jackson to purchase cigars or that she saw Mr. Jackson there talking to Meechie. Ms. Mason also testified that she did not remember telling ASA Daly about Mr. Jackson's gang membership, about a conversation between Ms. Davis and Meechie at the gas station, or that she saw Mr. Jackson shoot in Meechie's direction. She also denied telling ASA Daly that Mr. Jackson later warned

Ms. Mason, Ms. Butler, and Ms. Davis not to talk to the police about what happened.

¶ 25 Ms. Mason was not called as a witness to testify before the grand jury.

¶ 26 d. Manuel Stewart

¶ 27 In his signed pretrial statement given to Detective John Clisham and ASA Hennelly, Manny Stewart, Mr. Jackson's cousin, stated that he and Mr. Jackson drove to the Citgo gas station together on the night of the shooting—in a car that the two of them owned together and had shared for "two years at the most"—with Ms. Davis, Ms. Butler, and Mr. Stewart's brother, Mr. Brown. Mr. Stewart stated that he and Mr. Jackson were both members of the Vice Lords and that, at the gas station, they saw Meechie, a member of the rival Gangster Disciples, talking to Ms. Davis. According to Mr. Stewart's statement, Mr. Jackson noticed Meechie just as Mr. Jackson was crossing the street to talk to a man named Ernie. Mr. Stewart said that other people were around and people were getting in and out of his car. After a couple of minutes, he heard a gunshot, turned around, and saw Mr. Jackson shooting into a parked car, at which point Mr. Stewart drove away from the gas station. Mr. Stewart gave a similar account implicating Mr. Jackson in the shooting to the grand jury.

¶ 28 At trial, Mr. Stewart denied this version of events, testifying instead that he was at the gas station with only Mr. Brown, Ms. Butler, and Ms. Davis. Mr. Stewart said that he saw Ms. Davis talking to Meechie, heard gunshots, and drove away from the gas station with Mr. Brown. Mr. Stewart testified that he saw the shooter as he drove away and that it was not Mr. Jackson but rather was an individual named Rick Party, whom Mr. Stewart had initially told the police was the shooter. Mr. Stewart agreed that he was taken somewhere to see a polygraph examiner but—following an objection by defense counsel to this line of questioning that was sustained by the circuit court—was prevented from providing any details about that encounter.

¶ 29 Mr. Stewart told the jury that he lied when he implicated Mr. Jackson, both in his statement and in his testimony before the grand jury. When asked why, Mr. Stewart explained:

> " A. 'Cause they scared me. They said they was gonna lock me up for it or whatever.
>
> Q. They said they were going to lock you up for the murder?
>
> A. Yes, sir.
>
> * * *
>
> A. 'Cause I thought they was gonna pin the murder on me and they really wanted me to put it on him, sir. They had already had two other statements that was signed with him saying he did it.
>
> * * *
>
> *** I wasn't thinking about nobody else [*sic*] life, I was just thinking about myself."

¶ 30 2. Other Prosecution Witnesses

¶ 31 The State also called the surviving victim, Michael Watson, who testified unequivocally that Mr. Jackson was not the shooter. Michael testified that as he, Mr. Jenkins, and Meechie pulled into the Citgo gas station, he warned Meechie that they were in Vice Lord territory, but Meechie would not listen and headed toward the gas station to pay for the gas. When Michael exited the car to pump the gas, Meechie told him that a Vice Lord was coming their way. Michael testified that he looked up and saw his shooter from a distance of about 120 feet, describing him as a small, thin, African-American male, weighing around 120 pounds, whom Michael had never seen before. When asked if he recognized Mr. Jackson, Michael said, "I never seen that young man before" and he "don't look nothing like the guy 'cause the guy who shot

me, when I say black, I mean he's a black person, but he was dark, dark black."

¶ 32 In addition to these occurrence witnesses, the State called several of the officers and two of the assistant state's attorneys who worked on the case.

¶ 33 Detective Kevin Howley testified that when he interviewed Mr. Stewart, Mr. Stewart told him that he saw Mr. Jackson shoot the victims and that he had only previously implicated an individual named Rick Party to protect Mr. Jackson.

¶ 34 Forensic investigator Robert Tovar testified that he recovered six cartridge cases from near Mr. Jenkins's car and a fired bullet from the floor of the car. Dr. Adrienne Segova testified regarding Mr. Jenkins's cause of death: multiple gunshot wounds caused by bullets traveling from left to right through his body.

¶ 35 Detective Forberg testified that, after interviewing the surviving victim, Michael Watson, Detective Forberg and his partner, Detective John Foster, began looking for a car Michael had described to them—a "box-style Chevy with tan doors and primer painting" at the front and rear of the vehicle. Police found a car matching that description on May 18, 2001, 12 days after the shooting and approximately two blocks from where the shooting occurred. When they found the car it was occupied by Mr. Jackson and Mr. Brown. Michael Watson was brought in to view a photo array containing photos of both individuals but said that neither of them was the shooter. Michael did, however, identify a picture of the car that Mr. Jackson and Mr. Brown were found in as the vehicle he had described to police. He told them that he had seen the shooter sitting in the same car outside a liquor store approximately one month prior to the shooting. The photo of the car that police showed Michael was the same photo identified at trial by Mr. Stewart and Ms. Butler as the car that Mr. Stewart and Mr. Jackson shared, which Mr. Stewart used to drive himself, Ms. Davis, Ms. Butler, and Mr. Brown to the Citgo gas station on the night of the

shooting.

¶ 36 Most of the rest of the State's case was an attempt to convince the jury to believe the initial statements of the recanting witnesses, rather than their trial testimony. Detective Forberg recounted his interrogations of Mr. Clay and read Mr. Clay's statement into the record. According to Detective Forberg, Mr. Clay initially identified a fellow Vice Lord named Norman Mcintosh as the shooter but later changed his story, saying that Mr. Jackson was the shooter and had arrived at the gas station with Ms. Davis and Mr. Stewart.

¶ 37 Detective Forberg denied that Mr. Clay was forced to stay overnight at the police station and claimed that, instead, Mr. Clay had asked to stay there, telling the officers that he feared gang retaliation. Detective Forberg said, "I don't think he was happy about spending the night with us," but also that Mr. Clay never asked to leave because "[i]t was explained to him that the information that he conveyed to [the officers] needed to be checked out and he understood that [they] had to check out what he had told [them]."

¶ 38 Detective Clisham testified that, once he was informed of some things that Mr. Stewart had already told Detective Kevin Howley, he interrogated Mr. Stewart himself. Detective Clisham confirmed that what Mr. Stewart told him corresponded to Mr. Stewart's signed statement, which the detective then read into the record. When asked what happened next, Detective Clisham stated:

> "A. Um—Stewart was informed that he would be going to the—asked if he wanted to go to the Grand Jury the next morning. He stated that—um—he'd go. Basically, he wasn't too happy about it; but he said he'd stick around and go."

According to Detective Clisham, Mr. Stewart initially falsely identified the shooter to detectives as a member of the Vice Lords known as Rick Party in order to protect Mr. Jackson. However,

he later told Detective Clisham that Mr. Jackson was the shooter.

¶ 39 ASA Daly testified that, after meeting Detectives Foster and Forberg, she wrote out the statements of Ms. Mason and Ms. Butler. In each case, she first met alone with the witness to confirm that the witness had not been mistreated, threatened, or promised anything in exchange for the statement, then read the statement back to the witness, giving the witness an opportunity to make any necessary changes. Ms. Daly then read the statements into the record. On cross-examination, Ms. Daly acknowledged that she had no idea how long Ms. Mason and Ms. Butler were questioned before she arrived to take their statements.

¶ 40 ASA Lanahan testified that she met with Mr. Stewart, Ms. Butler, and Mr. Clay before each of them provided testimony before the grand jury. She reviewed with each witness his or her prior written statement and confirmed that it was correct, was not given while under the influence, and was not the result of threats or promises. Ms. Lanahan testified that, while questioning the witnesses before the grand jury, she again had occasion to show them their prior written statements. Ms. Lanahan then read the witnesses' grand jury testimony into the trial record in this case.

¶ 41 Mr. Jackson called no witnesses to testify and elected not to testify on his own behalf.

¶ 42 3. Closing Arguments and Verdict

¶ 43 In its closing argument, the State encouraged the jury to believe the prior inconsistent statements made by the recanting witnesses over their trial testimony, pointing out that several of those statements were corroborated by the witnesses' testimony before the grand jury, which the prosecutor explained was "a secret proceeding done outside the presence of police." The prosecutor also stressed how powerful those incriminating statements were, coming as they did from Mr. Stewart, who was Mr. Jackson's cousin; his friends, Ms. Mason and Ms. Butler; and

his fellow gang member, Mr. Clay. He then urged the jury to conclude that the witnesses had changed their stories at trial because they were afraid to testify against Mr. Jackson, a known gang member, while he was in the same room with them:

> "Do you really expect those witnesses to come into this courtroom, as the defendant sits here looking at him or at them, do you really expect those witnesses to be able to point to the defendant and tell you that he's the shooter, that he's the killer? Of course not. Use your common sense."

¶ 44 Defense counsel, in turn, urged the jury to believe the witnesses when they testified that they had been coerced into naming Mr. Jackson as the shooter, arguing that the detectives "wanted to sweat these people." He reminded the jury that all of the witnesses "had stuff hanging over their heads" and that the assistant state's attorney who arrived later to take down their statements was not there for the many hours the detectives held the witnesses without charging them with anything.

¶ 45 In rebuttal, the prosecutor mocked the accusations of witness coercion ("[C]an you believe it, ladies and gentleman? Poor, poor Kevin Jackson. Brian Forberg is after you."), saying that he felt sorry for Detectives Forberg and Foster, and would not want to have their jobs because "[n]ot only do you have to deal with the people you saw on the witness stand and guys like this [apparently referring to Mr. Jackson or his counsel], but you've got to come into court and get smashed by people who aren't even paying attention to what you're doing or trying to do, which is investigate a crime. Your reputation has to get sullied by people that aren't even paying attention." The prosecutor also stressed how difficult it was for the detectives to do their jobs when confronted with untruthful witnesses:

> "And it's not because they're trying to harass people or do bad things. It's

> because, unlike normal folks, some of these folks that you have seen and heard from, ladies and gentlemen, the truth is not the first thing that comes to their lips. It's not forced out of them, but you have to make them understand that you know what you're talking about, you know what happened out there on 55th and Damen, or you had a good idea."

¶ 46 The prosecutor again urged the jury to conclude that the witnesses' earlier statements were not the product of police coercion but rather that the witnesses recanted those statements at trial because they were intimidated by Mr. Jackson and the Vice Lords:

> "Folks, I've got to tell you something. When these people were up here on the witness stand and they were crying and they were complaining about how the police locked them up and how this never happened and how this was all a lie, putting a case on Googy, they weren't talking for you. They weren't talking for you one bit. They were talking for this guy [Mr. Jackson] and the Conservative Vice Lords out there at 55th and Damen.
>
> * * *
>
> Can you imagine what will happen to them? Can you imagine what will happen to them if the Vice Lords find out they came in here and put it on him and said what he did?"

¶ 47 The jury deliberated for approximately seven hours that same day. At some time after 9 p.m., the jury submitted the following questions to the circuit court: "What is the law for hung jury? How long do we stay tonight? Is there a time limit? How do we sleep?" Defense counsel, noting that the jurors had been "arguing very loudly," asked the court to declare a mistrial. The court, confirming that "you [could] hear, without the specifics, vigorous discussion [was] going

on," noted that the jurors were at least still talking and sequestered them for the evening.

¶ 48 The next day, July 25, 2003, the jury reached a verdict, finding Mr. Jackson guilty of the first degree murder of Mr. Jenkins and the aggravated battery with a firearm of Michael Watson.

¶ 49 At that point the court made a record of some previous questions the jury had asked, including, "We are ten to two and nobody is changing their mind. What do we do?" In response to that question, the jury had again been told to continue its deliberations. The jurors also asked to have read back to them the court's preliminary comments to the venire about using their common sense, but that request was denied.

¶ 50 The circuit court denied Mr. Jackson's motion for a new trial and sentenced him to concurrent prison terms of 45 years and 6 years. In affirming Mr. Jackson's conviction and sentence on direct appeal, we (1) held that the prosecutor's statements in closing argument regarding likely gang intimidation as an alternative explanation for why the recanting witnesses changed their stories were within the bounds of proper argument; (2) held that the prior inconsistent statements and grand jury testimony of the recanting witnesses was properly admitted as substantive evidence under section 115-10.1 of the Code (725 ILCS 5/115-10.1 (West 2000)); (3) agreed with a line of cases holding that prior inconsistent statements, alone, may sustain a conviction; and (4) rejected another line of cases holding that, without some independent corroboration, such statements are insufficient to support a finding of guilt. *Jackson*, slip order at 11, 15, 19, 25 (2006).

¶ 51 B. Postconviction Proceedings

¶ 52 On March 16, 2007, Mr. Jackson filed a *pro se* petition for postconviction relief, arguing that his trial counsel was ineffective in several respects, including for failing to call Ms. Davis or Mr. Brown as witnesses, and that his appellate counsel was ineffective for failing to raise the

failures of his trial counsel on direct appeal.Relying on the testimony of the recanting witnesses that their initial identifications had been coerced, Mr. Jackson also argued that he was denied a fair trial because the State knowingly used perjured statements to convict him. On May 25, 2007, the circuit court denied Mr. Jackson's request for counsel and summarily dismissed his petition as frivolous and without merit.

¶ 53 On June 2, 2017, Mr. Jackson, this time represented by counsel, sought leave to file a second postconviction petition, based on new evidence that he argued demonstrated his actual innocence or, in the alternative, met the threshold showing of cause and prejudice necessary for the filing of a successive petition. Mr. Jackson attached to his petition a number of documents he argued established a pattern and practice of police misconduct by the detectives involved in this case—Detectives Brian Forberg, John Foster, John Clisham, Edwin Kaup Jr., David Kowalski, Robert Bartik, and Kevin Howley—whom he referred to as "The Seven." The documentation included logs of citizen complaint reports (CR logs) alleging police misconduct and documents relating to a complaint made by Ms. Davis that officers harassed her. Mr. Jackson also referenced publicly available news articles and documents in civil suits relating to claims that certain detectives had coerced suspects and witnesses into giving false statements on other occasions. These documents purporting to show an alleged pattern and practice of police misconduct are discussed in more detail in our analysis.

¶ 54 Mr. Jackson also included with his motion three new affidavits, signed by Manny Stewart, Brandy Butler (signed as Brandi Grant), and Quiana Davis. In his affidavit, Mr. Stewart attested that he "saw a dark black man, who [he] knew as Rick Party, shooting" and immediately drove away from the gas station. When Mr. Stewart arrived home, he went to his room downstairs, which was next to Mr. Jackson's room, and noticed that the door was closed. Mr.

Stewart believed Mr. Jackson had gone to bed earlier that night, before Mr. Stewart left the house. Mr. Stewart then explained in some detail how he came to sign his initial statement at the police station, concluding by stating that Kevin Jackson was not the shooter and that Mr. Stewart only signed a statement implicating Mr. Jackson because he was "scared of the threats the police made."

¶ 55 In her affidavit, Ms. Butler stated that while she was in the Citgo gas station, she looked out the window and saw a man running with a gun in his hand, she "recognized [the] man from the neighborhood and it was not Kevin Jackson," the "shooter's skin was darker than Kevin's, the shooter's hair was braided and Kevin's was not, and the shooter was skinnier than Kevin." Ms. Butler likewise explained in detail how she came to sign her initial statement implicating Mr. Jackson.

¶ 56 Finally, in her affidavit, Quiana Davis stated that she had not testified before the grand jury and was not called to testify at Mr. Jackson's trial. Ms. Davis said that, on the morning of the shooting, she and Ms. Butler were celebrating a friend's birthday when they asked Mr. Stewart and Mr. Brown to take them to the Citgo gas station. Ms. Davis saw Meechie coming out of the store, knew it was dangerous for him to be in a rival gang's territory, and got back in the car. Ms. Butler, however, had already gone into the gas station. When the shooting began, Ms. Davis said that she got out of the car and started running. She saw Mr. Stewart and Mr. Brown drive away and also got a look at the shooter, who she said ran right by her and "was dark-skinned." Ms. Davis said she recognized the man "as someone from the neighborhood *** and certainly not Kevin Jackson," whom she grew up with and would have recognized if she had seen him. Realizing Ms. Butler was still at the gas station, Ms. Davis returned and the two called the police.

¶ 57 Ms. Davis said that she and Ms. Butler were picked up, separately interrogated, and gave separate statements to the police that night. According to Ms. Davis, Detective Foster came to her home to interrogate her further about a week later and, a week after that, took her back to the police station, where she was interrogated for three days. Ms. Davis said the officers kept insisting that Mr. Jackson was the shooter and that Meechie had been flirting with her at the gas station, making Mr. Jackson jealous. She said "they just kept insisting that was the way it happened and pressur[ing] [her] to confirm their theory, no matter how many times [she] told them they were wrong." Ms. Davis offered to take a lie detector test and was told by Detective Foster that she had failed the test. She said "Detective Foster and the other detective yelled at [her], cursed at [her], called [her] a liar, and made [her] feel threatened and scared."

¶ 58 Ms. Davis explained how the detectives attempted to coerce her:

> "37. Throughout my three days in custody, the police threatened me in several ways. They told me they would charge me as an accessory to the murder, they told me that they would not let me go home again, and they told me my daughter could be taken away and that I would never see her again. I knew they did not have anything on me, because I had done nothing wrong. But it was still scary to have them threaten me like this and it upset me a lot.
>
> 38. After they let me go, the police continued to harass me. They came by my house at all hours of the day and night looking for me *** they came so often that my mom made me move out *** I had to move out of my home with my one-year old daughter and essentially go into hiding at my sister's house to avoid their harassment.
>
> * * *

45. I refused to give a statement naming Kevin as the shooter because he was not the shooter. And unlike Brandi, Shemika and Vernon, who all had outstanding warrants against them during the timeframe of the investigation or had other serious things in their background, I did not have either a warrant against me or anything serious in my background, so the police were not able to threaten and intimidate me the way they did them."

¶ 59 Ms. Davis said that she did not hear about the case for a while after that, probably in part because she moved out of the neighborhood, but that "[e]ventually, [she] was told that [her] testimony would not be needed during [Mr. Jackson's] trial."

¶ 60 II. JURISDICTION

¶ 61 The circuit court denied Mr. Jackson leave to file his successive postconviction petition on June 15, 2017, and Mr. Jackson timely filed his notice of appeal on June 28, 2017. We have jurisdiction over this appeal pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 606 and 651, governing criminal appeals and appeals from final judgments in postconviction proceedings (Ill. S. Ct. R. 606 (eff. Dec. 11, 2014); R. 651(a) (eff. Feb. 6, 2013)).

¶ 62 III. ANALYSIS

¶ 63 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)) establishes procedures by which an incarcerated person may challenge his conviction or sentence by establishing that he suffered a substantial deprivation of constitutional rights in the proceedings resulting in that conviction. *Id.* § 122-1(a)(1). Postconviction proceedings in non-death penalty cases occur in three stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). At the first stage, the circuit court determines, without input from the State, whether a petition is

frivolous or patently without merit. *Id.*; 725 ILCS 5/122-2.1(a)(2) (West 2016). At the second stage, the circuit court appoints counsel to represent the defendant and, if necessary, to file an amended petition; at this stage, the State must either move to dismiss or answer the petition. *Gaultney*, 174 Ill. 2d at 418; 725 ILCS 5/122-4, 122-5 (West 2016). Only if the petition and accompanying documentation make a substantial showing of a constitutional violation does the defendant then proceed to the third stage, an evidentiary hearing on the merits. *People v. Silagy*, 116 Ill. 2d 357, 365 (1987); 725 ILCS 5/122-6 (West 2016).

¶ 64 "A postconviction proceeding is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings." *People v. Petrenko*, 237 Ill. 2d 490, 499 (2010). Its scope is limited to constitutional issues that were not, and could not have been, previously adjudicated. *People v. Whitfield*, 217 Ill. 2d 177, 183 (2005). Thus, the consideration of issues already decided by a reviewing court is barred by the doctrine of *res judicata*, and issues that could have been raised on direct appeal but were not are forfeited. *Id.*

¶ 65 In keeping with these principles, the Act contemplates the filing of only one postconviction petition. *People v. Ortiz*, 235 Ill. 2d 319, 328 (2009). Claims not raised in the original or an amended petition are generally forfeited. 725 ILCS 5/122-3 (West 2016).

¶ 66 This statutory bar is relaxed in two limited circumstances. Leave to file a successive postconviction petition will be granted when a petitioner either "assert[s] a freestanding claim of actual innocence based on newly discovered evidence" (*Ortiz*, 235 Ill. 2d at 331) or satisfies both prongs of the cause-and-prejudice test, *i.e.*, "demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice result[ing] from that failure" (725 ILCS 5/122-1(f) (West 2016) (codifying the test established by our supreme court in *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002))).

¶ 67 Although decisions granting or denying leave of court are generally reviewed for an abuse of discretion, our supreme court has held that "the cause and prejudice determination is a question of law to be decided on the pleadings and supporting documentation submitted to the court by the defendant-petitioner." *People v. Bailey*, 2017 IL 121450, ¶ 24. Our review is therefore *de novo*. *People v. Wrice*, 2012 IL 111860, ¶ 50.

¶ 68 Mr. Jackson argues that the circuit court should have granted him leave to file a successive petition because he made a *prima facie* showing of both actual innocence and cause and prejudice. We address each of these claims in turn.

¶ 69 A. Actual Innocence

¶ 70 Mr. Jackson's primary focus on appeal, as it was in the circuit court, is on his claim of actual innocence—and on his argument that new evidence of a pattern and practice of police misconduct supports such a claim. We must reject this argument. To set forth a colorable claim of actual innocence in a successive postconviction petition, the petitioner's "request for leave of court and his supporting documentation [must] raise the probability that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." *People v. Edwards*, 2012 IL 111711, ¶ 31. Newly discovered evidence relied upon merely "to *supplement* an assertion of a constitutional violation with respect to [the] trial" does not constitute a "free-standing claim of innocence." (Emphasis added.) (Internal quotations marks omitted.) *People v. Hobley*, 182 Ill. 2d 404, 443-44 (1998); see also *People v. Collier*, 387 Ill. App. 3d 630, 636 (2008) (noting that " 'actual innocence' is not within the rubric of whether a defendant has been proved guilty beyond a reasonable doubt. [Citation.] Rather, the hallmark of 'actual innocence' means 'total vindication,' or 'exoneration.' ").

¶ 71 In *Hobley*, 182 Ill. 2d at 444, our supreme court rejected the argument that newly

discovered evidence of "a pattern and practice of police torture" supported a freestanding claim of actual innocence, finding instead that the defendant in that case sought "to supplement [his] assertion *** that his confessions were coerced and involuntary and that the introduction of th[o]se confessions violated his constitutional rights." Mr. Jackson's claim of actual innocence based on newly discovered evidence of a pattern and practice of police misconduct fails for the same reason.

¶ 72 Mr. Jackson also argues that he has demonstrated actual innocence on the basis of the three new affidavits presented with his motion for leave to file a second petition—from Mr. Stewart, Ms. Butler, and Ms. Davis. To support a claim of actual innocence, evidence "must be newly discovered; material and not merely cumulative; and of such conclusive character that it would probably change the result on retrial." (Internal quotation marks omitted.) *Ortiz*, 235 Ill. 2d at 333. Newly discovered evidence is "evidence that has been discovered since the trial and that the defendant could not have discovered sooner through due diligence." *Id.* at 334. Evidence is material if it is probative of the defendant's innocence. *People v. Coleman*, 2013 IL 113307, ¶ 96. It is cumulative when it adds nothing to what was already before the jury. *Ortiz*, 235 Ill. 2d at 335.

¶ 73 The new affidavits provided by Mr. Stewart and Ms. Butler are consistent with the testimony they provided at trial. Both of these witnesses testified that Mr. Jackson was not the shooter and that their prior statements to the contrary were coerced by the detectives who interrogated them. To the extent that the new affidavits provide some additional details regarding the person the witnesses claim was the actual shooter or the manner in which the witnesses say they were coerced by the police, those additional supporting details do not constitute evidence "of such conclusive character that it would probably change the result on retrial." (Internal

quotation marks omitted.) *Id.* at 333. Nor do those additional details constitute evidence that Mr. Jackson "could not have discovered sooner through due diligence." *Id.* at 334.

¶ 74 Ms. Davis's affidavit, however, is not cumulative of the testimony offered at trial by other witnesses. Evidence is only cumulative if it "adds nothing to what was already before the jury." *Id.* at 335. This case turned on credibility determinations. The testimony of another eyewitness, who knew Mr. Jackson well, who would have recognized him, and who did not identify him but instead described someone else as the shooter, would have added something new to the evidence before the jury. And, unlike the other witnesses, Ms. Davis never signed a statement implicating Mr. Jackson as the shooter.

¶ 75 The question remains, however, whether Ms. Davis's affidavit constitutes newly discovered evidence. We first reject the notion, which appears to have been adopted by the circuit court, that we should focus on whether the *information* Ms. Davis now offers is newly discovered. The trial court pointed to the fact that it is not new information to Mr. Jackson that he was not the shooter and that the police were trying to coerce witnesses into saying that he was. Our supreme court has made clear that a claim of actual innocence based on the testimony of an additional eyewitness previously unknown to the defendant constitutes a new "claim" of actual innocence. *Id.* at 333-35. To hold otherwise would prevent innocent defendants, necessarily aware of their own innocence, from ever asserting claims of actual innocence based on newly discovered evidence supporting their exoneration.

¶ 76 However, newly discovered evidence offered in support a claim of actual innocence must also be evidence "that the defendant *could not* have discovered sooner through due diligence." (Emphasis added.) *Id.* at 334. Ms. Davis states in her affidavit that she had to "go into hiding," was "on the run" to avoid police harassment, and eventually moved away from her

neighborhood, indicating that it may not have been a simple matter for defense counsel to locate and speak with her before trial. As the State points out, however, the unsigned affidavit of Ms. Davis that Mr. Jackson attached to his initial postconviction petition indicates that she *was* in contact with an investigator for the public defender's office before Mr. Jackson's trial ("I also talked to Kevin Jackson['s] investigator Mary Clements, [about] exactly what happen the night of the shooting, she explained to me that I'll be subpoena[ed] to testify in Kevin's trial."). And Ms. Davis's new, signed affidavit indicates that counsel ultimately told her that her testimony was not needed at trial ("Eventually, I was told that my testimony would not be needed during Kevin's trial. *** [T]he next time I recall hearing anything about Kevin's case was when he was sentenced."). Under these circumstances, Mr. Jackson has not shown that he could not have discovered Ms. Davis's exonerating testimony sooner through due diligence.

¶ 77 We agree with the circuit court that Mr. Jackson failed to satisfy his burden of showing that the material, noncumulative evidence of his innocence he has raised at this point could not have been discovered by him prior to trial. His motion for leave to file a second petition was thus properly denied as to his claim of actual innocence.

¶ 78 B. Cause and Prejudice

¶ 79 We next consider whether the documentation relied on by Mr. Jackson—though insufficient to support a freestanding claim of actual innocence—was nevertheless sufficient to support allegations of cause and prejudice based on a pattern and practice of police coercion. Mr. Jackson argues that because the trial evidence itself was so weak, any evidence that the officers in this case had engaged in coercive conduct similar to that alleged by the four recanting witnesses would have changed the outcome of the trial.

¶ 80 There are at least two possible avenues for the introduction of such evidence. A

defendant might seek to introduce evidence of prior police misconduct to impeach a testifying officer at trial. See *People v. Almodovar*, 2013 IL App (1st) 101476, ¶ 74 (finding it "plausible that a finder of fact could view the evidence of [a detective's] pattern of misconduct as leveling the playing field between [the detective] and [a recanting witness] in terms of credibility"). Alternatively, such evidence might be presented before trial, at a hearing on a motion to bar a recanting witness's prior statement. *Cf. People v. Reyes*, 369 Ill. App. 3d 1, 19 (2006) (concluding that "if even a fraction of the allegations" of misconduct against a detective had been presented before trial, "it appear[ed] likely that [the detective's] credibility would have been damaged and [the] defendant's confessions would have been suppressed"); *People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 66 (noting that it is a due process violation for a conviction to be based on testimony the police know is false).

¶ 81 We turn first to whether Mr. Jackson had cause for not seeking to present this evidence sooner. "[A] prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings ***." 725 ILCS 5/122-1(f) (West 2016). We have held that "[a] defendant's lack of evidence that an officer has committed misconduct in circumstances similar to those of the defendant can serve as cause for failing to fully raise that claim in prior proceedings." *People v. Jones*, 2017 IL App (1st) 123371, ¶ 181 (citing *Almodovar*, 2013 IL App (1st) 101476, ¶¶ 64-68). Here, alleged misconduct by some of the detectives in this case has come to light after Mr. Jackson filed his initial postconviction petition in 2007. The news articles attached to his petition were not written until 2013 and 2014, and the filings and decisions in the civil cases that Mr. Jackson has attached all date from 2009 or later. The CR logs, some of which refer to complaints made before Mr. Jackson's trial, are accompanied by correspondence and litigation documents showing that, after

considerable efforts, Mr. Jackson's counsel only recently obtained them. Mr. Jackson has clearly shown cause, in terms of an inability to present these recently obtained documents alleging police misconduct in an earlier proceeding.

¶ 82 The question then is whether Mr. Jackson has yet made a *prima facie* showing of prejudice. A defendant shows prejudice "by demonstrating that [a] claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." 725 ILCS 5/122-1(f) (West 2016). Mr. Jackson argues that evidence of a pattern and practice of police misconduct by the detectives in this case would have allowed him to more fully challenge both the prior inconsistent statements of the recanting witnesses and the State's claim that those statements were truthful, while the recantations at trial were not.

¶ 83 The State does not dispute that if these witnesses falsely identified Mr. Jackson as the shooter because they were coerced to do so, that would constitute a due process violation. Nor does the State dispute that evidence establishing that these officers engaged in a pattern of coercion that was similar to what the witnesses said occurred here could support such a claim. Although this court found on direct appeal that the State's evidence was sufficient to support a finding of guilt (*Jackson*, slip order at 16 (2006)), we agree with Mr. Jackson that evidence of past witness coercion by the same officers involved here may well have made a difference in the outcome of this case, particularly where there was no evidence, other than the recanting witnesses' inconsistent statements, tying Mr. Jackson to the shooting and the surviving victim clearly and consistently testified that Mr. Jackson was not the shooter. Such evidence would have flown in the face of the State's closing arguments, in which the prosecutor mocked the recanting witnesses' stories of coercion and invited the jury to share in his outrage that honest, hard-

working officers could be subjected to baseless accusations of misconduct when they were simply trying to do their jobs. Given the nature of the determination the jury was asked to make, we find it likely that evidence of a relevant pattern and practice of the same or similar conduct by the same detectives could have led the jury to conclude that there was reasonable doubt of Mr. Jackson's guilt.

¶ 84 At this point, however, the documentation that Mr. Jackson has been able to marshal in support of his motion fails to connect any new evidence of police misconduct to what happened in his own case. As an initial matter, although Mr. Jackson refers to the detectives who played the largest roles in this case, collectively, as "The Seven," he has provided no evidence that they worked together in other cases to coerce witnesses. Indeed, the news articles and documents from various civil suits that Mr. Jackson relies on indicate that these detectives did *not* routinely investigate crimes together as a team. Mr. Jackson has not argued that the detectives acted in concert, pursuant to an express or implied agreement to coerce witnesses, or advanced any other argument for why alleged wrongdoing by one of the detectives should be considered relevant to any of the other detectives. See *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 65 (1994) (recognizing that "once [a] conspiracy is formed, all of its members are liable for injuries caused by any unlawful acts performed pursuant to and in furtherance of the conspiracy"). Nor has he made supported allegations of a systemic pattern of witness coercion infecting an entire investigatory unit or department. See *People v. Patterson*, 192 Ill. 2d 93, 145 (2000) (noting that a report of the Chicago Police Department's office of professional standards concluded that torture like that alleged by the defendant in that case was "systemic and methodical at Area 2 under the command of [Lieutenant Jon] Burge"). In short, Mr. Jackson has given us no reason to attribute alleged bad acts by certain members of "The Seven" to the group as a whole, or even to some

subset or partnership within the group.

¶ 85 We must therefore consider the alleged actions of each detective separately, finding other instances of misconduct by a particular officer to be relevant to Mr. Jackson's claim of prejudice only if those actions are similar to the misconduct the recanting witnesses in this case accused *that* officer of engaging in. See *People v. Nicholas*, 2013 IL App (1st) 103202, ¶ 40 (concluding that a defendant established prejudice where his claim that officers beat him into making a false confession was "strikingly similar *** as to the time period, location, manner, method, participants and the role of the participants" to prior acts of torture a special prosecutor found had taken place in other cases). We have carefully examined the details surrounding the other instances of alleged misconduct that Mr. Jackson cites in his motion for leave to file a successive petition and find that they fail to align in any meaningful way with what the witnesses in this case say those same officers did to them. We address the specifics officer by officer.

¶ 86 The only documents relating to other alleged misconduct by any of the three officers who interviewed Mr. Stewart and Ms. Davis (Detectives Clisham, Kaup, and Kowalski) consist of CR logs listing a handful of complaints filed over the years. These complaints are generally listed by category, with few details from which we can assess the nature of the misconduct reported. Of the 10 entries relating to Detective Clisham, who interrogated Mr. Stewart, all appear to have been either "not sustained" or "unfounded" and none involved the alleged intimidation or coercion of a witness. There is one CR log entry alleging that Detectives Kaup and Kowalski used excessive force to coerce a video confession in August 2002. But those detectives interrogated only Ms. Davis, who never provided any evidence against Mr. Jackson. Thus, these documents purporting to show a pattern and practice of witness coercion by these two detectives cannot be connected to Mr. Jackson's claim that evidence used to convict him was the result of

coercion.

¶ 87 Documentation regarding prior conduct by Detective Bartik, in the form of a 2013 newspaper article quoting the testimony of an expert witness who was critical of Bartik's record of pre-test confessions over a five-year period ending in 2003 (see Duaa Eldeib, *Polygraphs and False Confessions in Chicago*, Chi. Trib., Mar. 10, 2013, http://www.chicagotribune.com/news/watchdog/ct-met-polygraph-confessions-20130310-story.html), is likewise not relevant because he questioned only Ms. Davis, who did not testify at trial. No connection has been made between anything Detective Bartik did and Mr. Jackson's conviction.

¶ 88 Mr. Jackson also points to the same news article as evidence of alleged misconduct by Detective Howley. The article quotes another expert witness who criticized Detective Howley's tactic of using a polygraph examination to extract a confession, purportedly in violation of relevant protocols governing such examinations. Here, Detective Howley questioned and administered a polygraph test to Mr. Stewart, who did in fact give a pretrial statement identifying Mr. Jackson. Missing, however, is any suggestion by Mr. Stewart that Detective Howley coerced him into giving a false statement. We understand that Mr. Jackson might not have been allowed to bring this information out at trial, since the trial court judge sustained defense counsel's objection to any testimony about the polygraph examination. But notably, Mr. Stewart's current affidavit also says nothing about his polygraph examination or about Detective Howley.

¶ 89 Turning to the two lead detectives in this case, Detectives Forberg and Foster, we are faced with the opposite situation: ample trial testimony regarding alleged coercion in this case but insufficient documentation supporting an alleged pattern and practice of similar misconduct by these officers. According to the trial testimony of Ms. Butler and Mr. Clay, these detectives held them in police custody for multiple days and coerced them into making their initial

statements identifying Mr. Jackson as the shooter by threatening to charge them criminally if they refused adopt the officers' version of events. Ms. Butler testified that she was warned she would give birth in prison and her child would be taken from her, and Mr. Clay additionally said he was tricked into signing his initial statement, which he thought was something he needed to sign to have his personal property returned to him before he could leave the police station. Ms. Mason similarly testified that she was held overnight by the two detectives and was told that if she went along with what they wanted her to say, an outstanding warrant for her arrest would be "take[n] care of."

¶ 90 Aside from the CR logs, which contain no allegations of witness coercion, Mr. Jackson points to a complaint in a civil suit naming Detectives Forberg and Foster, along with a number of other defendants, and alleging generally that "the defendants" withheld food and water from witnesses and manipulated them into giving false statements, without specifically identifying Forberg or Foster as the perpetrators of this alleged misconduct. Complaint at 4, *Patterson v. City of Chicago*, No. 11 CV 07052, ECF No. 1, (N.D. Ill. 2011). Mr. Jackson also relies on a federal district court opinion granting summary judgment in favor of the defendant police officers in that case, where the court recounted, as part of the "facts on which the parties agree[d]," how Detective Forberg (working with a different partner) obtained statements from witnesses after interrogating them for many hours without bathroom breaks. *Bridewell v. City of Chicago*, No. 08 C 4947, 2012 WL 2458548, at * 1 (N.D. Ill. June 27, 2012). Even taking the allegations in the civil suit as true, this documentation, by itself, is "insufficient to justify further proceedings" (internal quotation marks omitted) (*Bailey*, 2017 IL 121450, ¶ 21). The conduct alleged—coercion by withholding food, water, and bathroom breaks or by "manipulate[ing]" witnesses is similar but not "strikingly similar" to the alleged coercion in this case, which the

recanting witnesses made clear was primarily achieved through threats that criminal charges would be pursued against them if they did not name Mr. Jackson as the shooter. One of the incidents Mr. Jackson offers as indicia of a pattern and practice of misconduct took place five years after the investigation and three years after the trial in this case. And in only one of the cases did the detectives together, as partners, interrogate witnesses, as they did in this case. We are simply unable to conclude that in this successive petition Mr. Jackson has supplied "enough in the way of documentation" to "justify further proceedings" (internal quotation marks omitted) (*id.* ¶ 21) on his claim that he was prejudiced by the inability to present evidence that the detectives in this case engaged in a pattern and practice of similar witness coercion in other cases.

¶ 91 We are well aware that police misconduct, including witness coercion, does occur. We also understand that courts must play a significant role in ensuring that individuals are not wrongfully imprisoned as a result of such tactics. Although the cause-and-prejudice test represents a significant hurdle, successive postconviction petitions are a proper tool for prisoners to raise previously unavailable evidence of police misconduct and to point out similarities between that conduct and what occurred in their cases, as such evidence becomes available. The test is met when a defendant can connect specific misconduct resulting in his conviction to sufficiently similar misconduct by the same officer or officers. If more evidence of misconduct is uncovered—either through proceedings in other cases, news coverage, the ongoing investigation of counsel where a prisoner is fortunate enough to be represented, or because witnesses have come forward with new information—and as patterns of misconduct are established with respect to individual officers or investigatory teams, a petitioner may be able to more closely connect documentation of improper tactics to his own conviction. And as our supreme court has made

clear, even a third or fourth petition may be allowed, provided that a petitioner can overcome the hurdle of showing cause and prejudice. *Edwards*, 2012 IL 111711, ¶ 22.

¶ 92 Here, although Mr. Jackson and his counsel were able to gather a number of documents relating to alleged police misconduct, they have not, at this point, made the necessary connection between the alleged misconduct of any one officer that Mr. Jackson claims led to his conviction and a pattern and practice of sufficiently similar misconduct by that same officer. We must therefore affirm the circuit court's denial of Mr. Jackson's motion for leave to file a successive postconviction petition.

¶ 93 IV. CONCLUSION

¶ 94 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 95 Affirmed.

¶ 96 **SEPARATE OPINION UPON DENIAL OF REHEARING**

¶ 97 PRESIDING JUSTICE MIKVA, dissenting:

¶ 98 Although I authored the court's opinion in this case, I now believe that we should grant Mr. Jackson's petition for rehearing, reverse the circuit court's order denying him leave to file his successive postconviction petition, and remand for Mr. Jackson to make his case for a new trial. The new evidence Mr. Jackson seeks to introduce includes both the affidavit of Quiana Davis—an eyewitness who says she was at the scene of the crime, she saw the shooter, and that it was not Mr. Jackson—and examples of police coercion of witnesses by some of the officers in the case. Mr. Jackson argues that the evidence of police coercion corroborates the trial testimony of four recanting eyewitnesses, all of whom testified that Mr. Jackson was not the shooter and that they had previously been coerced into saying he was by the interrogating officers.

¶ 99 In our opinion affirming the circuit court's order, we held that because Ms. Davis was known to Mr. Jackson at the time of trial, her affidavit was not "newly discovered" and, thus, could not be used to raise a claim of actual innocence. We also held that the evidence of other coercive conduct by police officers was not "strikingly similar" to the conduct recounted by the recanting witnesses at trial and did not therefore support Mr. Jackson's claim of witness coercion.

¶ 100 In November, Mr. Jackson sought leave to supplement the record with additional evidence about the officers' past conduct, and we denied that request on the basis that it would be improper for us to consider documents that were not before the circuit court. But we did allow briefing on Mr. Jackson's petition for rehearing, which we have now received and considered. The majority of the panel has decided not to grant the petition. I dissent from that denial for the reasons that follow.

¶ 101 This case has all the hallmarks of one in which the wrong person was convicted. Statements made to the police that were unequivocally recanted at trial were the *only* evidence of Mr. Jackson's guilt. The recanting witnesses' accounts of their interrogations and the reasons they felt pressured to falsely identify Mr. Jackson when they were picked up and questioned by the police were remarkably consistent. No physical evidence linked Mr. Jackson to the crime. And—of greatest significance to me—the surviving victim, Michael Watson, gave clear, specific, and compelling testimony that Mr. Jackson was *not* the person who shot him. No testimony suggested that Mr. Watson had any reason to protect Mr. Jackson. Mr. Watson's testimony, consistent with what he told police immediately after the shooting, was that the shooter was "a little, thin guy, about [a] hundred and twenty pounds," with "dark black" skin. Mr. Watson did not know who shot him but was certain it was not Mr. Jackson. Mr. Watson did

not identify Mr. Jackson as the shooter in a photo array or a lineup, and at trial he said unequivocally, "I never seen that young man before *** he don't look nothing like the guy 'cause the guy who shot me, when I say black, I mean he's a black person, but he was dark, dark black."

¶ 102 I find this exonerating testimony from the surviving victim, supported by specific details about the shooter's appearance, to be very persuasive, and I believe it distinguishes this case from others in which recanted testimony, on its own, was deemed sufficient to support a finding of guilt. Courts have, in varying circumstances, recognized the persuasive power of such testimony. See, *e.g.*, *People v. Henderson*, 2014 IL App (2d) 121219, ¶ 35 (concluding that newly discovered exonerating testimony from a surviving witness " arguably would carry weight with the trier of fact," such that "*all* of the facts and surrounding circumstances, including [the new] testimony, should be scrutinized more closely to determine [the] defendant's guilt or innocence" (emphasis added)); *People v. Newborn*, 379 Ill. App. 3d 240, 249 (2008) (concluding that, where the victim's in-court testimony exonerated the defendant, the trial court's refusal to allow impeachment of the only other eyewitness with evidence of his prior juvenile adjudications could not be considered harmless error).

¶ 103 The State argued that all of the witnesses—apparently including Mr. Watson—were essentially putting on a show at trial because they were afraid of Mr. Jackson and his gang. This argument was supported by nothing in the record as to Mr. Watson. And with respect to the recanting witnesses, the only support came from their initial statements to police, which they testified at trial had been coerced. The jurors of course heard all of this and, although the record suggests that they had some difficulty in reaching a verdict, they did find Mr. Jackson guilty of the crimes he was charged with, a conclusion that this court affirmed on direct appeal and that

we must now respect. But if we are to fairly consider whether the new evidence Mr. Jackson now presents would have resulted in a different outcome, we must first acknowledge how thin the trial evidence really was.

¶ 104 With this as my starting point, I now find myself persuaded by several of the arguments in Mr. Jackson's petition for rehearing.

¶ 105 A. Quiana Davis's Affidavit

¶ 106 I now believe that, in the unusual context of this case, we should consider Quiana Davis's signed affidavit to be "newly discovered" because, at the time Mr. Jackson filed his initial *pro se* petition, it was not available to him in any form the circuit court would consider.

¶ 107 Ms. Davis, who was present at the scene of the crime, was interrogated by the police. Unlike the recanting witnesses, she never implicated Mr. Jackson. But defense counsel never called Ms. Davis as a witness at trial. Mr. Jackson raised this failure in his initial *pro se* postconviction petition, in which he claimed ineffective assistance of counsel. That claim was dismissed as frivolous by the circuit court for the sole reason that the attached affidavit giving Ms. Davis's account—which Mr. Jackson stated in his own signed affidavit reflected a conversation he had with her when she visited him in prison—was unsigned. Mr. Jackson explained in his petition that he was "without any income or assets with which to procure counsel to get [the affidavit] signed," and asked for postconviction counsel to be appointed for that purpose.

¶ 108 The law governing the summary dismissal of postconviction petitions at the first stage has evolved significantly since 2007, when we affirmed the trial court's summary dismissal of Mr. Jackson's initial *pro se* petition for failure to attach a signed witness affidavit. The Post-Conviction Hearing Act (Act) requires a postconviction petition to be supported by "affidavits,

records, or other evidence supporting its allegations," or to "state why the same are not attached." 725 ILCS 5/122-2 (West 2016). As our supreme court recently explained in a case involving an unnotarized factual statement styled as an affidavit, a supporting document that is "not an admissible affidavit in its present form," still properly qualifies as " 'other evidence,' " if it serves the purpose contemplated by the statutory requirement, *i.e.*, by "showing that the petition's allegations are capable of corroboration" and "identifying the sources, character, and availability of evidence alleged to support the petition's allegations." *People v. Allen*, 2015 IL 113135, ¶ 34. The court has also taken pains to remind us that summary dismissal is only proper when a petition "lacks an arguable basis either in law or in fact" or is "based on an indisputably meritless legal theory or a fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). Judged by today's legal standards, it is likely that Mr. Jackson's initial *pro se* petition proffering this evidence of innocence and of ineffective assistance of counsel would not be summarily dismissed.

¶ 109 And Mr. Jackson's counsel is correct that a more relaxed standard of "newly discovered" has been applied in a number of circumstances where to do otherwise would risk denying a defendant any real opportunity to show his innocence. These include cases in which previously known witnesses would have been uncooperative (see *People v. Coleman*, 2013 IL 113307, ¶ 102), police records that existed prior to trial were difficult to obtain (see *People v. Tyler*, 2015 IL App (1st) 123470, ¶¶ 161-62), and information revealed in other legal proceedings, though public, would have required great time and effort for counsel to locate (see *id.*). Most compelling in my view is *People v. Warren*, 2016 IL App (1st) 090884-C, ¶ 130, in which a panel of this court held that it "would be a miscarriage of justice" if the defendant in that case—whose postconviction counsel had inexplicably failed to amend his petition to include the supporting

affidavits of available witnesses—was "denied his day in court where his allegations and supporting documentation, supported by the record and taken as true ***, demonstrate[d] that he was unable to put forth exculpatory evidence of his innocence through no fault of his own."

¶ 110 Here, Ms. Davis was an eyewitness to the crime who says she was prepared to testify at trial that she saw the shooter and it was not Mr. Jackson. And unlike the recanting witnesses, she had never given a conflicting account with which the State could have impeached her. Her account of how she was treated by the officers in this case, and her claim that she was able to withstand their pressure to falsely identify Mr. Jackson as the shooter because she had no outstanding warrant that the officers could use against her, also corroborates the trial testimony of the recanting witnesses. I believe that failing to consider Ms. Davis's account on the basis that she was technically known to defendant, even though—through no fault of his own—he has been precluded at every step from putting forward her exculpatory testimony, would be just the sort of fundamental miscarriage of justice that the actual innocence exception to the bar on successive petitions is intended to prevent.

¶ 111 B. Evidence of Other Coercive Conduct by Police Officers

¶ 112 I still believe that, for most of the detectives involved in this case, Mr. Jackson has failed to establish prejudice by connecting the dots between what the recanting witnesses said happened to them and evidence of prior coercive behavior on the part of those specific officers. However, I am now convinced that Mr. Jackson has met his burden with respect to Detectives Forberg and Foster, the lead detectives who handled this case. As detailed in our opinion, the relevant evidence consisted of (1) a complaint in a civil suit filed against a handful of officers, including Detectives Forberg and Foster, alleging generally that witnesses were denied food and water and were manipulated into giving false statements (see complaint at 4, *Patterson v. City of*

Chicago, No. 11 CV 07052, ECF No. 1, (N.D. Ill. 2011)), and (2) a federal district court opinion in another case in which the court recounted, as part of the "facts on which the parties agree[d]," how Detective Forberg (working with a different partner) obtained statements from witnesses after interrogating them for many hours without bathroom breaks (*Bridewell v. City of Chicago*, No. 08 C 4947, 2012 WL 2458548, at *1 (N.D. Ill. June 27, 2012)). We concluded that this conduct was "similar but not 'strikingly similar' " to the coercion alleged by the recanting witnesses in this case. *Supra* ¶ 90. I now think this was the wrong standard, based on our incorrect assumption that Mr. Jackson needed to show that a particular type of coercion was the *modus operandi* of these police officers and our failure to differentiate between propensity evidence offered against a defendant and evidence used by a defendant to demonstrate his innocence.

¶ 113 To show prejudice, the Act requires a defendant to demonstrate that a claim not raised during his initial postconviction proceedings "so infected the trial that the resulting conviction or sentence violated due process." 725 ILCS 5/122-1(f) (West 2016). Mr. Jackson is correct that, when the basis for a postconviction petition is evidence of prior police conduct, there is no express requirement that the conduct must be "strikingly similar" to what the petitioner claims the police did in his case. "Strikingly similar" is a phrase we have used when prejudice is clearly shown, as in cases involving confessions made under police torture. See *e.g.*, *People v. Patterson*, 192 Ill. 2d 93, 145 (2000); *People v. Nicholas*, 2013 IL App (1st) 103202, ¶ 47. But we have never held that such evidence must be "strikingly similar" in order to be relevant or admissible.

¶ 114 Evidence is relevant if it has "any tendency" to make the existence of a fact of consequence more or less probable than it would otherwise be. Ill. R. Evid. 401 (eff. Jan. 1,

2011) (codifying the common law definition). Although propensity evidence is generally excluded, even if relevant, for fear that a jury might improperly draw an inference of guilt from prior bad acts, our supreme court has noted that this concern is not present when a *defendant* seeks to introduce exculpatory evidence of *someone else's* prior conduct. *People v. Cruz*, 162 Ill. 2d 314, 348-50 (1994). As the court has further explained, although "a substantial and meaningful link between the offenses being compared" is required when propensity evidence is admitted to prove a particular *modus operandi*, a lesser degree of similarity will suffice when such evidence is admitted for any other purpose; to corroborate witness testimony, for example. *Id.* at 351-53.

¶ 115 In *Cruz*, evidence of a third-party's past crimes, though dissimilar in many respects to the offense at issue and thus inadmissible to establish *modus operandi*, was still relevant to corroborate the third-party's statement that he committed the crimes alone, without the defendant's help. *Id.* at 355. When the theory that the two men had worked together was "an essential element of the State's case," the defendant "was thus entitled to rebut the evidence of that linkage with nonprejudicial and relevant evidence." *Id.*

¶ 116 The State's theory was that the recanting witnesses changed their stories, not, as they explained at trial, because they had been coerced into identifying Mr. Jackson by Detectives Forberg and Foster, but because they feared gang retribution if they told the truth on the stand. Mr. Jackson was unable to rebut that theory in any meaningful way at trial. Had he been able to present evidence, however slight, that one or more of the same detectives had coerced other witnesses into giving false testimony or into identifying a particular person, it may well have changed the outcome of his trial. While the allegations in *Patterson*, the facts recited by the court in *Bridewell*, and the allegations in this case may not be sufficiently similar to establish a

modus operandi on the parts of Detectives Forberg and Foster, they surely lend a degree of support to the allegations of coercion leveled against these officers by the recanting witnesses. I am convinced by the petition for rehearing that by demanding that this evidence be "strikingly similar," we applied an overly rigorous standard on this issue.

¶ 117 C. The Combined Force of Mr. Jackson's New Evidence

¶ 118 This brings me to a third point raised in Mr. Jackson's petition for rehearing that I think warrants discussion. Mr. Jackson initially asked us to consider the evidence of prior coercive conduct by the officers as further evidence of his actual innocence, which, together with Ms. Davis's affidavit, he argued made a strong showing in that regard. We declined to do so, concluding that, as in *Hobley*, the evidence was not presented as a wholly independent basis establishing the defendant's innocence but to supplement a due process claim. *Supra* ¶ 71 (citing *People v. Hobley*, 182 Ill. 2d 404, 444 (1998)).

¶ 119 Mr. Jackson argued in his initial briefing and in his petition for rehearing that the distinction drawn in cases like *Hobley* and *People v. Orange*, 195 Ill. 2d 437, 460 (2001), between "freestanding" claims of actual innocence and claims relating to procedural defects at trial was "repudiated" by our supreme court in *Coleman*, 2013 IL 113307, ¶ 83. I do not believe that *Coleman*, which mentions neither *Hobley* nor *Orange*, was intended to overrule those cases in any way. What *Coleman* stands for is the proposition that, contrary to federal *habeas* law, a "freestanding" claim of actual innocence is cognizable under the Illinois Constitution, even when it is not also a due process claim. See *id.* ¶¶ 90-91. The recognition of freestanding actual innocence claims is not only alive and well in this state, it is a decidedly *good* thing for postconviction petitioners since it allows them to bring claims of actual innocence even where they cannot demonstrate due process errors in their trials. See *id.* ¶ 94 (reiterating, as the court

first stated in *People v. Washington*, 171 Ill. 2d 475, 489 (1996), that " 'no person convicted of a crime should be deprived of life or liberty given compelling evidence of actual innocence' ").

¶ 120 The important point that Mr. Jackson makes—and that I think, upon rereading them, is fully consistent with our supreme court's opinions—is that in considering the support for a successive petition, the "actual innocence" evidence of Ms. Davis's affidavit should not be siloed off and considered separately from the "cause-and-prejudice" evidence of prior coercive police misconduct. Rather, the combined strength of all the new evidence should be considered in light of the evidence already presented at trial. See *People v. Ortiz*, 385 Ill. App. 3d 1, 12-13 (2008) (discussing the combined effect of all the evidence available to the defendant on a successive postconviction petition, and whether, when added to the evidence presented at trial, it would likely lead to a different result), *aff'd*, 235 Ill. 2d 319, 336-37 (2009). This is especially important here, where Ms. Davis's affidavit not only contains exonerating testimony but also corroborates the recanting witnesses' accounts of coercive police conduct, which are further corroborated by evidence that the detectives may have coerced other witnesses.

¶ 121 In sum, I believe fundamental fairness dictates that we consider both Ms. Davis's affidavit and evidence of other coercive conduct by Detectives Forberg and Foster. When we look at the strength of that combined evidence in light of what was actually presented at trial, I find it difficult, if not impossible, to believe that the outcome would be the same, *i.e.*, that a reasonable jury considering the unequivocally exonerating testimony of the surviving victim, the detailed and consistent accounts of coercion given by the recanting witnesses at trial, the evidence of witness coercion by some of the same detectives in the *Patterson* and *Bridewell* cases, *and* the testimony of Ms. Davis would still find Mr. Jackson guilty. Mr. Jackson should be allowed to file his successive petition and make his case for a new trial based on all of the

evidence now available to him.

I, THOMAS D. PALELLA Clerk of the Appellate Court, in and for the First District of the State of Illinois and keeper of the records, files and seal thereof, Do HEREBY CERTIFY That the foregoing is a true copy of the final order and judgment and all other proceedings of the said Appellate Court in the above entitled cause, of record in my office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 26th day of September in the year of two thousand and nineteen

Thomas D. Palella

Clerk of the Appellate Court of the First District, Illinois



APPENDIX 12

No. _____

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Respondent, -vs- KEVIN JACKSON, Defendant-Petitioner.	)	Petition for Leave to Appeal from the Illinois Appellate Court, First District, No. 1-17-1773 On appeal from the Circuit Court of Cook County, Illinois, No. 01-CR-17492 Honorable Evelyn B. Clay, Judge Presiding.

PETITION FOR LEAVE TO APPEAL

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PRAYER FOR LEAVE TO APPEAL

Defendant-Petitioner, Kevin Jackson, seeks leave to appeal, pursuant to Illinois Supreme Court Rules 315, (eff. July 1, 2018), and 612, (eff. July 1, 2017), the judgment of the appellate court affirming the denial of leave to file a successive post-conviction petition. In the alternative, Mr. Jackson seeks remand to the appellate court with instructions to reconsider that court's judgment in accordance with this Court's supervisory authority under Illinois Supreme Court Rule 315(a) (eff. July 1, 2018).

PROCEEDINGS BELOW

Over the course of three days in July 2003, Kevin Jackson was tried before a jury presided over by Cook County Circuit Court Judge Evelyn Clay. Docket, *People v. Jackson*, No. 01-CR-17492-01 (Cir. Ct. Cook Cty.). Following contentious deliberations during which the jury inquired about the law for declaring a jury hung, (R1019; C43)[1], it returned a guilty verdict, (C39-42), which was read to Mr. Jackson on July 25, 2003, (R1026). Before, during, and ever since trial, Mr. Jackson has steadfastly maintained his innocence and has made continuous attempts to obtain relief from his wrongful conviction.

Mr. Jackson filed a motion for a new trial on August 22, 2003, (C47), which Judge Clay denied by a bench ruling on March 25, 2004, (R1214), and immediately sentenced Mr. Jackson to 45 years and 6 years, to run concurrently, (R1223-24).

On April 20, 2004, Mr. Jackson filed a motion to reconsider his sentence, (C94-96), which on May 14, 2004, was also denied from the bench by Judge Clay, (R1235).

[1] Citations to pages in the Report of Proceedings are denoted by an "R" (*e.g.*, R1019). Citations to pages in the Common Law Record are denoted by a "C" (*e.g.*, C43). Citations to information contained in the Appendices filed herewith are denoted by "App." (*e.g.*, App. A029-30, ¶ 83).

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Mr. Jackson next appealed his conviction, (C98), but was denied relief by the First District Appellate Court by written opinion issued on April 19, 2006, (C115-140).

Mr. Jackson, acting *pro se*, filed a petition for relief under the Post-Conviction Hearing Act, 725 ILCS 5/122-1, *et seq.* (West 2002), on March 16, 2007, (C146-205), which Judge Clay summarily denied as "frivolous and patently without merit" by written order dated May 25, 2007, (C212-227, 229). Mr. Jackson filed a notice of appeal of that ruling on June 12, 2007 and was appointed counsel, (C230-32), but the circuit court's ruling was upheld by a Rule 23 Order on April 29, 2009, *People v. Jackson*, 388 Ill. App. 3d 1137 (2009). This Court denied Mr. Jackson's Petition for Leave to Appeal that decision. *People v. Jackson*, 233 Ill. 2d 578 (2009).

Mr. Jackson, again acting *pro se*, then sought relief under federal habeas law. *U.S. ex rel Jackson v. Hardy*, No. 09-C-7774, 2011 WL 1357310 (N.D. Ill. Apr. 11, 2011). This too was denied. *Id.*

Mr. Jackson, still acting *pro se*, then filed a motion to vacate his conviction and sentence as void, (C236-71), which Judge Clay treated as a motion under 735 ILCS 5/2-1401 and denied by written order on May 9, 2014, (C274-79).

In late 2015, Mr. Jackson retained private *pro bono* counsel who in May 2017 filed a motion for leave to file a successive petition under the Illinois Post-Conviction Hearing Act (the "Motion") on Mr. Jackson's behalf. (App. C.) The Motion was summarily denied in a bench ruling by Judge Clay on June 15, 2017. (App. B.) Mr. Jackson appealed the ruling to the First District Appellate Court, (C523-24), which heard oral argument on June 27, 2018, (App. B), and on September 28, 2018 issued an opinion written by Justice Mary L. Mikva affirming the circuit court's denial of leave. (App. A.) Mr. Jackson petitioned

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for rehearing on October 19, 2018, and the First District allowed the State to file a response and for Mr. Jackson to file a reply. Order, *People v. Jackson*, No. 1-17-1773 (1st Dist. App. Ct. Nov. 8, 2018). On March 29, 2019, the First District Appellate Court re-issued its opinion, written by Justice Mikva, affirming the circuit court's denial of leave; however, Justice Mikva also filed a dissent to her own majority opinion—making her the author of both the majority and dissenting opinions. (App. A.) Justice Mikva's thoughtful reconsideration of her prior opinion based on her extremely detailed understanding of the record below merits careful attention by this Court and great weight in its consideration of this petition for leave to appeal.

POINTS RELIED ON IN SEEKING REVIEW

Mr. Jackson has always asserted that he is innocent of the crimes for which he has now been incarcerated for almost seventeen years—nearly half his life. In proceedings below, he has marshalled substantial evidence supporting his claim of having been wrongfully convicted, including evidence of misconduct by the lead detectives responsible for his arrest, and exculpatory testimony of witnesses who maintain that Mr. Jackson was not involved in—or even present during—the shooting for which he was convicted. Yet he has so far been denied even the opportunity to engage in second stage post-conviction proceedings.

This Court made clear long ago that "imprisonment of the innocent [is] … conscience shocking." *People v. Washington*, 171 Ill. 2d 475, 487-88 (1996). Yet, the scourge of wrongful convictions in Illinois, and Cook County in particular, continues. *See, e.g.*, Andy Grimm, *Nearly 50 People in Illinois Were Exonerated of Crimes in 2018, Top in US*, Chicago Sun-Times, Apr. 9, 2019, chicago.suntimes.com/news/nearly-50-illinois-exonerated-2018-tops-us. Worse, the plague of wrongful convictions is widely

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acknowledged to disproportionately affect those in poor and minority communities. *See, e.g.,* Niraj Chokshi, *Black People More Likely to Be Wrongfully Convicted of Murder, Study Shows*, N.Y. Times, Mar. 7, 2017, www.nytimes.com/2017/03/07/us/wrongful-convictions-race-exoneration.html. And yet, the problem persists at conscience-shocking rates. *See* 4 William Blackstone, Commentaries at *358 ("[T]he law holds that it is better that ten guilty persons escape, than that one innocent suffer."). But despite widespread recognition of the problem of wrongful convictions, and clear and ample instruction from this Court that this problem must be taken seriously and corrected, the First District Appellate Court continues to erect barriers to justice for the wrongfully convicted. Mr. Jackson's case presents such a case of injustice.

As Justice Mikva highlights in her dissent, Mr. Jackson is now denied the ability to challenge his conviction because of three errors committed by the First District. First, contrary to clear guidance from this Court, including *People v. Coleman*, 2013 IL 113307, *People v. Tate*, 2012 IL 112214, and *People v. Ortiz*, 235 Ill. 2d 319 (2009), the First District read *People v. Hobley*, 182 Ill. 2d 404 (1998), to *compel* the denial of leave to file a successive post-conviction petition because evidence of police misconduct supporting Mr. Jackson's actual innocence claim also supports his cause and prejudice claim. (App. A at A024-25, ¶ 71.) This is incorrect. As Justice Mikva responded in dissent, "…the 'actual innocence' evidence … should not be siloed off and considered separately from the 'cause-and-prejudice' evidence of prior coercive police misconduct." (App. A at A044, ¶ 120 (Mikva, J., dissenting).)

Second, the First District ruled that an eyewitness affidavit submitted with Mr. Jackson's Motion could not be treated as newly discovered evidence for the purpose of

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supporting his actual innocence claim, as a matter of law, because he knew or could have known of the existence of the testimony previously—even though, through no fault of his own, he has been prevented from presenting it in his defense at least twice previously. As Justice Mikva noted in dissent, the law of Illinois has changed since Mr. Jackson was last denied the opportunity to present this evidence, such that "[j]udged by today's legal standards, it is likely that … this evidence of innocence … would not be summarily dismissed." (App. A at A038-39, ¶ 108 (Mikva, J., dissenting).) Therefore, this case presents the question of whether previously excluded exculpatory evidence may be considered newly discovered for the purposes of supporting an actual innocence claim when the evidence has never before been considered by a court through no fault of the petitioner.

Finally, in resolving Mr. Jackson's case, the First District announced a brand new, inappropriate, and "overly rigorous" test for evaluating evidence of police misconduct offered in support of post-conviction petitions. (App. A at A042-43, ¶ 116 (Mikva, J., dissenting).) Although in the majority opinion Justice Mikva originally asserted the court was merely following this Court's guidance in *People v. Patterson*, 192 Ill. 2d 93 (2000), and its progeny, (App. A at A030-34 ¶¶ 84-90), upon careful reconsideration she acknowledges that the court, for the first time, imposed a new stringent litmus test on evidence of police misconduct, (App. A at A041, ¶ 113 (Mikva, J., dissenting)). Specifically, the First District ruled that Mr. Jackson's allegations and corroborating evidence of long detentions and other intimidating behavior intended to coerce eyewitnesses into making false statements implicating him in the crime was "insufficient to justify further proceedings," because it was merely "similar, but not 'strikingly similar'"

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to coercive behavior the same detectives had been accused of, and in at least one instance, had admitted to, in other judicial proceedings. (App. A at A033-34, ¶ 90 (citing *People v. Bailey*, 2017 IL 121450, ¶ 21).) This case presents the Court with the opportunity to clarify the standard by which corroborating evidence of police misconduct should be judged in relation to motions for leave to file a successive post-conviction petition claiming actual innocence.

As Justice Mikva's reconsideration of her own opinion concludes, the First District is out of step with this Court's jurisprudence and its disposition of Mr. Jackson's case is manifestly unjust.

STATEMENT OF FACTS

Kevin Jackson was convicted, following a jury trial, of first-degree murder and aggravated battery with a firearm for a shooting in 2001 in Chicago's Back of the Yards neighborhood, which left one person dead and another injured. (App. A at A003-04, ¶ 1.) As the First District noted, at trial the "State's case rested on the prior inconsistent statements of three eyewitnesses[, who b]y the time of trial, each … had recanted, telling the jury that their previous statements identifying Mr. Jackson as the shooter were the result of police coercion." (*Id.*) Following an exhaustive and impressive review of the evidence presented at trial, Justice Mikva, writing for the First District, concluded that "there was no evidence, other than the recanting witness' inconsistent statements, tying Mr. Jackson to the shooting and the surviving victim [called to testify at trial] clearly and consistently testified that Mr. Jackson was not the shooter." (App. A at A029-30, ¶ 83.) Nevertheless, Mr. Jackson has remained in state custody since his arrest in 2001.

The First District also noted that the detectives leading the investigation of the shooting have been accused numerous times of, and have admitted in at least one judicial

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proceeding to, misconduct related to witness coercion in other investigations. (*See* App. B at A072-74, 26:3-28:12; App. C at A104-111.) Their investigation eventually led to the arrest and conviction of Mr. Jackson. (App. C at A101, A103.) And at trial, "none of the[eye]witnesses identified Mr. Jackson as the shooter … instead each testified that they had been threatened and coerced by detectives into signing the statements and giving the grand jury testimony implicating Mr. Jackson." (App. A at A006, ¶ 9.) The eyewitnesses consistently testified the detectives had used coercive tactics to get them to implicate Mr. Jackson as the shooter, including intimidating interrogations, sham polygraph examinations, and in one instance denying access to a phone or legal counsel for 33 hours. (App. A at A010-11, A021-22, ¶ 24, ¶¶ 57-58; App. C at A116.)

One eyewitness in particular, Ms. Quina Davis, was so persistently harassed that she fled her home and went into hiding to avoid the lead detectives, Brian Forberg and John Foster, who repeatedly and at times forcibly entered her home in their campaign of intimidation. (App. C at A243-83, A312-20.) Yet Ms. Davis never relented; she never agreed to give a false statement identifying Mr. Jackson as the shooter, and instead maintains to this very day that he was *not* the shooter. (App. C at A319.) As a result, the State never called her to testify—inexplicably, neither did Mr. Jackson's defense attorney, who likely had difficulty finding her while investigating Mr. Jackson's case and preparing for trial due to her hiding from the police. (*Id.*)

The prosecution did, however, call the surviving victim to testify, and when asked if Mr. Jackson was the man who shot him, he unequivocally stated, "***I never seen that young man before … he don't look nothing like the guy … who shot me….***" (App. A at A036-37, ¶ 101 (emphasis added).)

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To counteract the consistent testimony that Mr. Jackson had nothing to do with the shooting, the State offered *no* forensic evidence linking Mr. Jackson to the crime. (App. A at A006, ¶ 9.) Despite the lack of forensic evidence or in-court testimony linking Mr. Jackson to the shooting, (*Id.*), and regardless of the surviving victim's "clear, specific, and compelling testimony that Mr. Jackson was *not* the person who shot him," (App. A at A036-37, ¶ 101 (Mikva, J., dissenting) (emphasis in original)), the jury convicted Mr. Jackson, although only after long, contentious deliberations, (R1019; C39-43).

The instant proceedings began in 2017 when Mr. Jackson filed his Motion. (App. C.) In support of his request for leave to file a successive post-conviction petition, Mr. Jackson presented evidence, unknown or unavailable previously, of a pattern and practice of witness coercion by the detectives involved in the investigation leading to his arrest, including lead detectives Brian Forberg and John Foster, that corroborates the testimony of the witnesses who recanted their statements at trial. (*See generally* App. C at A104-11.) This new evidence consisted, in substantial part, of: (1) logs of citizen complaints alleging a variety of misconduct by the officers, including one filed by the mother of Ms. Davis that relates to Detectives Forberg's and Foster's intimidation of Ms. Davis throughout the investigation leading to Mr. Jackson's arrest, (2) news articles describing alleged misconduct by the officers and exonerations of individuals caught up in their tainted investigations, and (3) civil suits involving similar misconduct by the officers. (*Id.*) Mr. Jackson also submitted affidavits from Ms. Davis and several other of the testifying witnesses. (App. C at A312-35.)

ARGUMENT

I. The First District Disregarded this Court's Instruction that an Actual Innocence Claim Need Not be "Freestanding" When It Denied Mr.

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Jackson's Successive Petition on the Basis that Evidence Supporting His Actual Innocence Claim also Supports His Cause and Prejudice Claim.

The First District described itself as "compelled" by *People v. Hobley*, 182 Ill. 2d 404 (1998), to deny Mr. Jackson relief on the basis of actual innocence because the evidence he proffered of police misconduct in support of that claim also supports his claim for relief under cause and prejudice. (App. A at A024, ¶ 70.) Thus, the First District concluded, Mr. Jackson's actual innocence claim is not "freestanding," and ruled on that basis that his claim must be denied. (*See* App. A at A043-44, ¶¶ 118, 119 (Mikva, J., dissenting) (citing App. A at A024-25, ¶ 71) ("We declined to ['consider the evidence of prior coercive conduct by the officers as further evidence of his actual innocence'] concluding that as in *Hobley*, the evidence was not presented as a wholly independent basis establishing the defendant's innocence but to supplement a due process claim").)

This ruling directly conflicts with this Court's much more recent decision in *People v. Coleman*, 2013 IL 113307, ¶¶ 89-91, in which it made clear that under Illinois law an actual innocence claim may warrant relief regardless of whether it is "freestanding." *See also People v. Tate*, 2012 IL 112214, ¶¶17, 23-25, 29 (this Court reversed the dismissal of a post-conviction petition in which claims of both actual innocence and cause-and-prejudice were supported by the same affidavits). As Justice Mikva, the author of both the majority and dissenting opinions below, agrees, under Illinois law "the 'actual innocence' evidence … should not [have] be[en] siloed off and considered separately from the 'cause-and-prejudice' evidence of prior coercive police misconduct." (App. A at A044, ¶ 120 (Mikva, J., dissenting).)

Most crucially, the First District's decision violates the ends of justice. *People v. Collins*, 202 Ill. 2d 59, 82 (2002) (McMorrow, J., dissenting) ("[A]llowing a claim of actual

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innocence to be lost because of a procedural deficiency would be contrary to principles of justice and fairness.") (internal quotation marks omitted) (*citing People v. Boclair*, 202 Ill. 2d 89, 102 (2002)). As Justice Mikva concludes:

> When we look at the strength of th[e] combined evidence [offered by Mr. Jackson's Motion] in light of what was actually presented at trial, I find it difficult, if not impossible, to believe that the outcome would be the same, *i.e.* that a reasonable jury considering the unequivocally exonerating testimony of the surviving victim, the detailed and consistent accounts of coercion given by the recanting witnesses at trial, the evidence of witness coercion by some of the same detectives in the *Patterson* and *Bridewell* cases, *and* the testimony of Ms. Davis[,] would still find Mr. Jackson guilty.

(App. A at A044-45, ¶ 121 (Mikva, J., dissenting) (emphasis in original).) This Court should not let this injustice stand unexamined.

This Court should grant Mr. Jackson leave to appeal, so the Court can definitively state the correct interpretation of *Hobley* in light of *Coleman* and other more recent decisions by this Court. In the alternative, the Court should remand this matter to the First District to reconsider in light of this Court's decisions in *Coleman* and *Tate*.

II. Lacking Clear Guidance from this Court, the First District Has Unjustly Refused to Treat an Exculpatory Affidavit as Newly Discovered Evidence, On the Basis that a Similar Affidavit Was Previously Presented by the Petitioner Even Though It Was Excluded at that Time Solely for Lacking Notarization, Which Is No Longer Appropriate under *People v. Allen*.

In support of his Motion, Mr. Jackson offered an affidavit from Ms. Davis stating, in relevant part, that she witnessed the shooting, that Mr. Jackson was not the shooter, and that the police investigating the shooting attempted to coerce her into giving a false statement indicating that he was the shooter anyway. (App. C at A312-20, Suppl. C220-28.) The First District held that this is not newly discovered evidence because Mr. Jackson knew of Ms. Davis at the time of the trial. (App. A at A026-27, ¶¶ 75-76.)

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The First District's decision is contrary to this Court's guidance in *People v. Sanders*, 2016 IL 118123, ¶ 47, *People v. Coleman*, 2013 IL 113307, ¶ 102, and *People v. Ortiz*, 235 Ill. 2d 319, 333-34 (2009), and other cases making clear that the most important consideration in an actual innocence claim is the conclusiveness of the evidence offered. By refusing to even allow Mr. Jackson the opportunity to file a successive post-conviction petition because he might have been able to present this evidence previously,[2] the First District is perpetuating and even deepening the injustice already suffered by Mr. Jackson. *Cf. People v. Washington*, 171 Ill. 2d 475, 493 (1996) (McMorrow, J., concurring) (due process prohibits formalist considerations from "overrid[ing] the natural demands of justice").

Moreover, the First District fails to account for the fact that when Mr. Jackson did attempt to present a similar affidavit from Ms. Davis with his first post-conviction petition—in support of his claim of ineffective assistance of counsel on the basis that Ms. Davis should have been called as a defense witness at trial—he was prohibited from doing so. (App. A at A038, A040, ¶¶ 107, 110 (Mikva, J., dissenting).) But because he filed that petition *pro se* and while incarcerated, he was unable to obtain her signature on the affidavit. (App. A at A038, ¶ 107 (Mikva, J., dissenting).) His petition was then "dismissed as frivolous by the circuit court for the sole reason that the attached affidavit giving Ms. Davis's account … was unsigned." (*Id.*) Therefore, Mr. Jackson has now been denied the opportunity to present Ms. Davis' exculpatory testimony in court three times—the first

[2] Even the majority admits the evidence on this point is conflicting, (App. A at A026-27, ¶ 76), and therefore it should not have ruled on this basis at this stage of proceedings. *People v. Domagala*, 2013 IL 113688, ¶ 34 (evidentiary issues are not to be decided before a third-stage evidentiary hearing); *People v. Coleman*, 183 Ill. 2d 366, 385, 390-91 (1998) (weighing of evidence is reserved for the evidentiary hearing phase of post-conviction proceedings).

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time at trial by his own counsel, the second by the circuit court in support of his first post-conviction petition, and now a third time by the circuit court in relation to his Motion.

The law has changed significantly since Mr. Jackson's first post-conviction petition. (App. A at A038-39, ¶ 108.) In *People v. Allen*, 2015 IL 113135, ¶ 34, this Court forbid the circuit courts from dismissing post-conviction petitions "solely for failure to notarize a statement styled as an evidentiary affidavit." So, were Mr. Jackson's first post-conviction petition to be filed today and "[j]udged by today's legal standards, it is likely that Mr. Jackson's initial *pro se* petition proffering this evidence of innocence and of ineffective assistance of counsel would not be summarily dismissed." (App. A at A038-39, ¶ 108 (Mikva, J., dissenting).) As Mr. Jackson has been prevented at every stage from presenting this evidence "through no fault of his own[,]" (App. A at A040, ¶ 110 (Mikva, J., dissenting)—should he not now, in light of *Allen*, finally be allowed to present it in support of his actual innocence claim?

As the dissent pointedly remarks: "a more relaxed standard of 'newly discovered' has been applied in a number of circumstances where to do otherwise would risk denying a defendant any real opportunity to show his innocence." (App. A at A039-40, ¶ 109 (Mikva, J., dissenting), *citing People v. Coleman*, 2013 IL 113307, *People v. Warren*, 2016 IL App (1st) 090884-C, *People v. Tyler*, 2015 IL App (1st) 123470.) As Justice Mikva states so effectively, to refuse Mr. Jackson the same chance would be a fundamental miscarriage of justice:

> I believe that failing to consider Ms. Davis's account on the basis that she was technically known to defendant, even though—through no fault of his own—he has been precluded at every step from putting forward her exculpatory testimony, would be just the sort of fundamental miscarriage of justice that the actual innocence exception to the bar on successive petition is intended to prevent.

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(App. A at A040, ¶ 110 (Mikva, J., dissenting).)

This Court should grant Mr. Jackson leave to appeal so that it may clarify the circumstances in which previously excluded evidence may later be appropriate support for a motion seeking leave to file a successive post-conviction petition claiming actual innocence. In the alternative, the Court should remand this matter to the First District to reconsider in light of this Court's decision in *Allen*.

III. The First District Departs from this Court's Jurisprudence and Contravenes the Ends of Justice by Announcing an "Overly Rigorous Standard" In Affirming the Denial of Mr. Jackson's Motion Because the Police Misconduct He Alleged Was "Similar But Not 'Strikingly Similar'" to Prior Misconduct by the Same Officers.

Mr. Jackson alleges that the detectives responsible for his arrest coerced witnesses into falsely identifying him as the shooter and he has presented corroborating evidence with his Motion relating to similar misconduct by the same officers in other investigations. As Justice Mikva agreed, "Mr. Jackson has met his burden [of establishing a pattern and practice of misconduct] with respect to Detectives Forberg and Foster, the lead detectives who handled this case." (App. A at A040-41 ¶ 112 (Mikva, J., dissenting).) Mr. Jackson's evidence included the case of *Bridewell v. City of Chicago*, No. 08-C-4947, 2012 WL 2458548, at *1-2 (N.D. Ill. June 27, 2012), in which the same Detective Forberg admitted detaining witnesses for extended periods of time without bathroom breaks, resulting in false statements that were later uniformly recanted. Mr. Jackson also relied on the Complaint in *Patterson v. City of Chicago*, No. 11-CV-07052, ECF No. 1 (N.D. Ill. 2011), which alleged that Detectives Forberg and Foster were among the officers who coerced false statements from witnesses by, *inter alia*, denying them food and water.

The majority held this evidence was "similar but not 'strikingly similar' to the alleged coercion in this case." (App. A at A033-34, ¶ 90.) As the author of the majority

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opinion now notes in dissent, this holding was "based on [an] incorrect assumption that Mr. Jackson needed to show that a particular type of coercion was the *modus operandi* of these police officers and [a] failure to differentiate between propensity evidence offered against a defendant and evidence used by a defendant to demonstrate his innocence." (App. A at A040-41, ¶ 112 (Mikva, J., dissenting).)

In its confusion the First District has announced a new "overly rigorous standard," (App. A at A042-43, ¶ 116 (Mikva, J., dissenting)), that for the first time requires that "evidence [of police misconduct] must be 'strikingly similar' [to the alleged misconduct] in order to be relevant or admissible," (App. A at A041, ¶ 113 (Mikva, J., dissenting)). This restrictive standard has prevented Mr. Jackson from the opportunity to "rebut … in any meaningful way" the State's theory at trial that the witnesses' recantations were out of fear of gang retribution. (App. A at A042-43, ¶ 116 (Mikva, J., dissenting).) Had he been able to do so before the jury, it "may well have changed the outcome of his trial." (*Id.*; *see also* App. A at A029-30, ¶ 83 ("[W]e find it likely that evidence of a relevant pattern and practice of the same or similar conduct by the same detectives could have led the jury to conclude that there was reasonable doubt of Mr. Jackson's guilt.").)

This Court should grant Mr. Jackson leave to appeal in order to clarify the standard by which evidence of police misconduct should be judged in relation to motions for leave to file a successive post-conviction petition claiming actual innocence. In the alternative, this Court should remand this matter to the First District to reconsider with appropriate instructions.

APPENDIX

Mr. Jackson herewith attaches an appendix comprising the following documents from the record:

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(A) the First District's opinion and dissent upon rehearing;

(B) the transcript of the oral argument before the First District;

(C) Mr. Jackson's omnibus motion for leave to file a successive post-conviction petition and the petition for relief under the Illinois Post-Conviction Hearing Act.

CONCLUSION

For the foregoing reasons, this Court should grant Mr. Jackson's petition for leave to appeal so that it may clarify the law surrounding motions for leave to file a successive post-conviction petition raising claims of actual innocence, and so that it may remedy the injustice that Mr. Jackson has suffered. In the alternative, this Court should remand this matter to the appellate court with instructions to reconsider its decision.

Respectfully Submitted,

/s/ *Brandon C. Clark*
Attorney for Kevin Jackson

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) 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 16 pages.

/s/ *Brandon C. Clark*
Attorney for Kevin Jackson

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PROOF OF SERVICE

I hereby certify that on this 2nd day of May 2019, a true and correct copy of Defendant-Petitioner's Petition for Leave to Appeal was electronically submitted to the Office of the Clerk of the Supreme Court of Illinois for filing, and that a true and correct copy of the foregoing was served via the Court's electronic filing system on:

Cook County State's Attorney Office, Criminal Appeals Division
Richard J. Daley Center
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eserve.criminalappeals@cookcountyil.gov

I further hereby certify that on this 2nd day of May 2019, a true and correct copy of Defendant-Petitioner's Petition for Leave to Appeal was sent via electronic mail to the below identified counsel of record in this matter:

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Date: May 2, 2019

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APPENDIX 13

SUPREME COURT OF ILLINOIS

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TDD: (312) 793-6185

September 25, 2019

In re: People State of Illinois, Appellee, v. Kevin Jackson, Appellant.
Appeal, Appellate Court, First District.
124818

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

APPENDIX 14

No. 124818

E-FILED
10/9/2019 1:21 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN JACKSON, Defendant-Appellant.	Appeal from the Illinois Appellate Court, First District No. 1-17-1773 There Heard on Appeal from the Circuit Court of Cook County No. 01-CR-17492 Honorable Evelyn B. Clay (Ret.), Presiding

NOTICE OF ELECTION PURSUANT TO SUPREME COURT RULE 315(h)

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COUNSEL FOR DEFENDANT-APPELLANT

ORAL ARGUMENT REQUESTED

SUBMITTED - 6893813 - Brandon Clark - 10/9/2019 1:21 PM

NOTICE OF ELECTION PURSUANT TO SUPREME COURT RULE 315(h)

Now comes Petitioner, Kevin Jackson, and pursuant to Supreme Court Rule 315(h), states that he elects to file an additional brief in this cause.

Date: October 9, 2019

Respectfully submitted,

/s/ *Brandon C. Clark*

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No. 124818

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Illinois Appellate Court,
	)	First District
v.	)	No. 1-17-1773
	)	
KEVIN JACKSON,	)	There Heard on Appeal from the
	)	Circuit Court of Cook County
Defendant-Appellant.	)	No. 01-CR-17492
	)	
	)	Honorable Evelyn B. Clay (Ret.),
	)	Presiding
	)	

NOTICE OF FILING OF
ELECTION PURSUANT TO SUPREME COURT RULE 315(h)

TO: ILLINOIS ATTORNEY GENERAL
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COUNSEL FOR PLAINTIFF-APPELLEE

PLEASE TAKE NOTICE that on this 9th day of October, 2019, I caused to be electronically filed with the Clerk of the Supreme Court of the State of Illinois, the attached ***Notice of Election Pursuant to Supreme Court Rule 315(h)***. Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned hereby certifies that the statements set forth in this instrument are true and correct.

SUBMITTED - 6893813 - Brandon Clark - 10/9/2019 1:21 PM

Date: October 9, 2019

/s/ *Brandon C. Clark*

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SUBMITTED - 6893813 - Brandon Clark - 10/9/2019 1:21 PM

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2019, true and correct copies of Defendant-Appellant's ***Notice of Election Pursuant to Supreme Court Rule 315(h)*** was sent via electronic mail to the following counsel of record:

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COUNSEL FOR PLAINTIFF-APPELLEE

Under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned hereby certifies that the statements set forth in this instrument are true and correct.

Date: October 9, 2019

/s/ *Brandon C. Clark*

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COUNSEL FOR DEFENDANT-APPELLANT

SUBMITTED - 6893813 - Brandon Clark - 10/9/2019 1:21 PM

APPENDIX 15

BRANDY BUTLER,

called as a witness on behalf of the People of the State of Illinois, after having been first duly sworn, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. PAPA:

Q. Ma'am, in a loud and clear voice could you please state your first and your last name and spell your last name for the benefit of the court reporter?

A. Brandy, B-r-a-n-d-y, Butler, B-u-t-l-e-r.

Q. Do you also go by another name of Brandy Grant?

A. Yeah.

Q. You got to keep your voice up, Brandy, so everybody can hear you. Okay?

A. Yes, sir.

Q. So you go by Brandy Butler as well as Brandy Grant?

A. Yes.

Q. How old are you?

A. 23.

Q. And do you live in the city of Chicago?

A. Yes, sir.

Q. How long have you lived in the city for?

A. The majority of my life.

Q. Prior to this weekend, Brandy, were you working?

A. Yes.

Q. Where were you working at?

A. Wendy's.

Q. And what Wendy's?

A. In Oak Park.

Q. How long had you been working for the Wendy's in Oak Park?

A. For about four months.

Q. Brandy, do you have any children?

A. Yes, sir.

Q. And how many children do you have?

A. Two.

Q. Brandy, you've been previously convicted for the felony offense possession of a controlled substance with intent to deliver and that was from August of 2002, correct?

A. Yes, sir.

Q. And you are actually in custody here today with the Cook County sheriffs, correct?

A. Yes, sir.

Q. And that's in connection with that offense,

correct?

A. Yes, sir.

Q. Now, Brandy, I want to ask you if you know a person with the nickname of Googie?

A. Yes, sir.

Q. Do you see Googie in court here today?

A. Yeah.

Q. Yes?

A. He's over there.

Q. Okay. Brandy, could you please point to him and describe what Googie is wearing.

A. He's wearing a white shirt with a tie.

MR. PAPA: Judge, may the record reflect an in-court identification of the defendant by Brandy?

THE COURT: The record will so reflect an in-court identification of the defendant.

MR. PAPA: Thank you, Judge.

Q. Now, Brandy, how long have you known Googie for?

A. For a couple years, for two years, since we went to school and stuff.

Q. Do you know what a couple of years is, about how many?

A. A long time, you know. Since we was about

13, 12.

Q. How do you know the defendant?

A. Because we all grew up like in the neighborhood together.

Q. You grew up with him in the neighborhood. And do you know Googie's real name?

A. Yes, sir.

Q. What's his real name?

A. Kevin.

Q. Do you know his last name?

A. No.

Q. You know him by Kevin or Googie?

A. Yes.

Q. Brandy, I'm going to call your attention to the early morning hours of May 6, 2001. Okay. And do you remember who you were with in the early morning of May 6, 2001?

A. I think I was with my friend.

Q. Did you have an opportunity to be at the Citgo station at 55th and Damen on May 6, 2001?

A. What time was it?

Q. About 1, 1:30 in the morning.

A. Yes, sir.

Q. Do you remember that day now?

A. Um-hum.
Q. Yes? You have to say yes.
A. Yes.
Q. Who were you with?
A. I was with Quiana Davis.
Q. Do you know Quiana's last name?
A. Yes. Quiana Davis, Emanuel, and me.
Q. Quiana Davis and Emanuel, is that also Manny Stewart?
A. That's Manny, yes.
Q. And who was the last person you named?
A. Me, Brandy. We was in the car, us three.
Q. Tameka?
A. No.
Q. Who did you say?
A. Me, Brandy.
Q. Oh, you. Just the three of you?
A. Yes.
Q. Whose car were you?
A. We were in Manny car.
Q. Where were you guys coming from?
A. We were coming from Quiana house.
Q. Who was at Quiana's house with you?
A. It was me, Quiana, Meek, that's Shemika, and

her little sister.

Q. Would that be Shemika Mason?

A. Yes.

Q. When you got to the Citgo gas station, what happened?

A. We pulled up in front of the Citgo, the store like where the two doors are, okay, and we saw Meechie, a guy named Meechie, and he was in the car with a guy and another guy, okay, and Quiana said hi to him and --

Q. Quiana said hello to whom?

A. Yeah, she said what's up, Meechie, you know. And so I said hi. So then she was like why don't you get the -- Can I say this? Blunt. A cigar, a blunt.

Q. Why don't you tell us what a blunt is.

A. A cigar that you smoke reefer in. But I really didn't smoke it, it was for her.

So I went in the store. As I go in the store, I'm getting the blunt, ordering the blunt, I hear gunshots.

Q. How many gunshots did you hear?

A. A couple, about ten. More than that, probably. And I hit the ground.

Q. After you hit the ground, then what happened?

A. After it happened I saw like footprints -- as I'm laying on the ground in the Citgo, footprints running back that way like chasing Meechie or whoever they was chasing 'cause I really did see somebody running from that way, like 54th, back 54th and Damen, like that way.

Q. 54th and what, Damen?

A. Yes. And that's when I really hit the floor 'cause I'm like, ah, I'm fittin' to die; oh, my God, and I was just scared.

Q. Now, Brandy, did you see Googie at that gas station on May 6, 2001?

A. No, he was nowhere around.

Q. Brandy, do you remember speaking to the police on June 20, 2001, correct?

A. Um-hum.

Q. You have to say yes or no.

A. Yes, sir.

Q. And that was at Area 1, a police station, correct?

A. Yes.

Q. That was 51st and Wentworth?

A. Yes, sir.

Q. These were Chicago police detectives that

spoke with you, correct?

A. Yes, sir.

Q. And it was about what happened on May 6th at that Citgo gas station, correct?

A. Yes, sir.

Q. About the shooting?

A. Yes, sir.

Q. You spoke with them about what you had saw, correct?

A. Yes, sir.

Q. Later that night into June 21st, into the early morning hours of June 21st you actually then met with an assistant state's attorney, correct?

A. Yes, sir.

Q. She identified herself as Colleen Daly to you, right?

A. Yes, sir.

Q. And she told you that she was a lawyer and a prosecutor but not your lawyer, right?

A. Yes, sir.

Q. And she then began asking you questions about what you had saw at that Citgo station, correct?

A. Yes, sir.

Q. About the shooting?

A. Yes, sir.

Q. And some questions about who you were with at that time, right?

A. Yes, sir.

Q. When you were talking to her, to Colleen Daly, the state's attorney, you weren't handcuffed at that time, right?

A. No.

Q. No, you weren't handcuffed?

A. No, I wasn't.

Q. And she asked you questions and then you gave her some answers, right?

A. (Nodding head.)

THE COURT: You have to say yes.

A. Yes. Sorry.

BY MR. PAPA:

Q. Now, Brandy, when Colleen, the state's attorney, Miss Daly, were talking to you, the detectives were also in the same room with you, right?

A. Yes, sir.

Q. At some point during the conversation the detective actually left the room and you were just talking with Miss Daly at that time, right?

A. Yes, sir.

Q. She asked you how you had been treated by those detectives, right?

A. Yes, sir.

Q. And you told Miss Daly that you had been treated fine or okay by the detectives, right?

A. Yes.

Q. After that conversation your statement, the conversation that you had, Colleen Daly then wrote out your statement, correct?

A. Yes, sir.

Q. She asked you some questions and you gave her some answers, right?

A. Yes, sir.

Q. And that was done in the same room -- you were sitting in the same room with her as Miss Daly was actually writing it out, right?

A. Yes, sir.

Q. At the end of the statement after she finished writing it out, that statement was then read back to you, correct?

A. Yes, sir.

Q. You were seated right next to Miss Daly, right?

A. Yes, sir.

Q. And she read it back to you, correct?
A. Yes, sir.
Q. She told you that if you wanted to make any changes or corrections to the statement you could, right?
A. Yes, sir. Can I say something?
Q. What do you want to say, Brandy?
A. Your Honor and to the jury, it's not -- I did not mean to say that statement.
Q. Okay. We'll get to that, Brandy. We'll get to that. Okay. I'm just going to keep asking you some questions.
A. Yes, sir.
Q. Okay. Going back to my other question. She told you, Miss Daly told you that you could make any changes or corrections or additions to that statement that you wanted to, correct?
A. Yes, sir.
Q. And when she read it back to you, you actually start making some corrections or additions to that statement, right?
A. Yes, sir.
Q. When you made those corrections, you had put your initials next to the corrections, right?

A. Yes, sir.

Q. Miss Daly and the detectives who was also in there, they also put their initials there, correct?

A. Yes, sir.

Q. At the end of that statement, after all the changes and corrections had been made, you actually then signed each page of that statement, correct?

A. Yes, sir.

Q. And you put your signature, Brandy Grant, at the bottom of each page?

A. Yes, sir.

Q. During that conversation, during that statement you were shown a picture, correct?

A. Yes, sir.

Q. That picture was used as an exhibit?

A. Yes, sir.

Q. That picture was of Googie, correct?

A. Yes, sir.

Q. And during the handwritten statement you actually identified the picture as being Googie, correct?

A. Yes.

Q. And you wrote your name on the back of that picture, correct?

A. Yes.

MR. PAPA: Judge, may I approach?

THE COURT: Yes.

MR. PAPA: Thank you.

Q. Brandy, I'm going to show you what's been marked as People's Exhibit Number 3 for identification. This is your handwritten statement, correct?

A. Yes, sir.

Q. It's got your name at the top, correct?

A. Yes, sir.

Q. It says the statement of Brandy Grant?

A. Yes, sir.

Q. And it says that it was taken on June 21, 2001?

A. Yes, sir.

Q. At about 12:10?

A. Yes.

Q. At Area 1?

A. Yes.

Q. And that present were ASA Colleen Daly, Detective Foster, and Detective Forberg, correct?

A. Yes.

Q. Now, Brandy, this document, that's your

handwritten statement, it's four pages long, correct?

A. Yes, sir.

Q. I'm going to just ask you some questions. Okay.

At the bottom of each of these charges, Brandy, your signature appears on page 1, page 2, page 3, and then at the top of page 4?

A. Yes, sir.

Q. There is an actual addition on page 1 of the the statement, correct?

A. Um-hum.

Q. That's yes?

A. Yes, sir.

Q. Your initials appear in those areas, correct?

A. Yes.

Q. The addition is in the left-hand margin of this document, correct?

A. Yes, sir.

Q. You wanted that addition put in there, correct?

A. Yes, sir.

Q. And it was by the state's attorney, correct?

A. Yes, it was. I need to talk.

Q. Okay. On the second page of your handwritten

statement there's a crossout about a little less than halfway down, correct?

A. Um-hum.

Q. Again, you have to say yes.

A. Yes, sir.

Q. Okay. Your initials appear at that crossout, correct?

A. Yes.

Q. And towards the end of that same line there's a crossout again, correct?

A. Yes, sir.

Q. Your initials also appear there, correct?

A. Yes, sir.

Q. About four lines from the bottom on page 2 there's another change or correction, correct?

A. Yes, sir.

Q. Your initials appear there?

A. Um-hum.

Q. Yes?

A. Yes, sir.

Q. And at the top of page 3, again there's a crossout, right?

A. Yes, sir.

Q. That's because you wanted the correction or

the addition there and it was done, right?

A. Yes, sir.

Q. Actually, Brandy, and then the exhibit, People's Exhibit Number 1, the one that I asked you about, who is that a picture of?

A. Googie.

Q. The defendant?

A. Yes.

Q. The same person in court here today?

A. Yes.

Q. And your signature appears on the back of People's Exhibit Number 1, Brandy Grant?

A. Yes, sir.

Q. You signed your signature on that exhibit, correct?

A. Yes, sir.

Q. The detectives' signature and the state's attorney's signature also appear there?

A. Yes, sir.

Q. And also there's a picture of you, correct, a Polaroid picture?

A. Um-hum.

Q. Again, yes?

A. Yes, sir.

Q. That photograph was taken after your statement had been completed, right?

A. Yes, sir.

Q. Your signature appears on this photograph as well?

A. Yes, sir.

Q. As do the state's attorney's and the two detectives?

A. Um-hum.

Q. Yes?

A. Yes.

Q. Now, Brandy, during the statement, the handwritten portion of the statement, Colleen Daly, the state's attorney, asked you some personal information; where you lived, how old you were, that kind of information, right?

A. Yes.

Q. And again you provided all that information to her?

A. Yes, sir.

Q. You also told Miss Daly in your handwritten statement that on Saturday, May 5th, 2001, during the evening and going into the day of May 6, 2001, you were in a car with your friend, Quiana Davis, Manny,

Mario, and Googie. You told her that in your handwritten statement, correct?

A. The police told me that, the police told her that.

Q. My question to you is this --

A. I need to speak.

Q. In the handwritten statement that I just showed you, you told Colleen Daly that on May 5th into May 6th you were with Quiana Davis, Manny, Mario, and Googie, correct?

A. No.

Q. That is contained in this handwritten statement, correct?

A. No.

Q. You also --

A. I didn't even read that, sir.

Q. Well, you told me earlier that it was read back to you out loud as you were sitting next to Miss Daly, correct?

A. Yes, sir, but I need to --

Q. And you were allowed -- Brandy, you were allowed to make any changes or corrections to that statement, correct?

A. Yes, sir.

Q. And you actually did make changes and corrections in that statement, right?

A. I guess, sir.

Q. You also said in that handwritten statement that you didn't know Mario or Manny's last name but that Googie's full name is Kevin Jackson. You said that, correct? And that's in your handwritten statement.

A. They wrote that statement, sir.

Q. Again, it was read back to you?

A. Yes, sir.

Q. You didn't make any changes or corrections to it, correct?

A. Yes, sir.

Q. In the statement you said that you have known Googie, who you identified in People's Exhibit Number 1, for two to three years from the neighborhood. That's contained in your statement, correct?

A. I guess, sir.

Q. You also said that you know that Googie is a member of the Vicelords street gang, correct?

A. Yes, sir.

Q. And that's because Googie is a Vicelord?

A. Yes, sir.

Q. In this handwritten statement that you told to Colleen Daly you said that Manny drove into the Citgo gas station located at 54th and Damen and that he parked in the station and that you got out of the car. That's what you told her, correct?

A. Yes, sir.

Q. And that as you were getting out of the car, you saw a guy -- heard a guy named Meechie who was in a car parked at that gas station, correct?

A. Yes, sir.

Q. That's what's in your handwritten statement?

A. Yes, sir.

Q. And in the statement you told Colleen Daly that you didn't know Meechie's full name, correct?

A. Yes, sir.

Q. You knew or you told Miss Daly that Meechie was a Gangster Disciple?

A. Yes.

Q. Brandy, you then told Miss Daly that you went into the gas station to buy a blunt, which is a cigar, correct?

A. Yes, sir.

Q. And that once you were inside the gas station you heard gunshots?

A. Yes, sir.

Q. That you then looked out the window of the gas station, right?

A. Yes, sir.

Q. And when you looked out of the gas station, in your handwritten statement you said that you saw Googie with a gun in his hand firing the gun, correct?

A. No, I didn't say that.

Q. It's in the handwritten statement, correct?

A. No.

Q. Okay. You also said that you saw Googie running from the Damen side of the gas station firing the gun at the car where Meechie was now standing. That's in your statement, correct? That's what you told ASA Colleen Daly, correct?

A. May I please speak?

Q. My question to you, Brandy, is that's what's in your statement and that's what you told Colleen Daly?

A. No, sir.

Q. You also told Miss Daly that you heard about four or five gunshots and then you hit the ground in the gas station, correct?

A. Yes, sir.

Q. You also told Miss Daly, and it's in your handwritten statement, that you never saw Meechie firing a gun, correct?

A. Yes, sir.

Q. You also told Miss Daly that after you heard the gunshots you saw a pair of black shoes run past the door to that gas station, correct?

A. Yep.

Q. And that a short time later Quiana came in and asked if everybody was okay, right?

A. Yes, sir.

Q. You then went outside and saw the old man slumped behind the car, correct?

A. (Nodding head.)

Q. And that was the same car that Meechie was standing by, correct?

A. Yes, sir.

Q. In the handwritten statement, Brandy, you said that you were treated well by the police and by the assistant state's attorney, correct?

A. Yes, because I was scared, but I was really not treated nice by them.

Q. Well, it's contained in your handwritten statement, correct?

A. Yes, sir.

Q. You told Miss Daly, and it's contained in your handwritten statement, that you had been allowed to use the bathroom whenever you needed to, correct?

A. Yes, sir.

Q. You had pop to drink, you had a double cheeseburger and fries to eat, correct?

A. Yes, sir.

Q. And that you also told Miss Daly that no one had made any promises or threats to you in order for you to give that statement, correct?

A. Yes, sir.

Q. You told her that, correct?

A. Yes, sir.

Q. And you also said that you were making the statement freely and voluntarily, right? Is that yes?

A. I didn't even say anything. I didn't say nothing. I just was ready to go because I was harassed. I was everything. I was three months pregnant. I was going through a lot. I'm stressed out still right now to this day 'cause I lied on him. They had me to lie on him. They told -- they coerced me, Judge, I promise you. They made this story up. They kept saying Googie did it. He did not do it. He

was nowhere around. And I'm not saying that for the simple fact, you know, that I'm scared of anybody. He didn't do it. He was nowhere around. He was not in the car with us. It was me, Quiana, and Brandy, the only three of us in the car. Mario wasn't even around. I don't even remember if Mario was or not. But he was not in the car with us. I just want to speak to the Judge and tell her that becaue I think she's the only one that will listen to me. The detectives would not listen to me. They was not trying to hear anything. They told us that if we did did not say who did that, that it would be crimes on us 'cause we was there that night at the gas station. And I was just ready to go. And I'm sorry for what I did and I just signed the statement on you because I was ready to go and they said we was gonna beat that case and I just did it because I have kids. And I was there that night. I wish I wasn't there. It was a nightmare.

Your Honor, look at my hair (indicating). It's been stressing me out that much that I had to put this man away for that long.

THE COURT: Do you need tissue, ma'am?

A. And I'm suffering now for what I did.

(Witness crying.)

THE COURT: Do you want some water, Miss?

A. No. Thank you, ma'am.

(Short pause.)

MR. PAPA: You ready, Brandy?

THE COURT: Are you ready to proceed, Miss Butler?

A. Yes, sir -- yes, ma'am.

BY MR. PAPA:

Q. Okay. Brandy, I'm going to keep asking you some questions. Okay?

Brandy, I'm going to keep asking you some questions. Okay? If you need some time, just let me know. Are you okay?

Brandy, just so we're all clear, you're not in custody here today because of anything that happened on May 6th, 2001, correct?

MR. CONNIFF: Objection.

A. I know --

THE COURT: Just a moment. There's an objection.

MR. CONNIFF: I'll withdraw it.

THE COURT: All right.

BY MR. PAPA:

Q. Brandy, after you signed the handwritten statement, after you had given that handwritten

statement, later that same morning on June 21st, 2001, you were then taken --

A. To a grand jury.

Q. -- you were taken to this building, correct?

A. Yes, sir.

Q. They brought you up to the fourth floor of this building, right?

A. Yes, sir.

Q. And once you were at the fourth floor in this building you met another assistant state's attorney, correct?

A. Yes, sir.

Q. Her name was Kathy Lanahan, right?

A. Yes, sir.

Q. And again, she did the same thing, she identified herself to you as being Kathy Lanahan, right?

A. Yes, sir.

Q. And she told you that she was an assistant state's attorney which meant that she was a lawyer and a prosecutor but not your lawyer, right?

A. Yes, sir.

Q. And then when you met with Miss Lanahan. Again, you had a conversation with her about what you

had seen on May 6, 2001, at that Citgo gas station, correct?

A. Yes, sir.

Q. Again, she asked you those same questions, how you were treated by the police, correct?

A. Yes, sir.

Q. You again told her that you had been treated fine, correct?

A. Yes, sir.

Q. And she asked you how Miss Daly, the assistant state's attorney. Had treated you and you told her that she had treated you fine, correct?

A. She did. Yes, sir.

Q. After speaking with Miss Lanahan you then went into and testified before the Grand Jury of Cook County, correct?

A. Yes, sir.

Q. And a grand jury is made up of about 16 people, correct? You got to say yes or no?

A. Yes, sir.

Q. Inside the grand jury besides yourself, Kathy Lanahan, the assistant state's attorney was in there, correct?

A. Yes, sir.

Q. There was a court reporter in there, just like we have here today, taking down everything that was said by yourself as well as anyone else, correct?

A. Yes, sir.

Q. There were no police officers or detectives in the grand jury at that time, correct?

A. Yes, sir.

Q. There were not, correct?

A. Yes.

Q. You were then asked questions by Miss Lanahan again about what you had observed on May 6, 2001, correct?

A. Yes, sir.

Q. Miss Lanahan asked you -- page 3. First she asked you again some personal questions about your name, where you lived and what kind of high school education you had, correct?

A. Yes, sir.

Q. She then asked you a question and then you provided the answer.

"Question: I want to call your attention to May 6th of 2001. At approximately 1:30 in the morning were you in the vicinity of 55th and Damen?

"Answer: Yes."

You were asked that question and you gave that answer, correct?

A. Yes, sir.

Q. She then asked you:

"Question: And who were you with?

"Answer:" This is what you said. "Me, Manny, Quiana, Mario, and Googie."

You were asked that question and you gave that answer, correct?

A. That's what they told me to say.

Q. Again, you were asked that question and that's what you answered, correct?

A. Yes.

Q. And Googie again is the defendant sitting here in this courtroom?

A. (Nodding head.)

Q. You're shaking your head up and down. Does that mean yes?

A. Yes.

Q. She asked you this question.

"What were you doing at about 1:30?

"Answer: We pulled up to the gas station to go get a blunt.

"Question: And who was driving the car?

"Answer: Manny.

"Question: Whose car was it?

"Answer: His and Googie's. They shared the car."

You were asked those questions and you gave those answers, correct?

A. Yes, sir.

Q. You were asked what gas station did you pull up to and you answered Citgo, correct?

A. Yes, sir.

Q. You were asked the question:

"And did anything happen when you got out of the car?"

And you answered: "When I went into the store, two people were in front of me.

"Question: So you were waiting in line?

"Answer: Yes.

"Question: What happened as you were waiting in line?

"Answer: I seen the gunman run from 54th alley."

Were you asked those questions and did you give those responses?

A. Yes, sir.

Q. And you were also asked the following question:

"Question: You say you saw the gunman run from 54th Avenue?

"Answer: 54th alley to shoot at the car that Meechie was in.

"Question. Okay. You saw the gunman run from 54th alley?

"Answer: Yeah.

"Question: Who was the gunman?

"Answer:" By yourself again. "Answer: Googie."

Were you asked those questions and did you give those answers?

A. Yes, I did.

Q. You were actually then showed another photograph in the grand jury, correct?

A. Correct.

Q. Miss Lanahan asked you:

"I will show you what I've marked as People's Exhibit Number 1 for identification. Who is this a picture of?

"Answer: Googie.

"Question: Do you know Googie's real name?

"Answer: Kevin something.

"Question: Did you later learn his name was Kevin Jackson?

"Answer: Yes."

Were you asked those questions and did you give those responses?

A. Yes, sir.

Q. And then were you asked, "How long have you known Googie?" And you answered, "About a couple of years, three or four years."

"Question:" And you said, "What exactly did you see Googie doing?

"Answer: Shooting."

Were you asked that question and did you give that response?

A. Yes, sir.

Q. Were you then asked by Miss Lanahan, "Who was he shooting at, could you tell?

"Answer: Meechie."

Were you asked that question and did you give that response?

A. Yes, sir.

Q. Were you asked this question:

"Who is Meechie"? And did you answer, "The Gangster Disciple member that was in the car.

"Question: What car was he in?

"Answer: The car that the old man got killed in."

Were you asked those questions and did you give those answers?

A. Yes, sir.

Q. She asked you where you saw Meechie during the shooting, correct?

A. Yes.

Q. She asked you that.

"Was Meechie inside the car or outside the car when Googie started shooting?

"Answer: Like getting into the car. He was like on the outside."

Were you asked that question and did you give that response?

A. Yes, sir.

Q. "Question: When Googie started shooting what did Meechie do?

"Answer: Ran."

Were you asked that question and did you give that response?

A. Yes, sir.

Q. And were you asked this question:

"After the shooting did you see where Googie went?

"Answer: I didn't see where nobody went. I was just on the floor because I hit the floor when I heard the shot."

A. Yes, sir.

Q. Were you asked the following question:

"So you only saw Googie with the gun and you saw Meechie run and then you were down on the ground?

"Answer: Yes."

You were asked that question and you gave that answer, right?

A. Yes, sir.

Q. You were asked if you knew what gang Googie is in, correct?

A. Yes, sir.

Q. You said that he was a member of the Vicelords, correct?

A. Yes, sir. When will I be able to speak?

THE COURT: Miss Witness, your job is to answer questions only. You cannot make speeches. Your job

is to answer questions.

BY MR. PAPA:

Q. Brandy, you were also asked the following questions and gave the following responses:

"Question: Brandy, on June 21st at approximately 12:10 in the morning you were at Area 1 Violent Crimes, is that correct?

"Answer: Yes."

You were asked that and you gave that response, correct?

A. Yes.

Q. You were asked:

"And there you spoke with Detective Foster, Detective Forberg, and Assistant State's Attorney Colleen Daly, is that correct?

"Answer: Yes."

You were asked that question and gave that response?

A. Yes.

Q. You were asked the following question:

"Did you tell them the same facts on that date as you are telling the grand jury today"?

You answered yes.

A. Yes, sir.

Q. Were you asked the question:

"Was that statement written down?

"Answer: Yes.

"Question: Did you review it and sign that statement?

"Answer: Yes."

Were you asked those questions and did you give those responses?

A. Yes.

Q. Were you asked the following question and did you give the following response:

"Question: I will show you what I have marked as People's Exhibit Number 2 for identification. Do you recognize this statement?

"Answer: Yes.

"Question: Is that a true and accurate copy of a statement you gave the assistant state's attorney and the detectives on that date?

"Answer: Yes."

A. Yes, sir.

Q. You were shown a picture of -- not a picture. You were shown a copy of your handwritten statement, correct?

A. Yes.

Q. Those questions were asked of you and you gave those responses, correct?

A. Yes, sir.

Q. You were asked:

"And did you sign that statement?

"Answer: Yes.

"Question: Does your signature appear at the bottom of every page of that statement?

"Answer: Yes."

You were asked those questions and did you give those responses?

A. Yes, sir.

Q. "Question: When you gave the statement were you under the influence of drugs or alcohol?

"Answer: No."

Did you give that response to that question?

A. Yes, sir.

Q. And were you asked this question:

"Were you threatened in any way to make that statement?

"Answer: No."

Were you asked that question, did you give that response?

A. Yes, sir.

Q. Were you asked this question:

"Were you promised anything in return for that statement"? And did you answer no?

A. Yes, sir.

Q. Were you asked this question and did you give the following responses:

"Question: How were you treated by the detectives and the assistant state's attorney?

"Answer: Okay.

"Question: And when you came here to the building today, did I introduce myself as a state's attorney, a lawyer and a prosecutor?

"Answer: Yes."

Were you asked those questions and did you give those responses?

A. Yes, sir.

Q. Were you asked the following questions and give the following responses:

"Question: And are you under the influence of drugs or alcohol now?

"Answer: No.

"Question: And were you threatened or promised anything in return for your statement today?

"Answer: No."

Were you asked those questions and did you give those responses?

A. Yes, sir.

MR. PAPA: Judge, may I approach the witness again?

THE COURT: Yes.

MR. PAPA: Thank you.

Q. Brandy, I'm going to show you what's been marked as People's Exhibit Number 4 for identification. Do you recognize who that is a picture of?

A. Yes.

Q. And who is that a picture of?

A. A young man named Googie.

Q. The defendant seated in court here today?

A. Yes.

Q. And this exhibit, this is the same picture that you identified in the grand jury as being Googie, correct?

A. Yes, sir.

Q. The handwritten statement that I showed you earlier, People's Exhibit Number 3, that was the same statement that Miss Lanahan showed you had in the

grand jury that you identified, correct?

A. Yes, sir.

MR. PAPA: Judge, I have no further questions of Brandy.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. CONNIFF:

Q. Miss Grant, the Prosecutor asked you whether prior to this past weekend you worked at a Wendy's in Oak Park. Do you recall that?

A. Yes, I did.

Q. What happened over the weekend?

A. What happened? What's going on with this now (indicating)?

Q. Right.

A. I had a drug case last year sometime. I had sold to the police. Trying to make a living for me and my kids, but it didn't work. I sold to the police, they gave me probation, then they gave me home confinement, then, you know, I couldn't do it at my aunt's house on 87th and Francisco so I didn't do it so I violated probation so now I gotta do four months boot camp.

Q. When were you arrested?

A. Four days ago or something. The state's attorney came and got us, me and Quiana, to my house and I went with them and he was like we're gonna just ask you questions. I was telling them that I wanted to tell the truth about what happened because the officers cursed and they made me say that. I was just scared. I promise you that I was scared. I was just ready to go home because I was harassed. They kept harassing me and Quiana for no apparent reason. I was very afraid. I cannot talk for nobody else. I just wanna tell the truth 'cause I feel a load off my back and I know that's why I'm going through the struggle I'm going through now 'cause God, you should not bear false witness and I can't do that. They made that, they coerced that story. They sat there and made it up, this is what he did. They wrote all that down and I just was saying like I'm ready to go, and I didn't take it serious like that because I ain't never been in no trial or nothing like this. I promise you.

Q. Miss Grant, this statement that the Prosecutor showed you, that was a statement that was written out by a prosecutor, correct?

A. Yes, sir.

Q. And that was a female prosecutor?

A. Yes, sir.

Q. And that was in the police station, right?

A. Yes, sir.

Q. And that statement was written out by the prosecutor on June 21st of 2001, right?

A. Yes, sir.

Q. At about 12:10 in the morning, right?

A. Yes, sir.

Q. How did you come to be in the police station on June 21st, 2001, at 12:10 in the morning when they wrote out this statement? Did the police pick you up and bring you into the station before this statement was prepared?

A. You talking about like when we first went into the station?

Q. Yes.

A. Yes. Do you want me to tell you what happened?

Q. Yes.

A. Okay. As we leaving the gas station, we talking, then we see --

Q. No, I'm sorry. You may have misunderstood my question. I'm talking about the statement which is -- Let me show you what's been marked as People's Exhibit

Number 3.

May I approach, Judge?

THE COURT: Yes.

BY MR. CONNIFF:

Q. See this statement here, People's Exhibit Number 3?

A. Yes, sir.

Q. This is the one that the Prosecutor just asked you about?

A. Yes, sir. Look at my face on the picture.

Q. Do you see the date on here, June 21st, 2001?

A. Yes, sir.

Q. Do you see the time, 12:10 in the morning?

A. Yes, sir.

Q. How did you come to be at the police when this was prepared?

A. They came and got us. They was harassing us.

Q. When you say they came and got you, was that police officers?

A. Yes.

Q. Was it detectives?

A. I think homicide, Foster and the other guy.

Q. And they brought you to the police station?

A. Yes, sir.

Q. And they put in a room at the police station?
A. Yes, sir, for hours.
Q. Did you tell them that Googie was not present at the time of this shooting?
A. I promise, I told them over and over again and they say you know Googie was there. The kept just telling me he was there and I kept telling them he was not there, which he was not there.
Q. That was not the first time that you told them that Googie wasn't there, was it?
A. Yes, sir.
Q. It was not the first time you told them then you didn't see who shot Mr. Jenkins, the old man, correct?
A. Yes, sir.
Q. That was the first time you told them that?
A. I told them I didn't see the shooter.
Q. You talked to the police the night of this shooting, didn't you?
A. Yes, sir.
Q. And they asked you if you had seen the shooter?
A. Yes, sir.
Q. And you told them then that you didn't see

the shooter?

A. I did not see him.

Q. But on June 21st when the state's attorney wrote out this statement for you, you signed this statement?

A. The Detective Foster them made that story up. I'm telling y'all, you gotta believe me. They told me to sign that statement. They told me if I didn't do it that I was gonna be doing time for that; me, Quiana. You can ask Quiana. I don't need to ask her. We was the only ones there; me, Emanuel, and Quiana. Wasn't nobody else there. Shemika wasn't there -- or the other statements that was signed across them. They kept showing us statements that he said he did it, which he didn't sign that statement. They was trying to make it seem like oh, yeah, well, he say he did it, so you might as well turn him in, he say he did it or you guys gonna be staying here for days and days. You're gonna have your baby in here. I'm like, oh, my God.

Q. So the detectives were telling you that Googie was involved?

A. Yes, they kept saying it.

Q. And that you were to sign a statement that he

was involved or that you would be charged?

A. Charged with it, yes.

Q. Now, this took place, this statement that you signed, People's Exhibit 3, that was at about -- that was after midnight, right?

A. Yes, sir.

Q. And you're in the police station?

A. Yes, sir.

Q. Now, after you signed that statement did they let you go?

A. I think it happened after I did that grand -- they told me do the grand jury. They was like then you can go home after you do that. You did a good job. That's what they told me.

Q. You went to the grand jury on June the 21st also, correct?

A. Yes, sir.

Q. So that was early the next moring?

A. Yes, sir. The same night I took that picture because I spent the night and went to the jury the next morning, that's when they tried to bribe me with cigarettes and stuff and I was like get outta here and I tried to go on the rampage so they could just leave me alone forever.

Q. How did you get to the grand jury?
A. They took me.
Q. When you say they, who are you referring to?
A. Foster and the other guy.
Q. Had you been in the police station all night?
A. Yes, sir.
Q. Were you in custody at that point for any crime that you committed?
A. No, sir.
Q. And you gave them the handwritten statement at 12:10 in the morning?
A. Yes, sir.
Q. And they didn't let you go home?
A. No, sir.
Q. They kept you in custody all night long until the following morning?
A. Yes, sir, until the grand jury.
Q. And then they drove you to the grand jury?
A. Yes, sir.
Q. They never said go home and appear the following morning at the grand jury?
A. No, sir.
Q. When you got to the grand jury, you were with detectives?

A. Yes, sir, they was in the other room, though, when I went in the grand jury. They just was out there.

Q. But they were present in the area there?

A. Yes, sir.

Q. Had they talked to the state's attorney, if you know?

A. I can't really remember.

Q. And did you talk to a state's attorney before you went into the grand jury?

A. Give me a moment. I have to think about it because I'm trying to see.

Q. Do you remember?

A. I kind of.

Q. Well, before you went into the grand jury they had the handwritten statement which was written out by the state's attorney?

A. Yes, sir.

Q. And he dove you down to the grand jury?

A. Yes, sir.

Q. And they took you into the grand jury?

A. Yes, sir.

Q. And the state's attorney asked you in the grand jury --

A. Yes, sir.

Q. And they asked you the questions and the answers based upon what the detectives had been talking to you about before, right?

A. Yes, sir.

Q. You've also used the name Brandy Butler?

A. Yes.

Q. You've also used the name Brandy Grant?

A. Yes.

MR. CONNIFF: May I have one moment, Judge?

THE COURT: Yes.

(Short pause.)

BY MR. CONNIFF:

Q. Do you know an individual by the name of Vernon Clay?

A. Yes, sir.

Q. Little Man?

A. Um-hum.

Q. Was he there that night?

A. No, sir.

Q. Did you ever tell the police that he was there?

A. No, sir.

Q. Were the police interested in Vernon Clay?

A. Repeat that, please.

Q. Did the police ask you about Vernon Clay?

A. No, but they showed us statements that he had, you know. They tried to show us.

Q. Is Vernon Clay one of the folks in the neighborhood?

A. Yeah.

MR. CONNIFF: Nothing further, Judge.

THE COURT: Any redirect?

MR. PAPA: Very briefly, Judge.

REDIRECT EXAMINATION

BY MR. PAPA:

Q. Brandy, you knew that the murder of Ernest Jenkins on May 6, 2001, that was a pretty serious matter, correct?

A. Yes, it was.

Q. You can read English, right?

A. Yes, sir.

Q. You understood every single word that the assistant state's attorney, Miss Daly, was reading back to you, correct?

A. Yes, sir.

Q. You understood every word that Miss Lanahan was asking you in the grand jury, correct?

A. Yes, sir.

Q. She was asking you in the grand jury when there weren't any police officers around, when there weren't detectives around, she was asking you if any threats or promises had been made to you, correct?

A. Yes. And if I would have them, that they would --

Q. She asked you those questions, right?

A. Yes, sir.

Q. And at no point did you ever say that any detectives threatened you, correct?

A. Yes, sir.

Q. You had never said in the grand jury that any other police officers had made any threats or promises to you in exchange for your testimony, correct?

A. Yes, sir.

MR. PAPA: Judge, may I approach?

THE COURT: Yes.

BY MR. PAPA:

Q. Brandy, I'm going to show you what's been marked as People's Exhibit Number 5 for identification and ask you if you recognize what's contained in People's Exhibit Number 5?

A. This is the car we was in.

Q. What kind of car is it, do you know?
A. A Chevy.
Q. That's the car you drove to the Citgo station on May 6th, 2001, right?
A. Yes, sir.
Q. That is Ruby's car, correct?
A. That's Manny's -- I guess it was both of they car.
Q. It was both Manny and Ruby's car, correct?
A. Yes, when they first got it. I thought it was Manny's.
MR. PAPA: Judge, could I have one second?
THE COURT: Yes.
MR. PAPA: Thank you.
(Short pause.)
BY MR. PAPA:
Q. Brandy, the night of the shooting on May 6, 2001, you actually went down to the police station at Area 1 and spoke with the detectives, correct?
A. Yes, sir.
Q. I believe you spoke with Detective Rolston, right?
A. He was with Foster?
Q. He was a detective assigned to this case.

You had a conversation with a detective, correct?

A. Yes.

Q. And when you spoke with the detective shortly after the shooting on May 6, 2001, isn't it true that you told the detective that you were with your girlfriend in the station and that she knows only one of them -- there were two male blacks with her and her girlfriend and that she knows only one of them as being Little Man. You told the detective that, correct?

A. No, I don't even know no Little Man.

Q. You know that Little Man is a Vicelord, correct?

A. Yes.

Q. And you know that he's in a gang, the Vicelords, and that he left prior to the police arriving at that Citgo gas station, correct?

A. I don't know no Little Man. I don't remember saying that.

MR. PAPA: Judge, I have no further questions of Brandy.

THE COURT: Any recross?

RECROSS-EXAMINATION

BY MR. CONNIFF:

Q. The state's attorney asked you if you could read and write. Do you recall that?

A. (Nodding head.)

Q. And you were in police custody at the time this was written out and you were reading it, correct?

A. Yes, sir.

Q. And before the state's attorney ever arrived you had had an ongoing dispute with the detectives about the facts?

A. Yes, sir.

Q. And you told them what you have told this jury today?

A. Yes, sir.

Q. And they didn't accept it?

A. Did not accept it at all.

Q. And they didn't let you go home, did they?

A. No.

Q. And they didn't let you go home all night long?

A. I stayed there for at least two days.

Q. They didn't let you go home before you went to the grand jury?

A. Right.
Q. They drove you to the grand jury?
A. Yes, sir.
Q. And they drove you back from the grand jury?
A. Yes, sir.
MR. CONNIFF: Nothing further.
THE COURT: Any redirect?
MR. PAPA: I have no further questions of Brandy, Judge.
THE COURT: Thank you, Miss Grant. You're excused.
A. Thank you, Judge.
(Witness excused.)
THE COURT: Ladies and gentlemen, this is a good time to see that you get a lunch, and this time it's on the County. I don't know if that's a plus or not. I'll find out from you afterwards. The sheriff will take you over to the second floor in the next building, the administrative building, for a hot lunch. And have them back in the courtroom, Rocky, I don't know who's going to be taking you, it's now 1:25, in an hour. We will break for lunch at this time.
(The lunch recess was had.)

your right hand.

(Witness duly sworn.)

THE COURT: Be seated. Proceed.

MR. DARMAN: Thank you, Judge.

VERNON CLAY,

called as a witness on behalf of the People of the State of Illinois, after having been first duly sworn, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. DARMAN:

Q. Sir, in a loud and clear voice would you please state your name and spell your last name for the ladies and gentlemen.

A. Vernon Clay, C-l-a-y.

Q. Mr. Clay, how old are you?

A. 24.

Q. Without telling me your exact address, could you tell us on which side of the city that you live?

A. South side of Chicago.

Q. Mr. Clay, you were convicted of burglary under 97 CR 5508 and given probation, is that correct?

A. Yes.

Q. That was back in 1997?

A. Yes.

Q. And also back in 1997 you were convicted of possession of a controlled substance with the intent to deliver under 97 CR 19105 and given probation on that case too, is that correct, sir?

A. No, sir, I went to boot camp.

Q. That's right. My apologies. You went to boot camp. Okay.

Mr. Clay, you have told us you live on the south side of the city, correct?

A. Yes.

Q. You live somewhere near the area of 55th Street and Damen, is that true?

A. Yes.

Q. About how far away do you live from 55th and Damen?

A. A block and a half over.

Q. Do you know a gentleman by the name of Kevin Jackson?

A. Yes.

Q. Do you see Kevin Jackson present here in court today?

A. Yes.

Q. Would you please point to him and describe something that he's wearing?

A. White shirt.

MR. DARMAN: Judge, may the record reflect the in-court identification of Kevin Jackson?

THE COURT: The record will so reflect an in-court identification of the defendant.

BY MR. DARMAN:

Q. Now, does Kevin have a nickname?

A. No.

Q. You don't call him Googie?

A. No.

Q. Are you and he friends?

A. We both in the same gang.

Q. You're both what?

A. We got in the same gang.

Q. What gang is that?

A. Conservative Vicelords.

Q. How long have you been a member of the Convervative Vicelords?

A. About 11 years, 12 years.

Q. What about Mr. Jackson?

A. I don't know.

Q. Do you know anybody that calls him Googie?

A. No.

Q. Have you ever called him Googie?

A. No.

Q. Mr. Clay, I'd like to direct your attention to May the 6th of 2001 at about 1:30 in the morning. Do you recall where you were at that time?

A. Yes.

Q. Where were you?

A. I was at home sleeping, getting ready to go to daily reporting center.

Q. Where was your home at that time, sir?

A. 5312 South Winchester.

Q. And did you sleep there the whole night?

A. Yes.

Q. Did you get up the next day and go to the daily reporting center?

A. Yes.

Q. Did you hear of a shooting that occurred on May the 6th of 2001?

A. No.

Q. You never heard of a shooting?

A. No.

Q. On June the 2nd of 2001 did you talk to a Detective Brian Forberg from Area 1 Violent Crimes?

A. Homicide?

Q. Yes. Do you know that guy?

A. They grabbed me.
Q. Did you talk to him?
A. No.
Q. You didn't talk to him?
A. No.
Q. So they grabbed you and what happened?
A. They grabbed me and they let me go.
Q. Did you ever tell Detective Forberg that on May the 6th of 2001 you went to the Citgo station at 55th and Damen to get some blunts?
A. No, I was never there.
Q. I'm not asking you whether you were there. Do you understand, Mr. Clay? I am asking if you ever told the detective that?
A. No.
Q. Did you ever tell the detective that you met Quiana Davis, Shemika Mason, and Brandy Grant there?
A. No.
Q. Did you ever tell the detective that you were inside the store at the Citgo station when Meechie came in and asked you for some pot?
A. No.
Q. Did you ever tell the detective that because Meechie was a Gangster Disciple he was unable to cross

to the east side of Damen Avenue to buy cannabis from the Vicelord operation? Did you ever tell the detective that?

A. No.

Q. Did you ever tell the detective that you and Meechie went to the same school together when you were young?

A. No.

Q. Did you and Meechie go to school together when you were young?

A. No.

Q. You don't know Meechie?

A. I know Meechie from the neighborhood.

Q. You know Meechie. Is Meechie in the Conservative Vicelords?

A. No.

Q. What gang is Meechie in?

A. He's a GD.

Q. What's a GD?

A. A Gangster Disciple.

Q. Now, is a Gangster Disciple people or folks?

A. They folks.

Q. What are Conservative Vicelords?

A. Peoples.

Q. The gangs under the people sign and the gangs under the folks sign, are they friendly?

A. Around the neighborhood they is.

Q. So the GDs and the Conservative Vicelords are friendly around the area of 55th and Damen?

A. Yes.

Q. Now, when you were talking to Detective Forberg on June the 2nd did you tell him that on the night of May the 6th of 2001 at about 1:30 you heard five to six gunshots as Meechie was walking to go to his car? Did you ever tell him that?

A. No.

Q. Did you ever tell him that Meechie ran toward you saying that his uncle had been shot?

A. Yes.

Q. Did you ever tell the detective that some guy on the street by the name of Norman, a Vicelord from 54th and Damen, did the shooting? Did you ever tell him that?

A. No.

Q. Did you ever tell the detective -- or did you ever look at a photograph? Did the detective show you any photograph when you talked to him on June the 2nd?

A. They showed me photographs about six people.

Q. Did they show you a photograph of any cars?
A. No.
Q. And so you say that after you talked to Detective Forberg he let you go, right?
A. Yes.
Q. How long were you and he together?
A. They had me for like 20 minutes.
Q. 20 minutes and then --
A. And they let me go.
Q. Mr. Clay, I'd like to direct your attention to June the 11th of 2003. On that day did you have occasion to see Detective Forberg again?
A. Yes.
Q. And where was that?
A. They came and grabbed me from coming out the liquor store.
Q. And then you went to Area 1 with the detectives, is that right?
A. Yes.
Q. And at that time Detective Forberg asked you for some more detail about this Norman, this Conservative Vicelord that allegedly done this shooting, is that right?
A. No.

Q. He didn't ask you that?

A. No.

Q. Did you ever tell the detective that you don't remember what you told him about Norman?

A. No.

Q. On that day, on June the 11th of 2001, did Detective Forberg confront you with Meechie's statement, what Meechie said about what happened on May the 6th? Did he ever say anything like that to you?

A. No.

Q. Did you ever tell the detective on June the 11th of 2001 that Googie, Kevin Jackson, pulled up in a car with Quiana Davis and Manuel Stewart at the gas station?

A. No.

Q. Did you ever tell the detective that Quiana Davis got out of the car to talk to Shemika Mason who was walking with you?

A. Yes.

Q. Did you ever tell the detective that Meechie got out of Jenkins's car and began talking to Quiana Davis?

A. No.

Q. Did you ever tell the detective that Meechie asked Quiana Davis out on a date that evening?

A. No.

Q. Did you ever tell the detective that Quiana Davis and Meechie went into the store at the gas station there and were hugging?

A. No.

Q. Did you ever tell the detective, and this is all on June the 11th, right, Mr. Clay, you understand that?

A. Yes.

Q. Did you ever tell the detective that Meechie and Davis exited the store and Meechie was whispering in Quiana Davis's ear? Did you tell him that?

A. No.

Q. Vernon, did you tell him that then you heard some shooting?

A. No.

Q. Did you tell the detective that then you saw Googie's car flee southbound on Damen Avenue?

A. No.

Q. Did you tell the detective that you saw the defendant running southbound through a lot with a gun in his hand?

A. No.

Q. You never told the detective any of that stuff on June the 11th?

A. No.

Q. What did you tell him on June the 11th, by the way?

A. I told him I was never there.

Q. You told him you were home sleeping?

A. Yes.

Q. Okay. Did you have occasion to talk to the detective on June the 12th, the next day?

A. They had me in custody for three days.

Q. They had you in custody for three days. So you were still there the next day, right?

A. Yes.

Q. So you talked to the detective the next day on June the 12th?

A. No.

Q. You didn't talk to Detective Forberg on June the 12th at all?

A. No.

Q. Did you talk to any detectives on June the 12th?

A. No.

Q. On June the 12th would you have told Detective Forberg that you may have been withholding further detail regarding the shooting because of fear?

A. No.

Q. Did you tell Detective Forberg that you and Googie were members of the same gang?

A. No.

Q. Did you tell Detective Forberg that you feared for your safety from fellow gang members if they discovered that you talked to the police?

A. No.

Q. Did you tell the detective that after you spoke to the police on June the 2nd you were confronted by Googie at a bus stop near 55th and I-94?

A. No.

Q. Did you tell the detective that at that time Googie questioned you about the shooting there that happened at the gas station?

A. No.

Q. Did you tell the detective that you told Googie that you didn't say anything to the police?

A. No.

Q. Did you tell the detective that that night of the shooting Quiana Davis had bought a blunt and was

rolling it as she walked to Googie's car?

A. No.

Q. Did you tell the detective that Meechie said to Quiana Davis, "Get off that bullshit," meaning to forget about being with Googie?

A. No.

Q. Did you tell the detective that you turned and saw Googie firing shots into a car?

A. No.

Q. Did you ever tell the detective that Meechie ran toward 55th Street and fled across Damen Avenue towards the Marathon station?

A. No.

Q. Vernon, did you have occasion to talk to Detective Forberg on the 13th of June?

A. Yes.

Q. You did talk to him on the 13th. You didn't talk to him on the 12th but you talked to him on the 13th?

A. Yes.

Q. So the 12th in the police station what did you do all day? Nothing?

A. They had me in a room.

Q. So you just sat there?

A. I went to sleep.

Q. You slept the whole day?

A. No.

Q. Now, the next day on the 13th at about 2:30 in the morning, so this is the evening of July the 12th, early morning hours of -- I'm sorry, June the 13th -- late evening hours of June the 12th, early morning hours of June the 13th you were at the police station, right?

A. Yes.

Q. And you talked to Detective Forberg, is that right?

A. Yes.

Q. Did you meet a state's attorney by the name of Lisa Hennelly?

A. No.

Q. You didn't meet a state's attorney?

A. No.

Q. Did you have occasion to sit down with Detective Forberg and anybody else, any females, and talk to them about what happened on May the 6th of 2001?

A. You say eight females?

Q. A female, any woman?

A. No.

Q. You didn't see any women there at the police station when you were there, right?

A. No, they had me in a room.

Q. Well, Detective Forberg -- you talked to Detective Forberg, right?

A. Yes.

Q. And did you and Detective Forberg discuss what happened on the evening of May the 6th, 2001 there at the gas station?

A. No.

Q. You didn't talk to him about that?

A. No.

Q. Well, what did the two of you talk about?

A. I asked him when was I going home.

Q. What did he say?

A. He said everybody say I wasn't there, so he said I was leaving to be home shortly. He say they gonna write up my property and then I could sign for my property and then I could leave.

Q. Well, Detective Forberg took a picture of you when you were there at police station, didn't he?

A. No.

Q. He didn't take any pictures of you?

A. Not that I know of.

Q. Did Detective Forberg and the state's attorney or anybody sit down with you and write on a piece of paper events that happened --

A. No.

Q. Let me finish.

A. Oh. Excuse me.

Q. -- events that happened on May the 6th, 2001?

A. No.

Q. Never did that? Don't know anything about that?

A. No.

MR. DARMAN: Judge, may I approach?

THE COURT: Yes.

MR. DARMAN: Showing to counsel what I've marked as People's Exhibit Number 6 for identification.

Q. Let me ask you something, Mr. Clay, before I show you this. You said nobody took a picture of you or nobody wrote out any statements from you, right?

A. No.

Q. And you didn't sign anything while you were there at the police station, is that correct?

A. Only thing I signed was for my property.

Q. So they took your property when you came into

the police station?

A. Yes.

Q. And you couldn't get it back until you signed something for it, right?

A. Yes.

Q. But you did sign for it?

A. Yes.

Q. Only thing you signed at the police station, right?

A. Yes, that's what I know of.

Q. I want to show you what I've marked as People's Exhibit Number 5 for identification. That's a picture, right? That first thing on top, there's a picture, isn't it?

A. Yes.

Q. That's a picture of you, isn't it?

A. Yes.

Q. Isn't that a picture of you there in Area 1 in the Area 1 police station?

A. That's the police station. I don't know if it's at Area 1 police station.

Q. Is that your signature right there, Vernon Clay?

A. Yes.

Q. So you did sign something when you were at the police station, didn't you?

A. For my property.

Q. Was this the receipt for your property, this picture here (indicating)?

A. Not that I know of.

Q. I'll show you something else here. This is another part of Exhibit Number 5. That's a photograph, is that correct?

A. Yes.

Q. Who is that a photograph of, Mr. Clay?

A. Kevin Jackson.

Q. Is that the same Kevin Jackson that's sitting right there (indicating)?

A. Yes.

Q. That's Googie, right? That's Googie right there (indicating)?

A. I know him by Kevin Jackson.

Q. Is that Googie or is that not Googie? Do you know that as a fact?

A. Not as I know him.

Q. Okay. Is that your signature right there, Vernon Clay (indicating). See where it says Exhibit A, right underneath there it says Vernon Clay. That's

your signature, isn't it?

A. That's not my signature right there.

Q. That's not your signature right there. Okay.

Let me show you another part of People's Exhibit 5. This looks like a piece of paper with a bunch of writing on it, is that correct?

A. Yes.

Q. And right here at the bottom of the page, that says Vernon Clay, doesn't it?

A. Yes.

Q. Is that your writing?

A. Yes.

Q. You signed that piece of paper right there?

A. Yes, that's the paper they said I had to sign for my property.

Q. So this is the piece of paper you signed to get your property back?

A. Yes.

Q. Did you read this writing before you signed to get your property back?

A. No.

Q. So they just gave you this paper and you just signed it?

A. They told me if I don't sign the paper to get

my property back, they said they was gonna come back, they was gonna lock me up, they was gonna harrass me some more.

Q. They said we're going to have to harass you some more if you don't sign up for getting your property back?

A. Yeah.

Q. Well, look here on page 2. Does that say Vernon Clay right there (indicating)?

A. Yes.

Q. Is that your signature?

A. Yes.

Q. Did you read any of this before you signed it?

A. No.

Q. What about that on the bottom of page 3 there, is that Vernon Clay? Is that your signature (indicating)?

A. Yes.

Q. Now, over here (indicating) there's a little, looks like a correction on the side here. Do you see that? Right here (indicating), something is written out on the side of the margin of that piece of paper.

A. Yes.

Q. Vernon, that's a VC right there, isn't it?
A. Yes.
Q. You put that VC there, didn't you?
A. No.
Q. That stands for Vernon Clay, doesn't it?
A. No.
Q. You didn't put that VC there?
A. No.
Q. You're telling everybody right now you didn't put that VC there? You're sure?
Look again and make sure. You don't want to make a mistake.
A. No.
Q. Okay. Page 4 on the bottom there, it says Vernon Clay, doesn't it?
A. Yes.
Q. Did you write that there?
A. Yes.
Q. Page 5, right there in the middle of the page, that says Vernon Clay, doesn't it?
A. Yes.
Q. Did you write that right there (indicating)?
A. No.
Q. You didn't write that?

A. No.

Q. Page 5 is not your signature?

A. No.

Q. What about here at the bottom of page 5, it says Vernon Clay again. Did you sign it right there (indicating)?

A. Yes.

Q. You signed down here (indicating)?

A. Yes.

Q. But you didn't sign in the middle (indicating)?

A. No.

Q. Now, there were -- was there just one person that gave you this piece of paper or were there two?

A. It was the two arresting officers.

Q. Who were the two arresting officers?

A. The two homicide people. I don't know they name.

Q. So these two guys gave this thing to you?

A. They gave me that, they told me to sign that and then I could leave. I signed that. I tried to get up out of there so I could leave.

Q. Well, you knew when you were at the police station there, did you not, Vernon, that they were

investigating the shooting which had happened on May the 6th of 2001, is that correct?

A. Yes, I knew that.

Q. You knew they were investigating that shooting, right?

A. Yes, that's what they told me.

Q. Didn't you worry about what it was that you were signing?

A. No. They said everybody said I wasn't there, I wasn't there.

Q. What was that?

A. They came there, told me -- they said I ain't gotta stay there no more, everybody said I wasn't there, so they told me to leave. They said the only thing I gotta do is sign a piece paper of property, for my property and then I could leave.

Q. I just want to make sure I understand this, Vernon. The police came, they brought you into Area 1, they kept you there for a couple of days, right?

A. Yes.

Q. And then they said that everybody's saying that you're not there, so you could go but all you have to do is sign this piece of paper and you can go and get your property back and go home, right?

A. Yes.

Q. So they gave you this, People's Exhibit Number 5 here, this whole statement, right?

A. Actually, sir, they didn't have the piece of paper out. They just had part of it like where I could sign at.

Q. So you didn't see the rest of the statement?

A. No.

Q. So you didn't know when you signed these pieces of paper that there was writing on them?

A. No.

Q. Well, explain to me exactly how they covered up the pieces of paper for you, Vernon. Exactly what did they do?

A. See this line right here (indicating).

Q. What did they cover it up with?

A. Another piece of paper.

Q. This picture of Kevin Jackson here, did that have Kevin Jackson's picture on it when you signed it?

A. No, not that I could tell 'cause the only thing they had was a piece of paper on it.

Q. So you signed a blank piece of paper and this picture must have got on here later. Is that what you're telling the ladies and gentlemen of the jury?

A. Yes.

Q. What about this picture here (indicating)? Now, earlier you told us that you just signed this piece of paper to get your stuff back, right?

A. Yes.

Q. Well, you signed this picture too, right?

A. Yes. They told me to sign this picture just to make sure it was me.

Q. Sign the picture to make sure that it was you?

A. Yes.

Q. Is that you?

A. Yes.

Q. And is this a picture of you the night that you signed this piece of paper, all these blank pages?

A. Not that I could recall, no.

Q. So this might have been when you were in the police station for something else? You don't know?

A. That might have been something else, as far as I know.

Q. So you have no idea what these pages say, you've never seen them before in your life except for your signature, is that right?

A. Yes.

Q. What about these other signatures? There's some other signatures here next to yours. Were those on there when you signed this?

A. No.

Q. So you just signed a piece of paper that --

A. I signed a piece of paper.

Q. Was it blank?

A. No, I told you you could see the sheet up there.

Q. Could you tell if there was writing under this sheet of paper?

A. No, I couldn't tell. The only thing I was trying to do was get up out of there.

Q. Which one of the police officers held this piece of paper down over these pages and had you sign the bottom? Which guy was it, do you remember?

A. No, I can't recall.

Q. Was it a man or a woman?

A. It was a man.

Q. African American guy, white guy, Hispanic guy, Chinese guy?

A. Kind of like white and Mexican.

Q. Mexican guy?

A. Yeah, he had black hair.

Q. Black hair, Mexican guy?

A. Yeah.

Q. Actually, Vernon, and I want to make the record clear so we all understand each other, this piece of paper on this little thing that I've marked here with a 5 on it, it is actually supposed to be 6. So I'm thinking I've been referring to it as Exhibit Number 5. It should be Exhibit Number 6. Is that okay with you?

A. Yes, sir.

Q. Now, let me direct your attention to June the 28th. Now, you went home, right, on the 13th you left after you signed these pieces of paper, right, you went home?

A. Yes.

Q. On June the 28th of 2001 you came here to 26th Street, is that correct?

A. No.

Q. You didn't come here to 26th Street?

A. No.

Q. Where were you at on June the 28th of 2001?

A. I got brung here at 26th Street.

Q. I'm sorry, somebody brought you here?

A. Yes.

Q. Who brought you here?
A. The two arresting detectives.
Q. The Mexican guy?
A. Yes.
Q. When you came to 26th Street, you went up to the fourth floor and you went to the grand jury, is that right?
A. Yes.
Q. And you met with a state's attorney there, is that true?
A. No.
Q. You didn't meet with a state's attorney?
A. Not that I recall. They had a lady already downstairs.
Q. Did you meet with a girl when you came here, a female?
A. Yes.
Q. A little light-haired thing, kind of thin, her name was Kathy?
A. Not that I could recall about that.
Q. You don't remember meeting with her?
A. Yes.
Q. I'm sorry, no or yes?
A. You said did I meet up with a female?

Q. Yeah. Did you see a female state's attorney when you were here at the grand jury?

A. When they brung me here and they told me what I had to do unless I was gonna go to jail, they brung me here, they ain't never tell me I had to go do nothing or none of that.

Q. Let me stop you right there then, Vernon, because there's some questions I want to ask.

You said somebody brought you here and they told you what you had to do. What are you talking about? What do you mean tell you what you had to do?

A. I'm talking about the harassing detectives.

Q. The harassing detective?

A. Yeah.

Q. The Mexican guy?

A. Yes, and his partner.

Q. And what did they tell you that you had to do?

A. They told me how many times I was convicted, how many cases I was fighting, and then they told me what I had signed.

Q. So you didn't know what you had signed before that, right?

A. No.

Q. So on the 28th of June 2001 that was the first time you found out you signed actually pieces of paper that had writing on them?

A. Yes.

Q. What else did they tell you?

A. They told me if I go up in there and I tell them what really happened, I tell them I wasn't never there, I would never see the streets again.

Q. So they told you that if you went into the grand jury and told the truth you were going to go to jail forever?

A. Yes.

Q. And they told you this where?

A. They told me -- they was telling me that when they brung me -- when they came and got me.

Q. They brought you here to 26th and California?

A. Yes.

Q. What happened when you got here?

A. When I got here they told me -- when I was going through the car they told me I was gonna meet up with a lady downstairs. They told me the only thing I had to do was just sign a piece of paper and then I could leave.

Q. They told you when you got here you had to

sign a piece of paper and then you could leave?

A. Yes.

Q. And then you said you had to talk to a lady downstairs?

A. Yes.

Q. Did you come into the building with the policemen?

A. Yeah. They lied. I ain't never sign no piece of paper and leave. They made me come upstairs.

Q. So you came upstairs, you came up to the grand jury on the fourth floor there?

A. Yes.

Q. And there you met with the state's attorney. Is that true?

A. Yes. It was the two arresting officers and the state's attorney.

Q. You never got a chance to be alone with the state's attorney?

A. No.

Q. What did you and the state's attorney and these two policemen talk about?

A. She just asked me was everything on the paper true.

Q. That is this piece of paper, this Exhibit 6

here?

A. Yes.

Q. And did she show you Exhibit 6 at that time?

A. No, she just asked. I was sitting across the table from her, the two arresting officers was sitting at the table and she just showed me. She just said is this true.

Q. And you said what?

A. I ain't respond.

Q. You didn't say anything to the state's attorney when she asked you if it was true?

A. Yes.

Q. And she let that go?

A. No.

Q. She didn't say anything back to you?

A. They summoned me to the grand jury.

Q. I just want to make sure that we're clear here, Vernon. The state's attorney showed you this piece of paper?

A. She ain't showed it. She just like put it up there, like is everything on this piece of paper true.

Q. Yeah. But that was the one that had your signature on it, right?

A. Yes.

Q. You saw your signature on it. It was that same piece of paper?

A. Yes.

Q. It just had the writing on it, right?

A. Yes.

Q. She asked you if it was true and you didn't reply?

A. No.

Q. And she didn't say anything else to you at that time?

A. They told me to go out there and sit on that little stand, that little door by the grand jury, and her and the two arresting officers came out there. Then he came out there, he sat next to me, he told me what I was fittin' to have to do.

Q. Who told you what you were going to have to do?

A. The arresting officer.

Q. And what did he tell you?

A. When one of them came out the room, he sat by me and he said, now, we told you what we gonna do if you go out there and you get in front of these people and you tell them what happened. He was like, well, if you do this, you could see the streets, you won't

have to worry about it. He was like you already on day reporting and you fighting two drug cases.

Q. Let me make sure that we are on the same page here, Vernon, because I'm not quite sure.

So up until this point on May the 6th of 2001 you were at home sleeping?

A. Yes.

Q. You don't know nothing from nothing about this shooting that happened at the gas station, right?

A. Yes.

Q. When you went to police station the first time you talked to them and they let you go?

A. Yes.

Q. You guys didn't talk about this shooting?

A. No. When they came and got me the first time, it was in the station, they asked me -- they was like, they told me what they was grabbing me for. I told them what happened. I told them I was up in the house sleep, and they let me go.

Q. When you went to the police station on June the 11th you talked to them about -- you didn't talk to them about anything. You told them that you were home sleeping, right?

A. Yes.

Q. You didn't talk about what happened at the gas station at 55th and Damen on June the 6th?

A. You can't talk about something you don't know.

Q. Right, You can't talk about anything you don't know. Exactly.

On June the 12th nothing happened, right? You just stayed in the police station all day?

A. Yes, I just stayed in the police station.

Q. June the 13th you signed these pieces of paper and these pictures and stuff?

A. I signed my picture.

Q. So this Exhibit A here now with Kevin Jackson's picture, that's not your signature on that piece of paper?

A. No.

Q. Okay. All right. But you signed this stuff and you didn't know what it was at the time?

A. Right.

Q. So you went into the grand jury and the detectives only told you when you went in that you had to do the right thing, right?

A. They told me I had to do the wrong thing. They say if I do the right thing, it was gonna cost

me.

Q. Did you know what the wrong thing was?

A. No.

Q. So you came up to the grand jury, you talked to a state's attorney. She showed you this thing. She kind of kept it to herself, but she showed you this thing, asked you if it was true and you didn't reply, right?

A. Right.

Q. She didn't say anything back to you, right?

A. She told me -- she whispered over to the other officer and he told me step out the room.

Q. Right.

A. And he told me to sat down by the door, and the other one came out there, told me what I had to do. He say the only thing you gotta do is like go in there, just say yes to everything, that's it.

Q. Say yes to everything that he said, right?

A. Right.

Q. All you got to do is go in there and say yes?

A. Right.

Q. So you went into the grand jury, right?

A. Yes.

Q. You raised your right hand like you did

today, right?

A. Yes.

Q. Promised you'd tell the grand jury the truth?

A. Yes.

Q. And there were a bunch of folks in the grand jury, much like the folks that are in here today, is that correct?

A. Yes.

Q. And that state's attorney was in the grand jury with you, is that right?

A. Yes.

Q. There were no policemen in the grand jury, were there?

A. No.

Q. So it was you, the state's attorney, the grand jurors, and a court reporter, right?

A. Yes.

Q. At that time did the state's attorney ask you your name?

A. Yes.

Q. And you told her it was Vernon Clay, is that right?

A. Yes.

Q. State's attorney asked you what your date of

birth was, right?

A. Yes.

Q. And you told her it was what?

A. 6/12/79.

Q. Right.

You told her you were 22 years old and that you live at 5312 South Winchester, is that right?

A. Yes.

Q. And you told her you went to Tilden High School, is that right?

A. Yes.

Q. And you told her that at the time you were working at Johnny Rocket's, is that right?

A. Yes.

Q. Mr. Clay, I'm going to ask you if you recall being asked this question and giving this answer by the state's attorney:

"Question: Calling your attention to May the 6th of 2001 at approximately 1:30 in the morning, where were you at?

"Answer: Citgo gas station.

"Question: Where is that located?

"Answer: 55th and Garfield."

Do you recall being asked those questions and

giving those answers?

A. Yes.

Q. Do you recall being asked these questions and giving these answers:

"Question: What were you doing there?

"Answer: Walking up in the store to get some potato chips.

"Question: Who were you there with?

"Answer: Shemika, Brandy, Quiana."

Do you remember being asked those questions and giving those answers?

A. I was being asked a question.

Q. So you didn't say Shemika, Brandy, and Quiana?

A. No.

Q. Who said that then?

A. The police told me to say that. That's what they was talking to me about on the side of the -- when I was sitting down. And that's what they told me to go out there and do.

Q. Now, you're saying that the police told you everything to say?

A. Yeah, they don't tell me that when they was bringing me here.

Q. Well, that's not what you told these folks a minute ago.

A. You did not ask me that.

MR. CONNIFF: Objection.

THE COURT: What's the objection?

MR. CONNIFF: Judge, the objection is he's arguing with the witness.

THE COURT: Well, allow him to answer before you pose the next question.

MR. DARMAN: I will, Judge.

Q. Let me ask you this, Vernon: Do you remember being asked these questions and giving these answers:

"And did anything unusual happen?

"Answer: Yes.

"Question: What happened?

"Answer: When we was coming out of the Citgo gas station. Before we walked up in there we seen Googie and Manny.

"Question: Do you know Googie's real name?

"Answer: No."

Do you remember being asked those questions and giving those answers?

A. I know Googie real name.

Q. Did the detectives tell you that this guy was

Googie?

A. Yes.

Q. Do you remember being asked these questions and giving these answers:

"Let me show you what I've marked as People's Exhibit Number 1 for identification. Do you recognize this person?

"Answer: Yes.

"Question: Who is that?

"Answer: Googie.

"Question: How long have you known Googie?

"Answer: Three years."

Do you remember being asked those questions and giving those answers?

A. I remember the police and the state's attorney asked me questions.

Q. What state's attorney asked you those questions?

A. The one that was at the grand jury.

Q. I thought you just told us a little while ago that the only thing she asked you was whether these items on this piece of paper here, Exhibit Number 6, were true and you didn't say anything to her. That's what you said a moment ago.

A. You just said did the state's attorney ask me did I know Googie, did I see the pictures, did I know Googie. I told you I know his real name. I don't know him as Googie.

Q. Maybe we're getting a little confused here. Let's confine ourselves to what's going on in the grand jury now, Vernon.

Do you remember being asked these questions and giving these answers:

"How long had you known Googie?

"Answer: Three years.

"Do you know him to be a member of a gang?

"Answer: Yes.

"What gang?

"Answer: Vicelords."

Do you remember being asked those questions by the state's attorney in the grand jury and giving those answers?

A. I remember being asked those questions.

Q. Do you remember giving those answers?

A. Yes.

Q. Do you remember being asked these questions and giving these answers:

"Are you a member of a gang?

"Answer: Yes.

"Question: What gang?

"Answer: Vicelords."

Do you remember answering those questions?

A. Yes.

Q. Do you remember being asked this question and giving these answers:

"Question: Now, you saw Googie and Manny. Where were they at?

"Answer: Sitting in the car.

"Question: Sitting in a car?

"Answer: Yes."

Do you remember being asked those questions and giving those answers?

A. I remember them asking the questions.

Q. You don't remember giving those answers?

A. (Nodding head.)

Q. Is that a no? You have to say out loud because the court reporter is taking down what you say. Okay, Vernon?

Do you remember being asked these questions and giving these answers:

"And did you see anyone else around the gas station at that time?

"Answer: Yes.

"Question: Who did you see?

"Answer: I seen Stanley.

"Question: What is Stanley's last name?

"Answer: Watson."

Do you remember being asked those questions and giving those answers?

A. No.

Q. You don't remember that at all?

A. No.

Q. Okay. Do you remember being asked these questions and giving these answers:

"Question: Does Stanley have a nickname?

"Answer: Yes.

"Question: What's his nickname?

"Answer: Meechie.

"Question: How long have you known him?

"Answer: Since I was in the fifth grade."

Do you remember being asked those questions and giving those answers?

A. I remember getting asked those questions.

Q. You don't remember giving those answers?

A. No.

Q. Do you remember being asked these questions

and giving these answers:

"Question: And what did you see Stanley Watson or Meechie doing?

"Answer: Talking to Quiana.

"Question: And what happened next?

"Answer: He was asking Quiana what's up with the dip?

"Question: What's up with the dip?

"Answer: Yeah."

Do you remember being asked those questions and giving those answers?

A. No.

Q. You didn't say anything like that in the grand jury?

A. No.

Q. Do you remember being asked these questions and giving these answers:

"Question: What does that mean?

"Answer: That means going creep.

"Question: What does that mean?

"Answer: Sexual intercourse.

"Question: So is he asking her if she wanted to have sex with him?

"Answer: Yeah, because they use to go

together."

Do you remember being asked those questions and giving those answers?

A. No.

Q. Do you remember being asked these questions and giving the following answers:

"Question: How do you know he said that to her?

"Answer: Because he was talking loud.

"Question: So you actually heard that?

"Answer: Yes.

"Question: What happened then?

"Answer: We walked up to the Citgo gas station."

Do you remember the state's attorney asking you those questions and you giving her those answers?

A. No.

Q. Do you remember being asked these questions by the state's attorney and giving her these answers:

"Question: Is all this happening at the Citgo gas station?

"Answer: Yes.

"Question: You see Meechie talking to Quiana?

"Answer: Yes.

"Questions: What happened next?

"Answer: When we all come out, Meechie and Quiana, they was talking in front of us and I turned my back after walking across the park, that's when I heard shooting."

Do you remember being asked those questions and giving those answers?

A. No.

Q. Do you remember being asked these questions and giving these answers:

"How many shots did you hear?

"Answer: Eight, about eight, I'm sorry.

"Question: What did you do after you heard the first shot?

"Answer: I ran.

"Question: Did you ever look to see who was shooting?

"Answer: Yes.

Do you remember being asked those questions and giving those answers?

A. No.

Q. You don't remember the state's attorney asking you none of that stuff at all?

A. No.

Q. Do you remember being asked the following questions and giving these answers:

"Question: Who did you see shooting?

"Answer: Googie shooting at Meechie.

"Question: What did Meechie do when Googie was shooting at Meechie?

"Answer: He ran by Gero's behind Citgo.

"Question: What did Googie do?

"Answer: He ran across Damen towards the Marathon."

Do you remember being asked those questions and giving those answers?

A. I remember getting asked those questions by the homicide.

Q. We're talking about what happened in the grand jury. And the question that the state's attorney was asking you, do you recall being asked those questions and giving these answers to the state's attorney in the grand jury?

A. No.

Q. Do you remember being asked these questions by the state's attorney and giving these answers:

"Question: And when you saw Googie shooting

at Meechie was there anything else around there?

"Answer: Yes.

"Question: What was that?

"Answer: The car that Meechie was in.

"Question: The car that me Meechie had been in?

"Answer: Yes."

Do you remember being asked those questions and giving those answers?

A. No.

Q. Let's go on. Do you remember being asked the following questions and giving the following answers to the state's attorney in the grand jury:

"Question: And could you tell if they were people in the car?

"Answer: I just saw the front of the car.

"Question: Now, Vernon, on June 13th of 2001 were you at Area 1 Violent Crimes?

"Answer: Yes."

Do you remember her asking you those questions and you giving her those answers?

A. I remember her asking that question.

Q. Is that the answer you gave her?

A. Yes, I was there.

Q. She said, "Now, Vernon, on June 13th of 2001 were you at Area 1 Violent Crimes"? Do you remember her asking you that and you telling her yes?

A. June 13th I was at 51st and Wentworth.

Q. But the question is, Vernon, if you remember her asking you that question when you were in the grand jury and whether or not you gave her that answer in the grand jury?

A. Yes.

Q. You did answer yes?

A. Yes.

Q. Okay. Let me ask you this: Do you remember her asking you this question:

"When you were there did you speak to an Assistant State's Attorney Hennelly and a Detective Forberg?

"Answer: Yes."

Do you recall her asking you those questions and you giving that answer?

A. No.

Q. Do you recall her asking you this question:

"And did you tell them the same facts that day that you are telling the grand jury today?

"Answer: Yes.

"Question: Was that statement written down?

"Yes."

Do you remember her asking you those questions and you giving --

A. Yes.

Q. You gave her those answers?

A. I remember her asking that question.

Q. Do you remember her asking you this question and you giving her these answers:

"Question: And let me show you what I've marked as People's Exhibit Number 2 for identification. Do you recognize this?

"Answer: Yes.

"Question: Is this a statement you gave on June 13?

"Answer: Yes.

"Question: And did you sign every page of this statement?

"Answer: Yes."

Do you remember being asked those questions and giving those answers?

A. Yes.

Q. Do you remember being asked these questions and giving these answers:

"Question: Do you recognize the signatures at the bottom of the page?

"Answer: Yes.

"Is this a true and accurate copy of the statement you gave?

"Answer: Yes."

Do you remember her asking you those things and you giving those answers?

A. I remember her asking it.

Q. As a matter of fact, in the grand jury she showed you those pieces of paper, right?

A. Yes.

Q. Those are the same ones that she was holding in her hand outside the grand jury, right?

A. Yes, the papers that they told me to sign when I was getting my property.

Q. What?

A. I say the papers that they told me to sign when I was getting my property.

Q. I guess, if that's the one you're referring to, we're talking about Exhibit Number 6 here. For the record, the one I'm holding up in my hand with the two pictures attached to it, right? This is the one she was showing you in the grand jury, right?

A. Yes.

Q. Do you remember the state's attorney asking you these questions and you giving these answers:

"On June 13 how were you treated by detectives and Assistant State's Attorney Hennelly?

"Answer: Good.

"Question: Were you threatened in any way in return for your statement?

"Answer: No."

Do you remember being asked those questions and giving those answers?

A. No.

Q. Let me ask you if you remember being asked these questions and giving these answers:

"Were you made any promises in return for your statement?

"Answer: No.

"Question: Were you under the influence of drugs or alcohol on that day?

"Answer: No."

Do you remember her asking you those questions and you giving --

A. I remember her asking me those questions.

Q. Okay. Do you remember giving her those answers?

A. Yes.

Q. Do you remember her asking you the following questions and you giving her the following answers:

"Question: Now, I want to call your attention to this morning when you came to the building. Did you meet me?

"Answer: Yes.

"Question: Did I introduce myself as an assistant state's attorney, a lawyer and a prosecutor?

"Answer: Yes.

"Question: Were you threatened in any way today?

"Answer: No.

Do you remember her asking you those questions and you giving her those answers?

A. No.

Q. Finally, Vernon, let me ask you if you remember her, the state's attorney, asking you these questions and you giving her these answers:

"Question: Were you promised anything in return for your testimony before the grand jury?

"Answer: No.

"Question: Are you under the influence of any drugs or alcohol?

"Answer: No."

Do you remember her asking you those questions and you giving those answers?

A. No.

MR. DARMAN: Judge, may I have one moment?

THE COURT: Yes.

(Short pause.)

MR. DARMAN: Judge, for the record, showing to counsel what's previously been marked as People's Exhibit Number 4 for identification.

Q. Vernon, when you were in the grand jury the state's attorney asked you to look at Exhibit Number 1 and it was a photograph. Remember, we talked about that when I was over there on the witness stand? You said it was a photograph of Googie, is that correct?

A. Yes.

Q. This was People's Exhibit Number 1, it says People's Exhibit Number 1 on the back from the grand jury. I've marked it for our purposes of trial People's Exhibit Number 4. That's a photograph that she showed you in the grand jury, is that correct?

A. Yes.

Q. That's a photograph of Googie, right?

A. Kevin.

Q. That's a photograph of this guy sitting right there in the white shirt (indicating), right?

A. Yes.

Q. And this is the photograph that you told the state's attorney in the grand jury was a photograph of Kevin Jackson, is that correct?

A. Yes.

Q. Vernon, you said you had been friends with Kevin Jackson for some time, is that correct?

A. Yes.

Q. And you knew him from the neighborhood?

A. Somewhat like that, yes.

Q. You knew what kind of car he drove?

A. No.

Q. You never saw him in a car before?

A. No.

MR. DARMAN: Judge, I have no further questions of Vernon Clay.

THE COURT: Cross exam.

CROSS-EXAMINATION

BY MR. CONNIFF:

Q. Mr. Clay, do you remember the Prosecutor asked you about when you were picked up on June the 2nd?

A. Yes.

Q. And he asked you about whether or not the detectives questioned you about this case?

A. Yes.

Q. And he asked you whether you ever told the detectives that you had seen Googie shooting into the car?

A. I wasn't there.

Q. But do you remember that's what he asked you about?

A. Yes, that's what I remember he asking me about.

Q. At any time when you talked to the detectives, either on June the 2nd or at any time after that, did you ever tell the detectives that you saw Googie shooting into the car from the passenger side of the car?

A. No.

Q. Did you ever tell the detectives that?

A. No.

Q. You didn't know anything about the details of the shooting, did you?

A. No.

Q. Now, you said that they came and picked you up on the 2nd of June?

A. Yes.

Q. Where did they pick you up?

A. Coming out of E and J liquor store.

Q. Coming out of E and J liquor store?

A. Yes.

Q. Where is that, 55th and Damen?

A. Yes.

Q. Were you committing any crime then?

A. No.

Q. And they picked you up and where did they take you?

A. They took me to 51st and Wentworth, the police station.

Q. Was that in a squad car or was that in a detective's car?

A. A detective's car.

Q. And that's a regular-looking civilian car, right?

A. No, it had the M license plates on it.
Q. I'm sorry?
A. It was a Crown Vic.
Q. Crown Victoria?
A. Yes.
Q. And they took you to 51st and Wentworth?
A. Yes.
Q. And what happened when you got to 51st and Wentworth?
A. When I got to 51st and Wentworth they took me in a room with a camera and they asked me where was I on May something and I told them I was at home sleep getting ready for day reporting and they asked me -- talking about some people calling me Lil' Man it's about. I asked them who was Lil' Man. They called me Lil' Man, we know you Lil' Man. They was harassing me and then they asked me, like we know something about a Cit -- do you know something aobut a Citgo shooting. I told them no, I wasn't never there, they say okay, go home.
Q. Which detectives were that, do you know their names?
A. No.
Q. You said you got picked up again on June the

11th?

A. Yes.

Q. And what time of day was that?

A. That was about 6:00 o'clock.

Q. 6:00 o'clock at night or in the morning?

A. In the evening.

Q. Where were you when you were picked up at 6:00 o'clock in the evening on June the 11th?

A. I was in a car. I was coming from the mall.

Q. You were in a car coming from the mall?

A. Yes.

Q. Were you with anyone?

A. No.

Q. What mall were you coming from?

A. Ford City.

Q. And you were driving down the street?

A. Yes.

Q. What happened?

A. I pulled in the gas station to get some gas, I jumped out, they come -- as I'm coming out to pump my gas, they come pull up in the gas station.

Q. And when you say they pulled up in the gas station, who pulled up?

A. The two detectives that had me the first

time.

Q. And what happened then?

A. They pulled up, jumped out, handcuffed me and and put in the car.

Q. And they took you where?

A. Back to 51st and Wentworth.

Q. That was on June 11?

A. Yes.

Q. At about 6 p.m.?

A. Yes.

Q. And you got to 51st and Wentworth did you go inside?

A. Yes.

Q. Where did they take you?

A. They took me in a dark room and closed the door and left me in there for a minute.

Q. They took you in a room, it was dark?

A. Yes.

Q. By that you mean the lights were off?

A. Yes.

Q. Was it an office or was it some other kind of a room?

A. It was a interrogation room.

Q. But the lights were off in there?

A. Yes.

Q. And when they put you in that room, did they hang around and talk to you?

A. No, they closed the door.

Q. And was the door locked?

A. Yes.

Q. So you weren't free to go?

A. No.

Q. Now, when they picked you up, were you commmitting any crime at that time?

A. No.

Q. Were you doing anything wrong?

A. No.

Q. How long did you stay in that room?

A. I stayed in there for three days.

Q. In that room?

A. Yes.

Q. So the Prosecutor asked you about being at Area 1 on the 11th, you said that you were?

A. Yes.

Q. That you were picked up at 6:00 o'clock on the 11th?

A. Yes.

Q. So they kept you at Area 1 on the night of

the 11th, right, all night long?

A. Yes.

Q. And they kept you all day on the 12th?

A. On my birthday, yeah.

Q. And they kept you the night of the 12th?

A. Yes.

Q. And finally on the early morning hours of the 13th they came to you with some papers to sign?

A. They came in there and told me -- first they grabbed me for a lineup, took me to a lineup, then they came back up in there, they told me -- they was like, well, we don't need you, you can gone ahead 'cause they took my property and whatever and they was like we don't need you. They was like the only thing you gotta do is just sign your property. They was like people say you wasn't there, so the only thing you gotta do is sign this piece of paper and you go home.

Q. Now, on the 11th, the 12th, and the 13th, were the detectives coming in and out of the room talking to you?

A. They was coming in there harassing me.

Q. When you say harassing you, what were they doing?

A. The 11th when they took in there -- they came in there, they told me -- they was like, you gonna suffer 'cause tomorrow your birthday and woo, woo, woo, woo. They was like, you gonna say something about something. And then they was trying to make, you know, me say something, that I wasn't there, actually.

Q. And then you said finally on the 13th when they came to you with the papers you said to them when are you going to let me go?

A. Yes.

Q. Did you ask them about that on the 12th, too?

A. The 12th they did not come in there. They left me alone 'cause it was my birthday.

Q. Now, they came in on the 13th, the Prosecution asked you about whether these papers were all together. When they came in on the 13th, was this document stapled together the way it is now?

A. No.

Q. Was this picture stapled on top of another picture that all the pages of this are all stapled together?

A. No.

Q. How were these pages presented to you?

A. The picture was by itself. This was like on a desk with a lot of papers (indicating). The only thing was out was this part right here (indicating), the bottom with all this. I signed this, they flipped it over, did like this (indicating). I signed it, they flipped over.

Q. You're indicating that they just picked up the bottom of the page and had you sign at the bottom?

A. Yes.

Q. And they told you that you were signing to get your property so you could go home?

A. Yes.

Q. How far did you go in school, Vernon?

A. I went to ninth grade.

Q. And this particular statement, this was written out by someone else?

A. Yes.

Q. And according to the statement, this was June the 13th at 2:30 a.m. in the morning. Did you know what time it was when you were signing these papers?

A. No. When I signed the papers it was about 3:00 o'clock. When I signed the papers to get my property to go out, he said tell Brandy we looking for her.

Q. And after you signed the papers to get your property did they let you go then?

A. Yeah. They said tell Brandy -- they say tell Brandy we looking for her. If you don't tell Brandy we looking for her, we gonna come back and lock you up.

Q. And what time did you leave Area 1 on the 13th?

A. About 3:30.

Q. 3:30 in the morning?

A. Yes.

Q. And it wasn't until June the 13th at 3:30 in the morning after you signed the papers that they let you go from the police station?

A. As soon as I signed the papers, they gave me my property and told me to leave and they told me to find Brandy. If I don't find Brandy, they was gonna lock me up.

Q. By Brandy are you referring to Brandy Grant?

A. Yes.

Q. That wasn't the last contact that you had with the police?

A. No.

Q. On the 28th they picked you up again?

A. They was harassing me before the 28th.

Q. When you say harassing you before the 28th, you had contact with the police between the time you left the station on the 13th at 3:30 in the morning and then on the 28th?

A. Yes.

Q. And what was happening?

A. While I was coming out of daily reporting, they'll pull up by daily reporting saying what's up Lil' Man, calling me a name that I am. They was just harassing me, like yeah, we got you, woo, woo, woo, woo. They told me -- they was like if I don't do it, you know what I'm saying, they gonna tell everybody that I did this and did that so people could come get me or whatever or they gonna lock me up.

Q. Who did you think they were referring to when they said they were going to tell everybody?

A. Just tell everybody, like don't mess with him, he doing this and doing that. Like I'm a hot person or something.

Q. When you say day reporting, where were you going for day reporting?

A. Right down the street.

Q. So that was something you were doing for

court?

A. Yes.

Q. What hours were you going there?

A. I had to go report there from 7:30 in the morning to about 3:30 in the afternoon.

Q. You say they were waiting for you when you came out?

A. Yes.

Q. And on the 28th they picked you up?

A. Yes.

Q. And where were you when they picked you up?

A. I was coming out of E and J liquor store.

Q. And what time of day was that?

A. It was about 8:30 or 9:00 o'clock. I was getting ready to go to daily reporting and they picked me up.

Q. In the morning?

A. Yes.

Q. And that was when they took you to the grand jury?

A. Yes. They ain't tell me nothing about that. The only thing they was telling me like would I sign, like yeah, we trick -- you know, woo, woo, woo, woo, woo, and all that. Now if you don't say this, we

gonna lock you up. You already fittin' to go to trial and you on daily reporting, so they broke it down.

Q. The Prosecution asked you whether you ever told the police that you were afraid of other gang members. Do you remember that?

A. Not that I recall.

Q. Based on your experience with the police in this case, who were you more afraid of in this case?

A. The police.

MR. CONNIFF: Nothing further.

REDIRECT EXAMINATION

BY MR. DARMAN:

Q. Are you aware of me, Vernon?

A. No, not you.

Q. Good. Good. How did you get to court today, Vernon?

A. How I get to court?

Q. Yeah, how did you get to court?

A. Bus.

Q. Who did you come here with?

A. Me.

Q. You come here by yourself?

A. Yes.

Q. You didn't come with Shemika or any of these

other witnesses?

A. Uh-uh, I met up with them.

Q. You said you've been a Vicelord for 12 or 13 years, is that correct?

A. Yes.

Q. Vicelord from the same area?

A. No.

Q. What area were you at before 55th and Damen?

A. Oh. You talking the same --

Q. Yeah, you've been a Vicelord in the same area?

A. Yes.

Q. Have you ever had experience with what happens to a Vicelord when the other Vicelords find out that you ratted on him?

A. No.

Q. You don't know what happens?

A. No.

MR. CONNIFF: Objection. Beyond the scope.

THE COURT: Sustained, counsel.

BY MR. DARMAN:

Q. You said that the police at one point put you in a room with some lights off, is that right?

A. Yes.

Q. The lights were all out, it was dark?
A. Yes.
Q. But then you told these folks that it was an interrogation room. How did you know?
A. That's what they call it.
Q. That's what they called it. They said we're going to put you in this dark interrogation room and they put you in there?
A. And closed the door.
Q. Let me get this straight, Vernon. You never told the police that the shooting at 55th and Damen was done by a guy by the name of Norman, a Vicelord from the area of 54th and Damen, you never told them that?
A. No.
Q. Since all this stuff happened in the grand jury on the 28th of June of '01, right, almost two years ago, right?
A. Yes.
Q. Do you still see Shemika Mason?
A. Do I still see her?
Q. Do you know a Shemika Mason?
A. Yeah, I know her.
Q. She's a girl from the neighborhood, right?

A. Yes.

Q. Have you seen Shemika during that time from 6/28 of '01 until now?

A. Yes.

Q. Have you seen Brandy Grant or Brandy Butler?

A. No.

Q. You haven't seen Brandy in all that time?

A. I saw her a couple of times but not that long. It's been a minute.

Q. Did you ever see a guy by the name of Michael Watson?

A. No.

Q. You've never seen Michael Watson. You don't know him?

A. I don't even know who that is.

Q. You don't know who that is?

A. No.

Q. Did you ever talk to anybody about this case besides --

MR. CONNIFF: Objection, Judge. Beyond the scope.

THE COURT: Sustained.

BY MR. DARMAN:

Q. You have told us, Vernon, that the police were harassing you and they kept harassing you and

they continued harassing you, is that right? Is that what you were telling Mr. Conniff there?

A. Yes.

Q. You called somebody to complain, right, to complain about that, didn't you?

A. No. I can call somebody to complain about that?

Q. Sure, you can.

A. I need the number then.

MR. DARMAN: I don't have any further questions, Judge.

MR. CONNIFF: Nothing further.

THE COURT: Thank you, Mr. Clay. You're excused.

(Witness excused.)

THE COURT: Ladies and gentlemen, you need a break?

JURORS: Yes.

THE COURT: Okay. We'll give you a break. Washroom, refresh yourself break, water break. We'll take a 15-minute break.

(Short recess had.)

(Defendant Present.)

THE DEPUTY SHERIFF: All rise.

(The following proceedings were had before the jury:)

THE COURT: All right. Be seated.

All right. State, call your next witness.

MR. PAPA: Thank you, Judge. The State calls Shemika Mason.

THE COURT: Step up, Miss Mason. Step up here to the witness stand. Remain standing, raise your right hand.

(Witness duly sworn.)

THE COURT: Be seated.

MR. PAPA: May I proceed, Judge?

THE COURT: Proceed.

MR. PAPA: Thank you.

SHEMIKA MASON,

called as a witness on behalf of the People of the State of Illinois, after having been first duly sworn, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. PAPA:

Q. Ma'am, in a loud and clear voice could you please state your first and your last name and please spell your first and your last name.

A. My first name is Shemika Mason. My first name Shemika, my last name Mason.

Q. How do you spell Shemika?

A. S-h-e-m-i-k-a.

Q. Okay. Shemika, how old are you?

A. I'm 26.

Q. And do you currently live in the city of Chicago?

A. Yes.

Q. How long have you lived in the city for?

A. All my life.

Q. And where in the city, without giving your exact address that you live on, what side of the city?

A. South.

Q. Are you working right now, Shemika?

A. No.

Q. Do you go -- Do you have a couple different names that you go by?

A. No.

Q. So is Shemika Mason your only name?

A. Yes.

Q. Shemika, you've been previously convicted of possession of a controlled substance charge from January of 2001, correct?

A. Yes.

Q. Actually you were convicted on two separate possession of controlled substance offenses, both occurring in January of 2001, correct?

A. I don't remember two.

Q. Have you ever gone by the name of Kanisha Mason?

A. Yes.

Q. Were you convicted in -- for retail theft from November 3rd of 1997?

A. Yes.

Q. So -- Strike that.

Shemika, do you know a person by the name of Googie?

A. Yes.

Q. Do you see Googie in court here today?
A. Yes, I do.
Q. Would you please point to where he's at and identify him by an article of clothing?
A. Right there in a white shirt and some black dress pants and some black shoes.
MR. PAPA: Judge, may the record reflect an in-court identification of the defendant?
THE COURT: The record will so reflect an in-court identification of the defendant.
MR. PAPA: Thank you very much, Judge.
Q. Shemika, do you know Googie's real name?
A. No.
Q. How long have you known Googie for?
A. A good three, four years.
Q. Where do you know him from?
A. Hanging out at my friend Quiana house.
Q. What's Quiana's last name?
A. Davis.
Q. Do you know the defendant then from the neighborhood?
A. Yeah, I sees him in the neighborhood.
Q. Do you know if the defendant's in a gang?
A. No, I don't know all that.

Q. Do you know a person by the name of Vernon Clay?

A. Yes.

Q. Do you know if Vernon has a nickname?

A. I call him Vernon.

Q. Have you heard him called Little Man before?

A. No.

Q. Have you ever heard Vernon refer to the defendant as Googie?

A. No.

Q. Have you ever seen Vernon Clay with the defendant before?

A. No.

Q. Do you know what gang Vernon Clay is in?

A. No, I do not.

Q. Shemika, I'm going to call your attention to the early morning hours of May 6, 2001. Okay. Do you remember who you were with?

A. That day I remember I was with a girl named Neicy, Brandy, and Quiana.

Q. What's Neicy's full name?

A. Inecia Sneed.

Q. Do you know how to spell that?

A. Inecia?

Q. Yes.

A. I think she spell her name I-n -- I don't know how she spell her name.

Q. Okay. So with her and you said, I believe, Brandy?

A. And Quiana.

Q. What's Brandy's last name?

A. Brandy Grant.

Q. And then you see Quiana Davis, correct?

A. Yes.

Q. Where were you guys at?

A. We was riding around getting drunk and smoking some marijuana because it was my friend birthday.

Q. Which friend?

A. Inecia. And she do hair. She was a beautician. So she dropped us off. We ended our night. We went to Quiana's house.

Q. What time did you get to Quiana's house?

A. I don't remember what time I got there. Maybe about 1 or 2:00 o'clock.

Q. So this would actually be May 5th, 2001, going into May 6th, 2001, right?

A. I don't know. It was after 12.

Q. Do you remember where the address of Quiana's house was?

A. 5543 South Seeley?

Q. South Seeley?

A. Yes.

Q. Okay. After arriving at Quiana's house did you have an opportunity or did you leave her house later or earlier that morning?

A. No. I actually -- when we got there I was tired. I sat on Quiana couch. Quiana and Brandy left up out the house and then they say they was going to the gas station.

Q. Did you see who Quiana and Brandy left out of the house with?

A. It was just them two who left up out of the house.

Q. Did you leave the house?

A. No, I did not.

Q. At any time on May 6th, the early morning hours of May 6th, did you leave Quiana's house?

A. Yes, I left her house 'cause she was at the store and she called me on the phone crying saying that somebody had just got shot in the gas station.

Q. Do you know what gas station she was at?

A. Yes, she told me she was up at Citgo's.

Q. On May 6th of 2001, Shemika, did you see Googie at all?

A. No, I did not.

Q. Did you see Manny at all?

A. No.

Q. Do you know who Manny is?

A. Yes.

Q. What's Manny's last name?

A. I don't know. I just him by Manny.

Q. How do you know Manny?

A. Because Brandy and Manny use to go together.

Q. Okay. So, Shemika, then is it your testimony that you were not present at the Citgo gas station when Ernest Jenkins was shot and killed?

A. No, I was not.

Q. Shemika, do you -- I'm going to call your attention to June 12, 2001. You were at Area 1, the police station at 51st and Wentworth, on June 12, 2001, correct?

A. Yes.

Q. And when you were at the police station you actually spoke with a couple of Chicago police detectives, right?

A. Yes, two of them.

Q. Two of them. Detective Foster and Detective Forberg, correct?

A. I guess. I don't remember they name, but.

Q. Okay. They were asking you questions about the murder of Ernest Jenkins that had happened on May 6, 2001, right?

A. Yes, they was.

Q. They were asking you questions, you were giving them answers, right?

A. Well, basically I tried telling them that I was not there. They kept arguing with me, calling me B's, telling me I was there because I was with a girl name Quiana and Brandy. And then I had a warrant at the time, I was running from the police, and I had had a warrant and they told me if I go along with what they want me to say or whatever, they was gonna take care of my warrant.

Q. During the conversation that you were having with the detectives, you weren't handcuffed in any way, correct?

A. No.

Q. Again, they were just asking you questions and you were telling them what happened?

A. No. Basically they was telling me what they wanted me to say.

Q. Well, do you remember telling Detectives Forberg and Foster that on the day of the shooting or the night of the shooting you were with the defendant, Googie, Manny Stewart, Brandy Grant, and Quiana Davis?

A. No.

Q. Do you remember telling the detectives that all of you pulled into the gas station at 55th and Damen, the Citgo gas station?

A. No.

Q. Do you remember telling the two detectives that you along with Brandy and Quiana got out of the car that Manny was driving?

A. No.

Q. Do you remember telling the detectives that you were there to buy blunts?

A. No.

Q. Do you remember telling the detectives that the defendant and Manny stayed in the car?

A. No, I do not.

Q. Do you remember telling the detectives that you along with Brandy went into the Citgo gas station to buy the blunt?

A. No.

Q. And that Quiana stayed outside because she saw a person by the name of Meechie by the gas pumps?

A. No.

Q. Do you remember telling the detectives that you saw Meechie and Quiana walk towards each other?

A. No.

Q. Do you remember telling the detectives that after you bought what you had to buy inside of the gas station, when you came out of the store you saw the defendant, Googie, exiting the alley holding a gun?

A. Um-hum, (nodding head.)

Q. When you shake your head and say you um-hum --

A. No.

Q. Do you remember telling the detectives that you saw the defendant fire four to five times in the direction of where Meechie was at?

A. No.

Q. Do you remember telling the detectives that the defendant was firing his gun at the person who was pumping the gas?

A. No.

Q. Do you remember telling the detectives that

you saw the person who was pumping the gas fall to the ground?

A. No.

Q. Do you remember telling the detectives that after you saw the defendant shoot his gun that you saw the defendant run towards Garfield Boulevard?

A. No.

Q. Do you remember telling the detectives that after the shooting you ran to Quiana Davis's house?

A. No.

Q. Do you remember telling the detectives that you spent the night at Quiana Davis's house?

A. Yes, I remember telling them that.

Q. That's because you did?

A. I did. I told them I stayed there 'cause I did.

Q. Shemika, do you remember telling the detectives that later that day after the shooting Googie came by Quiana Davis's house? Do you remember telling the detectives that?

A. No, I do not.

Q. Do you remember telling the detectives that the defendant, Googie, told you, Quiana, and Brandy not to talk to the police about the shooting?

A. No.

Q. And do you remember telling the detectives that the defendant, Googie, asked Brandy and Quiana what they told the police?

A. No.

Q. How long did you talk to the detectives for?

A. They had me overnight.

Q. Overnight?

A. Yeah.

Q. Now, Shemika, you said you didn't tell any of what I just asked you to the detectives, right?

A. No.

Q. How long did you actually talk with the detectives?

A. I was there overnight.

Q. Well, did you speak with them the entire night?

A. I talked with them all night.

Q. You spoke with them the entire night?

A. Yeah.

Q. Okay. After speaking with the detectives you actually met an assist state's attorney, correct?

A. Yes.

Q. Colleen Daly, a female, came into Area 1 and

you met with her, correct?

A. Yes.

Q. She told you that she was a lawyer, a prosecutor, and not your lawyer, right?

A. I think.

Q. Okay. The detectives were with you at that time, correct?

A. Yes.

Q. And when Colleen Daly, the state's attorney, arrived, she then started asking you some questions about what had occurred on May 6, 2001, the murder of Ernest Jenkins, right?

A. Yes.

Q. When she was asking you the questions, you were telling her what you had saw that night, correct?

A. I don't remember what I told her.

Q. Okay. At some point during your conversation with Colleen Daly the detective actually left the room, right?

A. I don't recall.

Q. You were alone with Colleen at that time, right?

A. I don't remember being alone with her.

Q. Do you remember Colleen asking you how the

police had treated you?

A. Yes.

Q. And do you remember telling Colleen that the police had treated you fine?

A. Yes.

Q. And do you remember then, Shemika, that after -- Strike that.

Do you know your statement, the statement that you had just told Colleen Daly, that was actually then written out, correct?

A. Yes.

Q. That was done in front of you, right?

A. Yes.

Q. Colleen would ask you some questions and you would give her the answers as she was writing it down, right?

A. Yes.

Q. At the end of that statement, the statement was then read back to you, correct?

A. Yes.

Q. And Colleen read it back to you, right?

A. Yes, she did.

Q. Okay. She told you that you could make any corrections or changes or additions to that statement

that you wanted to, right?

A. I think, yes.

Q. And you actually did make some corrections to the statement, right?

A. I don't recall.

Q. Well, at the end of the statement after it had been read to you and the additions and corrections were done, you actually signed the bottom of that document, of the pages, correct?

A. Yes, I remember signing.

Q. You signed each and every one of those pages after it had been read to you, right?

A. Yeah.

Q. Colleen Daly, the state's attorney, she actually showed you an exhibit during that handwritten statement, correct?

A. I don't remember.

Q. It was a picture of Googie, the defendant, correct?

A. Oh, yeah.

Q. That's who you identified the picture as being, as Googie, correct?

A. Yes.

Q. And you actually signed the back of that

picture, right?

A. Yes. But at that time I signed anything to get up out that police station. I had a warrant and I did not want to go to jail.

MR. PAPA: Judge, may I approach?

THE COURT: Yes.

MR. PAPA: Thank you.

Q. Shemika, I'm going to show you what's been marked as People's Exhibit Number 7 for identification. You recognize what this is, correct?

A. Yeah.

Q. That's the handwritten statement that you provided back on June 13, 2001, correct?

A. Yes.

Q. That's your name at the top, Shemika Mason, taken on June 13th at about, 2:17, correct?

A. Yes.

Q. Your name appears at the bottom of the first page, right?

A. Yes.

Q. It's actually printed, right?

A. Yes.

Q. You printed it?

A. Yes, I did.

Q. And it's four pages long, right?
A. Yeah.
Q. Your name appears on the bottom of page 2, right?
A. Um-hum.
Q. When you say um-hum, is that yes?
A. Yes.
Q. And again you printed your name?
A. Yes.
Q. Your name appears on the bottom of page 3, correct?
A. Yes.
Q. And your name appears at the end of page 4 where the statement ends, correct?
A. Yes.
Q. Now, there are actually some crossouts in the statement, correct, where your initials appear?
A. Yes.
Q. Those initials there SM, right?
A. Um-hum.
Q. You wrote those out, right, you wrote SM?
A. Yes.
Q. And then at the top of page 2, it's the same thing, your initials appear at that crossout, correct,

or the correction, right?

A. Yes.

Q. And then again on page 3 in the middle there are about three corrections there that your initials appear at, right?

A. Yes.

Q. And those were done, the corrections were done as the statement was being read back to you, right?

A. I wasn't paying no attention.

Q. Well, you were signing your name to these documents, right?

A. Um-hum.

Q. When you say um-hum that's yes, right?

A. Yes.

Q. The exhibit here, who is that a picture of?

A. Googie.

Q. The defendant sitting at that table?

A. Yes.

Q. That says on the back of it People's Exhibit Number 1, right?

A. Yes.

Q. Your name again appears on the back of it, correct?

A. Yes.

Q. Along with the state's attorney and the detective?

A. Yes.

Q. And the photograph, who is that a picture of?

A. That's me.

Q. And that was taken after the statement had been completed, right?

A. I didn't even think -- I didn't know it was that day.

Q. Well, that's a picture of you?

A. Yeah, that's my picture.

Q. Well, your name appears on that, correct?

A. Yes.

Q. You signed it?

A. Yes.

Q. As did the detective and the state's attorney, correct?

A. Yes.

Q. Now, Shemika in this handwritten statement that you provided to Miss Daly, again you provided information regarding yourself. You told her that you were 24 years old and that your birthday was April 17, 1977, right?

A. Right.

Q. And you gave her your address where you were living and who you were living with, right?

A. Yes.

Q. And you actually told her that you graduated from Tilden High School, correct?

A. Yes.

Q. That's because you can read and write English, right?

A. Yes.

Q. In the handwritten statement that you gave to Miss Daly you told her that on May 16, 2001, at about 1:15 a.m. you were out with your friends named Kevin Jackson, who is nicknamed Googie, Brandy Grant, Quiana Davis, and Manny, who you now know to be as Manuel Stewart. You told her that, correct?

A. No, I did not because I do not even know Googie's real name and I don't know Manny's real name.

Q. Well, you told Miss Daly that Googie and Manny are in the Conservative Vicelords, right?

A. No, I don't remember telling her that.

Q. You told Miss Daly that Manny was driving them, all of you, and that you pulled into the Citgo gas station located at 55th and Damen, right?

A. No.

Q. Well, do you remember telling Miss Daly that you identified People's Exhibit Number 1 as being Googie? Do you remember doing that?

A. Yeah.

Q. Do you remember telling her that once Manny pulled into the gas station you, Quiana, and Brandy all got out of the car?

A. No. Didn't you just say though at first me and Brandy 'pose to got out the car and went in the store and Quiana was talking to Meechie?

Q. I asked you if that's what you told the detective?

A. No, I did not.

Q. Now, I'm asking you did you tell Miss Daly as part of this handwritten statement that you provided that once Manny pulled into the gas station you, Quiana, and Brandy all got out of the car?

A. No.

Q. Do you remember telling Miss Daly that Manny stayed in the driver's seat and Googie stayed in the passenger seat of that car?

A. No, I do not.

Q. Do you remember telling Miss Daly that you

and Brandy went into the gas station to get something to eat and drink while Quiana stayed outside the gas station as she called out to a guy named Meechie? Do you remember telling her that?

A. No.

Q. Do you remember telling her that you saw Meechie standing near a car that was parked at a gas pump and saw Quiana and Meechie walk towards each other? Do you remember telling her that?

A. No.

Q. Do you remember telling her that you knew Meechie to be a Gangster Disciple?

A. Yes.

Q. You remember telling her that part, right?

A. Yeah.

Q. Do you remember telling Miss Daly that a minute or so later you came out of the gas station after buying the juice and saw Googie standing near an alley but still in the Citgo lot holding a gun in his hand?

A. No.

Q. Do you remember telling Miss Daly that you saw Googie firing a gun and that he fired the gun about four or five times?

A. No.

Q. Do you recall telling her that Googie was firing the gun in the direction of Meechie who was standing near the same car which was parked at the gas pump?

A. No.

Q. Do you remember telling Miss Daly that Meechie was standing just behind the bumper of his car and Meechie did not have a gun or any type of weapon in his hand?

A. No.

Q. Did you tell Miss Daly that a guy was filling up the car with gas and that he fell to the ground when Googie was shooting?

A. No.

Q. Did you tell Miss Daly that Googie, after he fired the gun, then ran across the gas station towards Garfield Boulevard and then ran towards Seeley Avenue until you couldn't see Googie anymore?

A. No.

Q. Did you tell Miss Daly that you then saw Quiana and Brandy running into the gas station and then you ran to Quiana's house located at 5543 South Seeley?

A. No, I do not.

Q. Did you tell Miss Daly that you spent the night at Quiana's?

A. Yes.

Q. Did you tell Miss Daly that later that day at about 6 or 7:o'clock p.m. Googie came over to Quiana's house?

A. No.

Q. Did you tell Miss Daly that Googie told you, Brandy, and Quiana not to talk to the police if the police questioned you about the shooting?

A. No.

Q. Did you tell Miss Daly that Googie then questioned Brandy and Quiana about what they had told the police the night of the shooting?

A. No.

Q. You tell Miss Daly that Quiana and Brandy told Googie that they did not say anything to the police?

A. No.

Q. After you spoke to Miss Daly and after the statement had been given, you then were allowed to leave the police station?

A. No, I was not.

Q. How long did you stay at the police station for?

A. Until the next morning. I got home 3:00 o'clock the next morning.

Q. Just so I'm clear on this, Shemika, you told us that you had an outstanding warrant?

A. Yes.

Q. What was the warrant for?

A. Possession.

Q. And you're telling us that the detectives knew that you had an outstanding warrant?

A. Yes, they did.

Q. And they let you go even though you had an outstanding warrant?

A. Yes.

Q. Shemika, do you know the type of car that Googie drives?

A. A blue Chevy.

MR. PAPA: Judge, may I approach?

THE COURT: Yes.

BY MR. PAPA:

Q. Shemika, I'm going to show you what's been previously marked as People's Exhibit Number 5 and ask you if you recognize what is contained in the

photograph of People's Exhibit Number 5?

A. A Chevy.

Q. Is that Googie's car?

A. From my understanding that was Googie and Manny's car.

Q. Both of their cars, right?

A. Yea.

Q. But this is a car that you've seen Googie driving before, right?

A. Yeah, I seen him and Manny driving the car.

Q. Both of them?

A. Yeah.

Q. Shemika, would you consider yourself to be friends with Googie?

A. Yes.

Q. And you said, I believe you said you've known him for like three or four years?

A. Yes.

MR. PAPA: I have no further questions.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. CONNIFF:

Q. Miss Mason, People's Exhibit Number 7, this was written -- this is not in your handwriting, correct?

A. No.

Q. And it bears the date of June the 13th of 2001, is that right?

A. Yes.

Q. Is that your handwriting that date?

A. No, it is not.

Q. And it has the time as 02:17 hours?

A. Yes.

Q. 2:17 in the morning?

A. What, when I was picked up?

Q. No. When were you picked up, what time of day was it?

A. I was picked up at about, I believe, 9 or 10:00 o'clock, somewhere between there that, at night.

Q. 9 or 10:o'clock at night. And where were you when you were picked up?

A. Sitting out on the outside of my house in a car with some friends smoking some marijuana.

Q. And detectives picked you up?

A. Yes.
Q. And they took you to Area 1?
A. Yeah, 51st and Wentworth.
Q. How long were you at Area 1?
A. I was there until the next day.
Q. By the next day, what time of day were you released?
A. I think I got home about 12 or one that afternoon.
Q. 12 or one in the afternoon?
A. Yes.
MR. CONNIFF: I don't have anything else, Judge.
THE COURT: Thank you. Miss Mason, you're excused.
(Witness excused)
THE COURT: Call your next witness.
MR. DARMAN: Judge, we'd call Manuel Stewart.
THE COURT: Step up. Remain standing. Raise your right hand.
(Witness duly sworn.)
THE COURT: Be seated. Proceed.

MANUEL STEWART,

called as a witness on behalf of the People of the State of Illinois, after having been first duly sworn, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. DARMAN:

Q. Sir, in a loud and clear voice please state your name and spell your last name for the ladies and gentlemen of the jury.

A. Manuel Stewart, S-t-e-w-a-r-t.

Q. You also go by the name Manny?

A. Yes.

Q. Manny, do you know this fellow sitting here in the white shirt (indicating)?

A. Yes.

Q. Who is that?

A. Kevin Jackson.

Q. Do you know him by any other names?

A. Googie.

Q. You know him by Googie?

A Yeah.

Q. Is he related to you?

A. Yeah.

Q. How is he related to you?

A. Cousin.
Q. How long have you known Googie?
A. All my life.
Q. Mr. Stewart, you're presently incarcerated, is that correct?
A. Yes, sir.
Q. And that's for attempted aggravated arson under 99 CR 13535, is that correct?
A. Yes, sir.
Q. Mr. Stewart, before you went to prison did you own a car?
A. Yes, sir.
Q. Did anybody own that car with you or did you own it by yourself?
A. Me and my cousin, Kevin Jackson.
Q. Googie?
A. Yes, sir.
MR. DARMAN: Judge, may I approach?
THE COURT: Yes.
MR. DARMAN: Showing, Judge, for the record to counsel what I've previously marked as People's Exhibit Number 5 for identification.
Q. Manny, I want to show you what I've marked as People's Exhibit Number 5 for identification. Is that

a photograph?

A. Yes, sir.

Q. What's that a photograph of?

A. Chevy.

Q. Is that you and Googie's car?

A. Yes, sir.

Q. How long did you and Googie have that car?

A. About two years at the most.

Q. From approximately when to when?

A. From --

THE COURT: Mr. Witness, you'll have to speak up, sir, so we can all hear you. There's a microphone in the desk. Also keep your voice up and lean forward and we can all hear you.

A. We owned it about since --

THE COURT: You're still not talking loud.

A. We owned it since '99 to about the beginning of 2002.

BY MR. DARMAN:

Q. So you and Googie owned that car on May the 6th of 2001, is that correct?

A. Yes, sir.

Q. Manny, I'd like to direct your attention to May the 6th of 2001. You weren't in prison at that

time, were you?

A. No, sir.

Q. On May the 6th 2001 or May the 5th of 2001 in the evening hours or in the early morning hours of May the 6th of 2001 do you recall where you were?

A. Yes, sir.

Q. Where were you?

A. At Citgo gas station.

Q. Is that the Citgo station at 55th and Damen?

A. Yes, sir.

Q. Now, what kind of folks hang out at that Citgo gas station?

MR. CONNIFF: Objection.

A. All types.

THE COURT: Just a moment. What's the objection?

MR. CONNIFF: Judge, what kind of folks hang out.

THE COURT: Rephrase, counsel.

BY MR. DARMAN:

Q. Is that a particular gang turf at that gas station?

A. Not that I know of. I see all type of gangs there.

Q. What about across the street at the Marathon station, any particular gang hang out there?

A. I see all types.

Q. What were you doing at the gas station on the late evening hours, early morning hours of May the 5th and 6th, 2001?

A. Getting some blunts.

Q. What are blunts?

A. Cigars you roll marijuana with.

Q. Who was with you, if anyone?

A. My brother, Quiana Davis, and Brandy Grant.

Q. Were you in a car or were you on foot?

A. I was in a car.

Q. Is that a picture of the car that I've just showed you?

A. Yes, sir.

Q. You guys were in that car?

A. Yes, sir.

Q. So you drove to the gas station to get some blunts?

A. Yes, sir.

Q. About 1:30 in the morning on May the 6th, right?

A. Yes, sir.

Q. What happened when you folks got to the gas station?

A. We saw Meechie go in the gas station, then Quiana and Brandy got out and went in there.

Q. Now, who's Meechie?

A. I just know him as a Gangster Disciple. I don't really know him like that.

Q. And you saw Meechie do what? I'm sorry.

A. I saw him going in the gas station.

Q. What happened then?

A. Then Quiana and Brandy went in there.

Q. Do you see Quiana and Meechie talking inside the gas station?

A. Not inside the gas station. I saw them saying something to each other when they came out.

Q. Did you hear what they were saying?

A. No, sir.

Q. What happened then? What happened next?

A. Then I heard some gunshots and then I pulled off.

Q. When you pulled off, who was in the car with you?

A. Just my brother.

Q. So you left Quiana and Brandy there at the gas station with the gunshots?

A. When they heard the shots, they got to

running across the street. I wasn't saying get out the car, let's go get him.

Q. Okay. So they ran away and you took off in the car, you and your brother?

A. Yes, sir.

Q. What's your brother's name?

A. Mario Brown.

Q. Where is Mario at today, by the way?

A. Outside somewhere as far as I know.

Q. Did you see who did the shooting there at the gas station at 55th and Damen on May the 5th, 2001? Did you see the guy who shot?

A. Yes, sir.

Q. Who was it?

A. He's not in here.

Q. I didn't ask you if he was in here. I asked you who it was. Who was it?

A. Rick Party.

Q. Rick who?

A. Rick Party.

Q. How do you spell his last name?

A. That's just a street name. That's ain't his real last name.

Q. Do you know his real name?

A. No, I just know him by that name.

Q. Did you see the face of Rick when he was holding this gun?

A. Yes, sir.

Q. Where was he standing?

A. On the side of the next guy's pump from they car where the man was in, sir.

Q. Did you know Rick before that day? Had you ever seen him before?

A. Yes, sir.

Q. How had you been familiar with him?

A. Because me and him was part of the same organization, sir.

Q. What organization is that?

A. The Vicelords.

Q. Conservative Vicelords?

A. Yes, sir.

Q. That's a street gang, right?

A. Yes, sir.

Q. And Rick Party is from what faction of the Conservative Vicelords?

A. What you mean what faction, sir?

Q. Well, you know the Conservative Vicelords, some of them hang out on one corner or one part of the

city, some of them hang out at another part of the city, is that correct?

A. Yes. We both on the south side.

Q. You're both on the south side. So you're from the same faction?

A. Yes.

Q. How long had you known Rick Party?

A. I'd say about five years at the most.

Q. Five years at the most?

A. Yes.

Q. And you saw him shooting there at the gas station, right?

A. Yes, sir.

Q. Did you know somebody had got killed there at the gas station?

A. Yes, sir.

Q. Do you know somebody else had got shot in the leg at the gas station?

A. Yes.

Q. And you know the police were looking for whoever it was that did the shooting, is that right?

A. Yes, sir.

Q. Mr. Stewart, I'd like to direct your attention to June the 19th of 2001. On that day did

you have occasion to talk to a Detective Forberg at Area 1 Violent Crimes?

A. Yes, sir.

Q. And that was at the police station, right?

A. Yes, sir.

Q. Now, you knew that he knew that you had been at the gas station at the time of the shooting, right?

A. Yes, sir.

Q. And at that time he asked you about the shooting, right?

A. Yes, sir.

Q. He asked you if you knew who did it?

A. Yes, sir.

Q. And you told him you didn't know what was going on, right?

A. No, I ain't never told him I don't know what was going on.

Q. Did you tell the detective that you heard about the shooting but that you were not involved?

A. No, I ain't tell him that at all.

Q. Did you tell the detective that you were unable to recall where you were at the time of the shooting?

A. No, sir.

Q. You didn't tell him those things on June the 19th of 2001?

A. No, sir.

Q. Let me direct your attention to June the 20th of 2001. On that day did you talk to another detective by the name of Clisham, Detective John Clisham?

A. I was only there at the police station one time, so.

Q. So on 6/20 of 2001 you were never at the police station?

A. You said 6/20?

Q. Yeah, June the 20th of 2001, the next day after June the 19th.

A. I was there that day, but I'm just saying I didn't talk to nobody.

Q. You were there on the 20th but you didn't talk to anybody?

A. No, sir.

Q. You never told the detectives that day that you were driving and that you were pulled into the gas station?

A. No, sir.

Q. You never told the detectives that day that

it was you, Mario Brown, Quiana Davis, and Brandy Grant that were in the car with you, right?

A. No, sir.

Q. You never told them that?

A. I told them that the next day.

Q. You told them that what day?

A. The next day.

Q. Yeah, the 20th of June, that's the day I'm talking about. You talked to the detectives that day, right? Detective Clisham.

A. You said the 20th and the 21st, sir.

Q. Let's go back over this again, Mr. Stewart, so I'm not confusing you.

On the 19th did you tell Detective Forberg that you didn't know anything about the shooting?

A. Yeah, that day, yeah, I did.

Q. You did tell them you didn't have any knowledge of the shooting?

A. Right.

Q. You told them that you were unable to recall where you were at the time of the shooting, is that right?

A. No, I didn't tell them that.

Q. You didn't tell them that?

A. No.

Q. And you didn't tell them that you had heard about the shooting and that you weren't involved?

A. No.

Q. Okay. Now, did you go home on the 19th or did you stay in the police station?

A. I stayed in the police station.

Q. Okay. On the 20th of June did you talk to the detectives again?

A. Yes, sir.

Q. Now, did you tell them at that time -- did you talk to them about what happened on May the 6th of 2001?

A. Yes, sir.

Q. Did you tell them that you were driving and that you pulled into the gas station?

A. Yes, sir.

Q. Did you tell them that you were with Mario Brown, Googie, Quiana Davis, and Brandy Grant and they were all in the car with you?

A. Yeah. I lied, though.

Q. You lied?

A. Yeah.

Q. How come you lied?

A. 'Cause they scared me. They said they was gonna lock me up for it or whatever.

Q. They said they were going to lock you up for the murder?

A. Yes, sir.

Q. Who told you that?

A. The police officers.

Q. Which ones?

A. I don't know them by name, sir.

Q. Were they Asian guys, were they African American guys, were they white guys, were they Mexican guys? What were they?

A. I know one of them was white. I don't remember what the other one was, sir.

Q. Okay. And they told you they would lock you up for this murder if what?

A. If I didn't say he did it.

Q. Say who did it?

A. Kevin Jackson.

Q. So you basically ratted him out then?

A. Yes, sir.

Q. So you told them that he was with you along with those other folks that I've just mentioned, right, at the time of the shooting?

A. Yes, sir.

Q. And you told the detectives that Quiana went into the store to buy some blunts, right?

A. Yes, sir.

Q. Did you tell the detective that Mario said that you guys needed some more blunts and went into the store, too, right?

A. Yes, sir.

Q. You also told them that Googie said hold on, there's Dude and he was referring to Meechie, right?

A. Yeah.

Q. Googie saw Meechie in the parking lot, right?

A. Yeah. I told them that, but I lied.

Q. Okay. I'm asking you if you told them right now.

A. Right.

Q. You also told them that Googie got out of the car and ran across the street to some other Vicelords across the street, right?

A. Yes, sir.

Q. He was talking to some other Vicelords?

A. Yes, sir.

Q. You told the detective as Mario was getting back into the car, you heard a gunshot, right?

A. Yes, sir.

Q. You also told the detectives that you turned around and you saw Googie firing a gun five or six times at Stanley Watson and anybody else that was in the car that he was by, right?

A. Yes.

Q. You also told the detectives after he finished shooting, Googie ran across Damen and through the alley, right, and ran away, is that right?

A. Yes, sir.

Q. Did you also tell the detectives that you knew Quiana Davis from the neighborhood?

A. I told them know I her from school, we grew up together.

Q. Mr. Stewart, I want to direct your attention now to June the 20th of '01 at about 7:00 o'clock in the evening. You were still at the police station, is that correct?

A. Yes, sir.

Q. And at that time you met a female state's attorney by the name of Lisa Hennelly, is that correct?

A. Yes, sir.

Q. You met her, right?

A. Yes.
Q. Pretty girl, brown hair?
A. Yes, sir.
Q. And also at that time with her was Detective Clisham, is that correct?
A. Yes, sir.
Q. And at that time you weren't handcuffed, correct?
A. No, sir.
Q. You were sitting in a room?
A. Yes, sir.
Q. You and she and the detective?
A. Yes, sir.
Q. And she did all the talking, is that right?
A. Yes, sir.
Q. And she began to ask you questions about what happened on May the 6th, is that true?
A. Yes, sir.
Q. And you told her what happened on May the 6th, is that right?
A. I lied.
Q. But you did tell her some things about May the 6th, right?
A. Yes, sir.

Q. And as you were telling her those things, she was writing them down, is that true?

A. Yes, sir.

Q. I mean, you're sitting there and you're watching her write, correct?

A. Yes, sir.

Q. She asked you your name?

A. Yes, sir.

Q. She asked you your date of birth?

A. Yes.

Q. She asked you where you lived?

A. Yes.

Q. She asked what you what your nickname was, right?

A. Yes.

Q. And you told her all those things, right?

A. Yes.

Q. She also asked you about the shooting that took place on May the 6th, correct?

A. Yes.

Q. And you and she had a conversation about the shooting and she continued writing?

A. Yes.

Q. And when she finished asking you about the

shooting --

Now, was Detective Clisham, he wasn't in there the whole time, was he?

A. Part of the time, not the whole time.

Q. Was there a point when you and she were alone?

A. A little bit. I don't remember exactly how long, but a little bit.

Q. While you and she were together did she ask you how you had been treated by the police?

A. Yes, sir.

Q. You told her that you had been treated fine by the police, is that right?

A. Yes, sir.

Q. She asked you if you had been allowed to use the restroom?

A. Yes, sir.

Q. She asked you if you had been allowed to eat or anything like that, is that correct?

A. Yes, sir.

Q. And then these pieces paper that she had written on, she took them and she read them out loud to you, is that correct?

A. Yes, sir.

Q. Then you and she went over this statement together?

A. Yes, sir.

Q. As she read each page to you, Mr. Stewart, she asked you to verify whether or not the information contained on that page was true, is that right?

A. Yes, sir.

Q. And she said if the information on this page is true, what I've written down is okay, would you sign the bottom of that page. She asked you to do that, right?

A. Yes, sir.

Q. And you signed it, is that right?

A. Yes, sir.

Q. And then she signed it, is that right?

A. Yes.

Q. And then Detective Clisham signed it, is that true?

A. Yes.

Q. When you were talking to ASA Hennelly and Detective Clisham as she was writing the things down, did you tell her that on Saturday, May the 5th of 2001 you were driving a car owned by yourself and your cousin, Kevin Jackson? You told her that?

A. Yes, sir.

Q. Did you tell her that Kevin's street name is Googie and that Googie is also a Vicelord?

A. Yes, sir.

Q. Did you tell her that -- Did she show you a picture?

A. Yes.

Q. And was that a picture of Googie?

A. Yes, sir.

Q. And at some point did you sign that picture?

A. Yes, sir.

Q. Did you tell the state's attorney that late that evening going into the early morning of May the 6th, 2001, you pulled into the parking lot of the Citgo station at Damen and 55th? Did you tell her that?

A. Yes.

Q. Did you tell her that Googie was in the car with you, your brother, Mario, and a girl named Quiana Davis? Did you tell her that?

A. Yes.

Q. Did you tell her that you went to the gas station to get more blunts, which are cigars?

A. Yes.

Q. Did you tell her that a girl named Brandy Grant was also there and that Brandy was the one who went to buy the blunts? Did you tell her that?

A. Yes.

Q. Did you tell her that a guy named Meechie, who is a GD or a member of the Gangster Disciples street gang, was also there?

A. Yes, sir.

Q. Did you tell her that Googie went across Damen near where the Marathon station was and was talking to a guy named Ernie?

A. Yes.

Q. Did you tell her that before Googie went across Damen and went to talk to Ernie he said there goes Dude? Did you tell her that?

A. Yes.

Q. Did you tell her that Googie said when he saw -- he said that when he saw Meechie?

A. Yes.

Q. Did you tell the state's attorney that Quiana and Meechie were talking? Did you tell her that?

A. Yes.

Q. Did you tell the state's attorney that there were also other people around and that the other

people were getting in and you out of Meechie's car?

A. Other people like many people? I saw two people that was in Meechie car. It was the dued that got killed and Meechie in the car, that's the only two people I said got in and out the car.

Q. Did you tell the state's attorney that after a couple of minutes you heard a gunshot?

A. Yes, sir.

Q. Did you tell the state's attorney that you then turned around and saw Googie with a gun shooting at a car that was parked at one of the gas pumps?

A. Yes, I lied and said that.

Q. You lied and said that?

A. Yes, sir.

Q. Did you tell the state's attorney that you could see a man in the driver's seat and his body was jerking back as the gunshots hit? Did you tell the state's attorney that?

A. Yes, sir.

Q. Was that a lie or was that the truth?

A. That was the truth.

Q. Did you tell the state's attorney that you took off in your car and drove to 54th and Hoyne where you ran out of gas?

A. Yes, sir.

Q. Did you tell the state's attorney that Mario was with you?

A. Yes, sir.

Q. Did you tell the state's attorney that you walked back to the Citgo station to get some gas and Mario walked over to his girlfriend's house?

A. Yes, sir.

Q. Did you tell the state's attorney that there was a crowd around the car that Googie had been shooting into and Googie was gone when you had gone back to the gas station?

A. Yes, I lied and said that, sir.

Q. Okay. Did you tell the state's attorney that after you put the gas in your car you went back to the Citgo station again and the police were there?

A. You saying I walked up there two times, that's what you saying?

Q. Well, I'm asking you if you told the state's attorney this: "Manny states that after he put the gas in his car he again came back to the Citgo station and the police were there." Did you tell the state's attorney that?

A. I remember telling them I went to Quiana them

house after I went and got the gas and put the gas in my car. I didn't know if I went back to the gas station. I only went there one time when I got some gas, sir.

Q. Okay. And how did the state's attorney treat you that day?

A. Okay.

Q. And in your statement here there's a -- you said that the state's attorney had treated you fine, right?

A. Yes.

Q. You had been given McDonald's to eat, you were allowed to use the bathroom when you needed to to, right?

A. Yeah, that was afterwards and all that. It wasn't before it or nothing.

Q. Did you tell the state's attorney that no one had threatened you or promised you anything to get you to make that statement?

A. Yes, sir.

Q. Did you tell the state's attorney that you were not under the influence of any drugs or alcohol when you told her those things?

A. Yes, sir.

Q. Now, the state's attorney asked you to read the first paragraph of this statement out loud. Did you do that for her?

A. Yes, sir.

Q. She then read you the whole statement, is that correct?

A. Yes, sir.

Q. You followed along and read to yourself while she was reading it to you?

A. Yes, sir:

MR. DARMAN: Judge, may I approach?

THE COURT: Yes.

MR. DARMAN: For the record, Judge, showing to counsel what I've marked as People's Exhibit Number 8 for identification.

Q. Manny, I want to show you what I've marked as People's Exhibit Number 8. The first thing here is stapled to Exhibit Number 8 is a photograph.

A. Yes.

Q. Who is that photograph of?

A. Me, myself.

Q. And who took that photograph?

A. I think the state's attorney, but I don't remember exactly.

Q. She took that photograph of you after this statement, is that correct?

A. Yes, sir.

Q. Did you sign that, the bottom of that photograph there?

A. Yes, sir.

Q. That says 6/20/01 at 2000 hours. That's 8:00 o'clock, right?

A. Yes.

Q. And Detective Clisham signed that photograph too as well as the state attorney, is that right?

A. Yes, sir.

Q. You were sitting there when they signed it?

A. Yes.

Q. Here on the bottom of page 1 it says Manuel Stewart. Is that your signature?

A. Yes, sir.

Q. You signed that?

A. Yes.

Q. It says Lisa Hennelly next to you, the ASA. Did you see her sign that?

A. Yes.

Q. And Detective Clisham signed it too, is that correct?

A. Yes.

Q. Also here on the front page there's a picture. Who is that a picture of?

A. My cousin, Kevin Jackson, a/k/a Googie.

Q. Right there (indicating), Googie?

A. Yes, sir.

Q. Is that your signature on the back?

A. Yes, sir.

Q. Manual Stewart, right?

A. Yes, sir.

Q. That's the state's attorney's signature and the detective's signature, right?

A. Yes, sir.

Q. You were sitting right there when you signed that -- when they signed that piece of paper, you were sitting there, correct?

A. Yes, sir.

Q. And this is the picture of Googie who you referred to in this statement as the shooter at the gas station that day?

A. Yes, sir.

Q. Page 2. That's your signature on the bottom, is that right?

A. Yes, sir.

Q. The same thing with the state's attorney and the detective?

A. Yes, sir.

Q. Manuel Stewart on page 3?

A. Yes, sir.

Q. State's attorney and the detective's signatures?

A. Yes.

Q. The same thing on page 4, correct?

A. Yes, sir.

Q. On page 5 your signature appears in the middle of the page, correct?

A. Yes, sir.

Q. The same with the state's attorney and the detective?

A. Yes, sir.

Q. Then your signatures appears again at the bottom of the page?

A. Yes, sir.

Q. You told me a little earlier that some of the things that you said in here to the state's attorney were a lie?

A. Yes.

Q. Why did you lie?

A. 'Cause I thought they was gonna pin the murder on me and they really wanted me to put it on him, sir. They had already had two other statements that was signed with him saying he did it.

Q. There was the state's attorney, Lisa Hennelly, was sitting there in the station, right?

A. Yes.

Q. And you were alone with her at some point, right?

A. Yes.

Q. Did you tell her that the police were making you do this to help you out?

A. No.

Q. Mr. Stewart, I'd like to direct your attention to the next day, 6/21 of 2001. On that day, Manny, did you come down here to 26th and California and go in front of the grand jury?

A. Yes, sir.

Q. Now, before you went in front of the grand jury you met with another state's attorney, correct?

A. Yes, sir.

Q. Female?

A. Yes.

Q. Kind of red hair, short, thin?

A. Yes.
Q. Her name was Kathy, right?
A. Yes.
Q. And she talked talked to you, right?
A. Yes.
Q. She talked to you by herself?
A. I don't remember exactly. I can't remember exactly.
Q. Well, you were in an office up on the fourth floor of this building, is that true?
A. Yes, sir.
Q. And you told her about the shooting on May the 6th, correct?
A. Yes, sir.
Q. Did you tell her that Rick Party did it that day?
A. No.
Q. The detectives weren't there with you and she in her office, right?
A. I don't remember exactly, sir.
Q. Okay. Well, after you spoke to her then you and she went in front of the grand jury, is that right?
A. Yes, sir.

Q. You raised your right hand and were sworn to tell the truth like you were today, is that right?

A. Yes, sir.

Q. And at that point the state's attorney asked you questions?

A. Yes, sir.

Q. Is that true?

A. Yes.

Q. And when you were in the grand jury did you tell the grand jurors that Googie was the shooter that day?

A. Yes, I lied and said that, sir.

Q. You lied and said that that day?

A. Yes.

Q. So what you're saying to the ladies and gentlemen of the jury today is that Googie is not the shooter, right, it's this other guy, this Rick Party?

A. Yes.

MR. DARMAN: May I have one moment, Judge?

THE COURT: Yes.

(Short pause.)

BY MR. DARMAN:

Q. When you were in the grand jury with the state's attorney, Manny, do you remember being asked

this question and giving this answer:

"I would call your attention to May the 6th, 2001, at 1:30 in the morning around 54th and Damen. At that date, time, and location were you in that area?

"Answer: Yes.

"Question: Who were you with?

"Answer: My brother, Mario, Quiana Davis, and another friend, Brandy Grant, and my cousin, Kevin Jackson."

Do you recall being asked those questions and giving those answers?

A. Yes.

Q. Do you recall being asked these questions and giving these answers:

"Questions: Now, does Kevin Jackson go by a nickname?

"Answer: Yes.

"Question: What is his nickname?

"Answer: Googie.

"Question: What were you doing at the gas station?

"Answer: We was about to get some blunts because we were fittin' to get high.

"Question: Did anything happen while you were at the gas station?

"Answer: Yes.

"Question: What happened?

"Answer: Quiana had saw Meechie. She was like hi to him, whatever.

"Question: Okay. So Quiana saw Meechie?

"Answer: Yes."

So far do you remember being asked those questions and giving those answers?

A. Yes.

Q. Do you remember being asked these questions and giving these answers:

"Question: Who is Meechie?

"Answer: He's a rival gang member. He's folks.

"Question: And what gang is that?

"Answer: GDs, Gangster Disciples.

"Question: And what gang are you in?

"Answer: Vicelords.

"Question: And what gang is Kevin Jackson, also known as Googie, in?

"Answer: Vicelords."

So far do you remember being asked those

questions and giving those answers?

A. Yes, sir.

Q. Do you remember being asked the following questions and giving the following answers:

"Question: And when he saw Quiana talking to --m when Googie saw Quiana talking to Meechie, what did he say?

"Answer: Hold on, wait a minute.

"Questoin: And what happened then?

"Answer: He went across the street by the Marathon gas station and the liquor store. He was talking to some boy named Ernie.

"Question: Could you hear what they were saying?

"Answer: No, I ain't even look at him no more. I just saw him go over there.

"Question: Did Googie eventually come back across the street?

"Answer: Yes, ma'am.

"Question: How long was he gone?

"Answer: Like two minutes or a minute and a half."

Do you remember being asked those questions and giving those answers?

A. Yes, sir.

Q. Do you remember being asked the following questions and giving the following answers:

"Question: What happened when you came back across the street?

"Answer: I heard one shot and I turned around, I seen shooting inside the driver car, whoever car that was Meechie in.

"Question: Meechie?

"Answer: Meechie went in the car, the driver was in there, but --

"Question: Had Meechie been in that car earlier?

"Answer: Yes."

So far do you remember being asked those questions and giving those answers?

A. You said Meechie went in the car?

Q. The question is, Manny --

A. No, I done heard the question. I'm just asking you did you say I said me Meechie went in the car? That's what I'm saying.

Q. I'm reading you verbatim from the grand jury transcript. I can't --

A. I never said he went back in the car when he

went in the gas station 'cause he never did.

Q. Okay. Well, do you remember being asked the questions that I've said to you so far and remember giving those answers?

A. Yes.

Q. Okay. Do you remember being asked these questions and giving these answers:

"Question: Had Meechie been near that car earlier?

"Answer: Yes, ma'am.

"Question: Now, you saw Googie shooting into that car?

"Answer: Yes, ma'am.

"Question: Was there anyone in the car?

"Answer: Yes.

"Question: Do you know the person in the car?

"Answer: No.

"Question: Was it a male or a female?

"Answer: I know it was a male.

"Question: Was it somebody young, old; do you know?

"Answer: I don't know.

"Question: You couldn't tell?

"Answer: No."

Do you remember being asked those questions and giving those answers?

A. Yes.

Q. Do you remember being asked the following questions and giving the following answers:

"Question: After you seen Googie shooting into the car what did you do?

"Answer: I pulled off.

"Question: Did you see where Googie went?

"Answer: No, ma'am.

"Question: Where did you go?

"Answer: I drove down the boulevard, my car stopped on 54th and Hoyne because I had run out of gas."

Do you recall being asked those questions and giving those answers?

A. Yes.

Q. Do you recall being asked the following questions and giving the following answers:

"Question: When you ran out of gas, what did you do?

"Answer: I stopped, got out of my car, went in the trunk and got my gas can. My brother was

in there with me. He went to his girlfriend's house right down there on the boulevard. I went back up to the Citgo to get me some gas for my car.

"Question: When you went back to the Citgo was anyone there?

"Answer: Yes, it was a crowd of people. The main people I noticed was Quiana and Brandy because they were in the car with him.

"Question: So they were still out there when you went there?

"Answer: Yes, ma'am."

Do you remember being asked those questions and giving those answers?

A. Yes, ma'am -- I mean, yes, sir.

Q. Do you remember being asked the following questions and giving the following answers:

"I now will show you what I have marked as People's Exhibit Number 1 for identification. Do you recognize this photograph?

"Answer: Yes, ma'am.

"Question: Who is that a photograph of?

"Answer: Googie, Kevin Jackson, my cousin.

"Question: He's your cousin?

"Answer: Yes.

"Question: How long have you known him?

"Answer: All my life.

"Question: And this person Meechie, who is a rival gang member, how long had you known him?

"I would say for about six months or a year."

Do you remember being asked those questions and giving those answers?

A. Yes, sir.

Q. Do you remember being asked the following questions and giving the following answers:

"But you had seen him before?

"Answer: Right.

"Question: Where did you see him?

"Answer: Like on 53rd and Hoyne.

"Question: Now, Manuel, on June 20th, yesterday, were you at Area 1 Violent Crimes?

"Answer: Yes, ma'am.

"Question: When you were there, did you speak to an assistant state's attorney, Lisa Hennelly, as well as a Detective Clisham?

"Answer: Yes, ma'am.

"Question: Did you give them a statement at that time?

"Answer: Yes, ma'am."

Do you recall being asked those questions and giving those answers?

A. Yes, sir.

Q. Do you remember being asked these questions and giving these answers:

"Did you tell them the same facts yesterday that you are telling the grand jury here today?

"Answer: Yes, ma'am.

"Question: Was that statement written down?

"Answer: Yes.

"Question: Did you review that statement and sign it?

"Answer: Yes, ma'am.

"Question: I want to show you People's Exhibit Number 2 for identification. Do you recognize this?

"Answer: Yes, ma'am.

"Question: Is this a true and accurate copy of the statement that you gave yesterday?

"Answer: Yes, ma'am."

Do you remember being asked those questions giving those answers?

A. Yes, sir.

Q. Do you remember being asked these questions and giving these answers:

"Question: Did you review that statement and sign it?

"Answer: Yes, ma'am.

"Question: Does your signature appear at the bottom of every page?

"Answer: Yes.

"Question: Do you recognize the signature?

"Answer: Yes, ma'am.

"Question: Yesterday at the police station how were you treated by the assistant state's attorney and the detective?

"Answer: I was treated good.

"Question: And were you under the influence of drugs or alcohol when you took this statement?

"Answer: No, ma'am.

"Question: Did anyone threaten you in any way in return for this statement?

"Answer: No, ma'am.

Do you remember being asked those questions and giving those answers?

A. Yes, sir.

Q. Do you remember her asking you these

questions and you giving these answers:

"Did anyone promise you anything in return for this statement?

"Answer: No, ma'am.

"Question: When you came to the building this afternoon, you met me, did I introduce myself as Kathy Lanahan, assistant state's attorney, a lawyer and a prosecutor but not the lawyer for your cousin, Kevin Jackson?

"Answer: Yes, ma'am.

"Question: Has anyone threatened you or promised you anything in return for your testimony here before the grand jury today?

"Answer: No, ma'am.

"Question: Are you under the influence of drugs or alcohol at this time?

"Answer: No, ma'am."

Do you remember her asking you those questions and you giving her those answers?

A. Yes, sir.

MR. DARMAN: Judge, may I approach?

THE COURT: Yes.

MR. DARMAN: For the record, showing to counsel what's previously been marked as People's Exhibit

Number 4 and People's Exhibit Number 8.

Q. I want to show you, Manny, what I've previously marked as People's Exhibit 4 for identification. That's a photograph, right?

A. Yes, sir.

Q. That's a photograph of who?

A. Kevin Jackson, a/k/a Googie.

Q. Googie?

A. Yes, sir.

Q. And this is the photo that ASA Lanahan showed you in the grand jury, is that correct?

A. Yes, sir.

Q. Is that People's Exhibit Number 1 there on the back?

A. Yes, sir.

Q. People's Exhibit Number 8, that's the statement that you and I were talking about earlier, is that correct?

A. Yes, sir.

Q. Now, she showed you that statement in the grand jury, is that correct?

A. Yes, sir.

Q. And she asked you if that was a true and accurate copy of that statement and you said it was,

is that right?

A. Yes, I lied and said it.

Q. You lied and said what?

A. That it was.

Q. Mr. Stewart, I'd like to direct your attention to May the 7th of 2003.

MR. CONNIFF: Objection. Sidebar. Can we have a sidebar, Judge?

THE COURT: I'll tell you, folks, you can go into the jury room. There was a hand that went up anyway. You all can go into the jury room for the sidebar and refresh yourselves.

(The following sidebar was had outside the presence of the jury:)

THE COURT: Counsel?

MR. CONNIFF: Judge, I think I know what counsel is about to go into.

MR. PAPA: Should we do this outside the presence of the witness?

THE COURT: Yes, absolutely. Thank you.

(Witness exited courtroom.)

THE COURT: Counsel?

MR. CONNIFF: Judge, if the State could make a

proffer as to what area.

THE COURT: May 3, '03.

MR. DARMAN: May 7th of '03, I believe, if I'm not mistaken, I think an investigator from the public defender's office went down to the prison and talked to the witness where he, I guess for whatever you want to say, have a recant. I was going to go through the recant with him, ask him questions about the recant. As a matter of fact, he attached a grand jury transcript to the recant.

I can't make allegations that she had him do that, but she obviously brought a quick grand jury transcript there with her and he lined out an entire page of the grand jury transcript. Put on there that that this is not true and he signed. So I want to go through all that with him, and then there is one last piece of evidence --

THE COURT: Just as he did this afternoon, he said it's not true today.

MR. DARMAN: Yeah, but when the public defender's investigator went down there, he actually marked on the grand jury transcript. The public defender was kind enough to furnish copies of discovery and he lined out whole pages.

THE COURT: Why did you need that?

MR. DARMAN: Well, Judge, if I don't bring it out, then it's going to be brought out on cross.

MR. CONNIFF: It's not going to be brought out on cross. It would be a prior inconsistent statement. It's not admissible.

THE COURT: He's not only impeached. I don't know what you're doing. You're going to bring out this again on another occasion other than today he repudiated his handwritten statement and his grand jury statement. What for?

MR. DARMAN: Fine, Judge. You know what, I'm not asking to stand up here anymore, that's for sure.

THE COURT: I mean, it's overkill. It's not needed. You've accomplished this recantation already.

MR. DARMAN: Fine, Judge.

THE COURT: What was your objection to the recantation?

MR. CONNIFF: Judge, my objection is that it's not admissible. It's not a prior inconsistent statement. As you pointed out, he's already denied it also.

THE COURT: It's not needed. That's the main thing.

MR. DARMAN: Judge, I'll simply withdraw the question.

THE COURT: Very well. It's not needed. How many witnesses do you have today?

MR. DARMAN: Well, Judge, Michael Watson is here. We can call Michael Watson next. I'll be happy to put him up on the witness stand.

THE COURT: Okay. You're going to call Watson?

MR. DARMAN: Yes.

MR. CONNIFF: He still has to be crossed.

THE COURT: I know, I know. He's crossed himself. But anyway, you all are the attorneys.

MR. DARMAN: Judge, what I would like to do is I'm going to review the recant tonight to make sure that the recant is consistent with the things that he repudiated today or else the recant is actually not a prior inconsistent statement, it's just another version of the story that the defendant just told. And I will reserve the right to recall him and bring those inconsistencies out if that to be the case.

THE COURT: Technically you might be able to do that, counsel. Again, I say why?

MR. DARMAN: Well, Judge, I'm just reserving the opportunity.

THE COURT: I mean, so if it is a prior inconsistent statement, so you may be able to show that. Why? He's already in a mudhole. I mean, you know, it's your witness. I don't know what you're doing. He's in a mudhole. He's covered with mud. You're throwing more mud.

MR. DARMAN: Well, Judge, I'm asking for the opportunity. Either you'll grant me the opportunity or you won't.

THE COURT: Yes, counsel, go ahead.

MR. DARMAN: I just want to review it tonight, but, I'm not saying that --

THE COURT: Yes, counsel, go ahead, I will entertain your bringing this guy back.

MR. DARMAN: I'll just have one other brief question for this witness, Judge, and then I'm through.

THE COURT: All right. And you have officers tomorrow, obviously?

MR. DARMAN: Yes.

THE COURT: Is there anything that you all can stipulate to that's not a crucial situation here, the gathering of evidence? Do we have to listen to the evidence technicians, three and four of them? I mean,

come on. I would appreciate it if there's some stipulations on the officers' testimony, people who were not at the scene. I don't think that that should be a problem to anybody on appeal, if you got that far.

MR. CONNIFF: Judge, I would only want the testimony establishing the scene and what was found. That's all.

THE COURT: I don't know. Of course, you've got to bring in your impeachment officers.

MR. DARMAN: Well, I talked to Mr. Conniff about that and hopefully there's some of that we will be able to stipulate to also.

MR. PAPA: You're going to obviously have to hear from the state's attorney.

MR. DARMAN: Yeah, we have to put the state's attorney on.

MR. CONNIFF: I think we have the M E also.

MR. DARMAN: Then the M E is ready to come in tomorrow afternoon or Thursday morning. I'll see what else I can stipulate to.

THE COURT: Sure. Maybe we can end this the next day, then argument. They'll get the case Thursday, you think?

MR. DARMAN: Be nice.

MR. CONNIFF: All right. Tell them we're ready for them.

THE DEPUTY SHERIFF: All rise.

(The following proceedings were had before the jury:)

THE COURT: You may all be seated. Return the witness to the witness stand.

(Witness resumed the stand.)

THE COURT: You continue to be under oath, sir. All right. Be seated and remember to keep your voice up so we can all hear you.

A. Okay.

THE COURT: Continue.

MR. DARMAN: Judge, I have no further questions.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. CONNIFF:

Q. Mr. Watson -- I'm sorry, Mr. Stewart, you were arrested on June 19. You were taken -- The police picked up on June 19, 2001?

A. Yes, sir.

Q. Where were you when they picked you up?

A. At Citgo gas station.

Q. What time of day was it?

A. I don't remember exactly. It had to be about 3:30 or 4.

Q. In the afternoon?

A. Yes, sir.

Q. And you were taken to Area 1?

A. Yes, sir.

Q. And you were held at Area 1, arrested June 19?

A. Yes, sir.

Q. And all day on June the 20th?

A. Yes, sir.

Q. And then this statement, showing you what is People's Exhibit -- this statement is dated June the 20th of 2001?

A. Yes, sir.

Q. And the time that that statement -- By the way, that's not your handwriting, is it?

A. No.

Q. The time of the statement is 7:10 p.m., in the evening?

A. Yes, sir.

Q. After you signed the statement did the police let you leave?

A. No, sir.

Q. Did you stay at the police station?

A. Nah, we went to the -- down here to the grand jury.

Q. Right. They kept you all night at the station that night?

A. Yes, sir.

Q. Were you picked up for any case or any crime on the 19th?

A. No, sir.

Q. They kept you all night on the the 20th and they drove you to the grand jury the next morning, the 21st?

A. I don't remember exactly, but I think so, sir.

Q. You went to the grand jury on the 21st of June, right?

A. Yeah.

MR. CONNIFF: Judge, for the record, that exhibit I'm referring to is People's Exhibit 8.

THE COURT: Very well.

MR. CONNIFF: I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. DARMAN:

Q. So, Manny, you're saying that the only reason that you said these things that were in the grand jury and in this handwritten statement is because the police forced you to. Is that what you're saying?

A. I'm saying it's that and I'm saying I wasn't thinking about nobody else life, I was just thinking about myself.

Q. Well, on June the 20th the police took you somewhere, didn't they?

MR. CONNIFF: Objection.

THE COURT: Overruled.

BY MR. DARMAN:

Q. You went to see a polygraph examiner, didn't you?

A. Yes, sir.

MR. CONNIFF: Objection.

THE COURT: Sustained.

BY MR. DARMAN:

Q. The police took you to take a lie detector test, right?

MR. CONNIFF: Objection. Sidebar. Sidebar.

THE COURT: Sustained. Sustained. Move on. No

sidebar. Move on.

MR. DARMAN: I don't have any further questions, Judge.

MR. CONNIFF: I have nothing further.

THE COURT: Recross.

MR. CONNIFF: Nothing.

THE COURT: Thank you, sir. You're excused from the witness stand.

(Witness excused.)

THE COURT: State, call your next witness.

MR. DARMAN: Judge, we'll call Michael Watson.

THE COURT: Step up, sir. Raise your right hand.

(Witness duly sworn.)

THE COURT: Be seated. All right. Proceed.

MICHAEL WATSON,

called as a witness on behalf of the People of the State of Illinois, after having been first duly sworn, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. DARMAN:

A. Michael Watson. Date of birth: 12/18/60. Address: 5358 South Hoyne.

BY MR. DARMAN:

Q. Mr. Watson, how old are you?

A. 43.

Q. Do you know this fellow here in the white shirt (indicating)?

A. No, sir.

Q. You've never seen him before in your life?

A. No, sir.

Q. But you live in the area of 55th and Damen Avenue in Chicago?

A. Yes, sir.

Q. I want to direct your attention, Mr. Watson, to May the 6th in the early morning hours at about 1:30 in the morning. Did you have occasion to go to that gas station at 55th and Damen?

A. It wasn't in the morning hours. It was in

the evening hours. It was late at night. It was about 10 or 10:30 or about 9 or 9:45, around that area at that time.

Q. Okay. All right. Who did you go to the gas station with?

A. I went with my nephew and a friend of mine that stayed behind me. It was his birthday and we was to going to take my nephew to see his old lady. And I told my nephew, Stanley Watson, you a gangbanger and no need to riding up here 'cause you a GD and it ain't nothing but Vicelords up there.

Q. I'm sorry, can you say that again a little louder?

A. Well, they call them hooks. GDs call Vicelords hooks, Vicelords call GDs folks.

Q. I'm sorry, you said you told your nephew what?

A. I say ain't no need you going up there, I'll just ride up there and get some gasoline and then we'll come back and get you 'cause he wanted to go see his girlfriend.

Q. So did you go up to the gas station?

A. I went up to the gas station.

Q. Did you walk or did you go in a car?

A. We went in a car.

Q. Whose car did you go in?

A. Ernest. I don't know his last name.

Q. Is it Ernest Jenkins?

A. Ernest Jenkins.

Q. It's an older fellow in his fifties?

A. Older fellow.

Q. Had you known Ernest?

A. I known Ernest for over 25 years or better.

Q. But you don't know his last name?

A. No, sir. Wasn't my business to find out his last name.

Q. All right. Who drove?

A. Ernest Jenkins.

Q. And did you ride in the car with him?

A. Yes, sir.

Q. Where did you sit?

A. I sat in the back seat on the driver's side. He had a four-door Chevy.

Q. And you said your nephew Stanley went with you, correct?

A. Yes, sir.

Q. Was Stanley known by any other name?

A. Stanley. I mean, we call him Folks or GD or

whatever.

Q. Well, people call Stanley Meechie, don't they?

A. Meechie or Stanley, I'm saying. But mostly -- you know, I call him Stanley, Stan.

Q. Right. But he's your nephew. You don't know him as Meechie?

A. Street names is street names. Everybody got a street name.

Q. But you know that there are folks out there that refer to him as Meechie, correct?

A. Yes, sir.

Q. So you and Mr. Jenkins and Meechie went to the gas station to get some gas, correct?

A. Yes, sir.

Q. What happened when you got to the gas station?

A. When we got to the gas station -- before we got to the gas station I told Meechie you ain't got no business going up this way 'cause you know you gangbanging. These are GDs. It ain't nothing but Vicelords up there.

Q. Let me stop you right there because I want to make sure -- I can't hear you very well, so you're

going to have to speak up.

THE COURT: Sir, would you just lean forward. There's a microphone in the top of the desk where you're seated. Keep your voice up. The combination of those two things we can all hear you very well.

A. I don't see a microphone here.

THE COURT: It's there. It's there.

A. All right.

I went to the filling station, me and Meechie, my nephew, and Mr. Jenkins. I told Meechie ain't no need of you going up there 'cause you a GD.

BY MR. DARMAN:

Q. And why is that a problem?

A. It's a problem 'cause you got GDs here, you got Vicelords here, you got Stones here, you got BDs here. It's a known gang area. It ain't nothing new.

Q. What were you worried about going to the gas station --

A. It wasn't nothing for me to be worried about. I'm knowing that he's a GD, I'm knowing that it ain't nothing but Vicelords up here, so he ain't got no business going up there anyway 'cause they is into it with one another.

Q. The Vicelords and the GDs were into it with

one another?

A. No, it's opposite mob. So the opposite mob mean one thing; if you on they turf, they gonna get you; or if you on they turf, they gonna get you.

Q. Okay. So did Stanley listen to you or did he go?

A. He didn't listen to me 'cause he's a grown man.

Q. So the three of you drove up there?

A. Well, I went up there with them on a consent that I wanted to make sure that he would be all right if something did happen to him, you know what I'm saying.

Q. What happened when you got to the gas station?

A. When we got to the gas station he got out the car, walked in the filling station --

Q. Who got out of the car?

A. Stanley.

Q. Okay.

A. He got out the car, went in the filling station, he paid for the gas. Mr. Jenkins was sitting in the car, I got out to pump the gas.

Q. Okay.

A. When I got out to pump the gas, I was pumping the gas, by the time I got through with it, about three dollars worth of the gas, he come out the filling station, he say --

Q. Meechie came out?

A. He came out the filling station. He say, Unc, on them hooks.

Q. What does that mean, on them hooks?

A. That's a Vicelord.

Q. So Stanley is telling you the Vicelords are coming?

A. Nah, he say on them hooks. He didn't say they coming. He say on them hooks. That's one individual. He say on that hook, Unc.

Q. So he says watch out for that Vicelord? Is that what that means?

A. He say on that hook. When he say on that hook, I was standing just like this here (indicating), pumping the gas. That's when he hit me in the leg with a .9 millimeter. When he hit me in the leg with the .9 millimeter, I stood up and say -- excuse me for cursing in the courtroom. I say, damn, he done shot me. And when he shot me, the first thing hit my mind, hide behind the gas pump. My second mind say why you

wanna hide behind the gas pump, you look like a damn fool. So I came from behind the gas pump and I broke and went towards my house. I don't stay no more than about a block and a half from that.

When I got there, it was two police, blue-and-white, they was there. They say what happened, I say I just got shot, call the ambulance. And during the process when I hid behind the gas pump my mind say go on about your business, only thing I could hear was boom, boom, boom, boom, boom.

Q. Now, where did you get shot, Mr. Watson? Can you show the ladies and gentlemen?

A. I got shot in my left thigh.

MR. DARMAN: Judge, may I ask the witness to stand up, please?

THE COURT: All right.

A. I got shot right here in my left thigh (indicating).

MR. DARMAN: Judge, may the record reflect the witness has taken his right hand and crossed it over and put it towards the top part of his left thigh?

A. I got shot right here in my left thigh (indicating).

THE COURT: The record will so reflect that.

MR. DARMAN: Thank you, Judge.

Q. Did the bullet enter and leave your leg?

A. It entered and it was about a half a inch from the back of my thigh and it was in there about maybe three weeks and then after the three weeks it just came on out. Well, you know, it was already gonna come out and I just I pulled it out 'cause the only thing I do is just change my gauze and put a little salve on there.

Q. Now, did you go to the hospital that night?

A. Yes, sir.

Q. How long were you in the hospital?

A. I was in the hospital for maybe two or three days.

Q. And you actually took the bullet out of your leg?

A. Yes, sir.

Q. Where is that bullet at today?

A. I gave it to the officer.

Q. Okay. Now, Mr. Watson, you had said that when you were at the gas station there was somebody shooting at you, right?

A. No, I didn't say nobody was shooting at me. I say someone shot me.

Q. Okay. Somebody shot you?

A. Yes, sir.

Q. How far away from you was the person that shot you when you saw him shooting?

A. From this courtrom, from this here (indicating) to that window, twice the size of this room. So that mean he was like from coming into the filling station, I was like at the third or the fourth pump at the filling station. It's right here (indicating).

MR. DARMAN: I don't know, Judge, may the record refelct --

A. I'll say from that door right there, from here, twice this size (indicating). Say a hundred and twenty feet, something like that.

BY MR. DARMAN:

Q. A hundred and twenty feet you think it was?

A. Well, it was twice the size of this room.

Q. The person that shot you, Mr. Watson, was it a man or a woman?

A. It was a man.

Q. Was it a white man, a black man, Asian man, Mexican man?

A. It was a black male Caucasian.

Q. A black male Caucasian?

A. A black male Caucasian.

Q. What's that?

A. That's a black African American.

Q. Okay. All right. And from about a hundred and twenty feet away you saw his face, right?

A. No, I could not see his face.

Q. You couldn't see his face?

A. The only thing I could see that he was dark black, dark.

Q. Okay.

A. He was blacker than the mask that he had on his head.

Q. Okay.

A. And he didn't weigh no more than about a hundred and twenty pounds.

Q. So he was a little guy?

A. He was a little, thin guy, about hundred and twenty pounds.

Q. Okay. And did you tell the police all those things?

A. I told the police everything that I'm saying today.

Q. Was it this guy here that shot you

(indicating)?

A. I never seen that young man before.

Q. So you don't know whether he did shoot you or whether he didn't shoot?

A. I didn't say. I didn't identify that man in the lineup or nothing. I never seen him before.

Q. The police did show you a couple of lineups, right?

A. They showed me copies of pictures of everybody that sit here.

Q. Was this fellow here (indicating) in the lineups that the police showed you?

A. No. If he was, I didn't identify him as the person who shot me 'cause he don't look nothing like the guy 'cause the guy who shot me, when I say black, I mean he's a black person, but he was dark, dark black.

Q. So the bottom line is, Mr. Watson, you don't know who shot you, right?

A. No.

MR. DARMAN: Judge, may I approach?

THE COURT: Yes.

MR. DARMAN: Showing to counsel what I've marked as People's Exhibit Number 9 and 10 for

identification.

Q. Mr. Watson, I want to show you what I've marked as People's Exhibits Number 9 and 10 for identification. What's pictured in those photographs?

A. Well, sir, these pictures is photographs right here, I didn't have a chance to see neither one of these. When I got shot the guy -- Mr. Ernest Jenkins, when he got shot, he got killed, I wasn't at the scene, I was go gon.

Q. You had run away?

A. When you get shot with a .9 millimeter, what you gonna do? You gonna stand there and gonna wait? I got shot with a .9 millimeter in my leg. If the young guy would have shot two more times, I woulda been dead.

Q. Mr. Watson, the question that I wanted to ask you was, do you recognize the car that's shown in those --

A. This is his car.

Q. Sir, let me finish my question, okay, so we make sure that we understand each other.

Do you recognize the car that's shown in those two photographs?

A. Yes, sir.

Q. Whose car is that?

A. Mr. Ernest Jenkins car.

Q. And is that the car that you and Mr. Jenkins and your nephew, Meechie --

A. Me and my nephew was in it.

Q. And that's the car that you rode up to the gas station in that night, is that correct?

A. Yes, sir.

Q. And do these photographs truly and accurately reflect the way Mr. Jenkins's car looked back on the night of the shooting?

A. Yes, sir, 'cause there go the top right there (indicating) on the back of the car and I'm the one who sat it up there.

MR. DARMAN: I don't have any further questions, Judge.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. CONNIFF:

Q. Mr. Watson, you had been at a party with Ernest Jenkins, correct?

A. Yes, sir.

Q. And your nephew Meechie was there?

A. Yes, sir.

Q. His name is Stanley Watson?

A. Yes, sir.

Q. You were drinking that night?

A. Yes, sir.

Q. Were you using cocaine?

A. No, sir.

Q. And you said you had a long relationship with Mr. Jenkins, correct?

A. Yes, sir.

Q. And did you do any business with him?

A. No, sir.

Q. And was he ever a partner of yours in anything?

A. No, sir.

Q. Did you consider him a partner?

A. Well, I mean, as a partner, just like I had stated to you earlier when the Judge sat here and told he that I shouldn't sat here and tell you or him nothing 'cause both of y'all tried to prosecute me --

MR. DARMAN: Judge, I'm going to object.

THE COURT: Sir, you are to answer the question asked of you.

A. Well, it --

THE COURT: Just listen to me. Listen to me.

Answer the question that's asked, not the one that you want to be asked.

A. Well, he was a friend, he was a friend of mine.

BY MR. CONNIFF:

Q. Have you ever described him as a partner of yours?

A. No, sir.

Q. You went to the grand jury on June the 27th of 2001, correct?

A. Yes, sir.

Q. And the state's attorney was present?

A. Yes, sir.

Q. The state's attorney asked you questions?

A. Yes, sir.

Q. And you gave answers?

A. Yes, sir.

Q. And were you asked the following question and did you give the following answer:

"Question: And what did you do?

"Answer: After he said that I'm through pumping the gas and all of a sudden I'm putting the top on and he got out the pistol and boom, he shot me in the leg right here."

A. I never said that, sir.

Q. You never said that?

A. No, sir.

Q. Did you say, "So when he shot me in the leg, the first thing hit my mind is damn, I've been shot; so when I looked at my leg and I've been shot, my second mind says why don't you hide behind the gas pump. That was my first mind, hide behind the gas pump. My second mind said why hide behind the gas pump, he already shot me."

Do you remember giving that answer?

A. Yes, sir.

Q. "So I took off running because I only stayed two blocks from there, 54th and Hoyne."

A. Yes, sir.

Q. "So you only got Seeley and then Hoyne."

A. Yes, sir.

Q. That was your answer?

A. That's all it is, two blocks.

Q. "When I got to my house, there was a police car right out in front of my house."

A. Yes, sir.

Q. "I told them I had been shot and they asked could I identify them."

A. Yes, sir.

Q. "I said, well, you know, I don't really know who it was."

A. Yes, sir.

Q. "I got shot. And I said my little nephew and my partner, they still up there."

A. Yes, sir.

Q. Did you tell the grand jury that?

A. Yes, sir. Told the Court.

Q. Now, Meechie, Stanley Watson, went with you to the Citgo station, right?

A. Yes, sir.

Q. And when you talked to the police, you did talk to detectives right after this, correct?

A. Yes, sir.

Q. Did you tell them that your nephew, Stanley Watson, Meechie, had been with you when you were shot?

A. During the time I don't know about any --

Q. Sir, could you answer this question:

When you talked to the detectives after you had been shot, the night you had been shot, did you tell the detectives that your nephew, Stanley Watson, Meechie, had been with you at the Citgo station?

A. I didn't indicate his name, sir.

Q. I'm sorry?

A. I didn't indicate his name.

Q. You didn't indicate his name. That's a no, correct?

A. Yes, sir.

Q. You never told the police that Meechie was present, did you?

A. No, sir.

Q. The police came to you later on and they asked you some questions about Stanley Watson, also known as Meechie, correct?

A. Yes, sir.

Q. And they asked you whether or not he had been present at the station, correct?

A. Yes, sir.

Q. And they told you they thought that Stanley Watson had been with you and Mr. Jenkins, correct?

A. Yes, sir.

Q. And you told the police you didn't even know who Meechie was, did you?

A. No, sir.

Q. You never told them that?

A. No, sir.

MR. CONNIFF: Judge, can I just have one second?

(Short pause.)

BY MR. CONNIFF:

Q. You spoke to Detectives Forbeg and Foster, correct?

A. Yes, sir.

Q. And your testimony is that you never told them that you didn't know anyone named Meechie?

A. No, sir.

Q. On June the 20th -- Strike that.

Prior to June the 20th the detective showed you some pictures, correct?

A. Yes, sir.

Q. And they asked you whether you could identify anyone in the pictures as being the shooter?

A. Yes, sir.

Q. And you said you couldn't?

A. I couldn't.

Q. You went to a lineup on June the 20th, correct?

A. Yes, sir.

Q. And did you see Kevin Jackson in that lineup?

A. I didn't see Kevin Johnson in that lineup and I never seen seen Kevin Johnson in that area. I never seen Kevin Johnson before.

Q. You never identified anyone from that lineup as being the shooter in this case, did you?

A. No, sir.

Q. When is the first time that you told the police that Meechie was involved at the Citgo station on 55th and Damen?

A. I didn't have to tell the officers 'cause the officers already had said they had questioned some other people and found out that he was there with me and Mr. Jenkins.

MR. CONNIFF: Judge, if I may have just one minute.

THE COURT: Yes.

(Short pause.)

BY MR. CONNIFF:

Q. So your testimony today is that you did not see the person that shot Mr. Jenkins?

A. No, sir.

MR. CONNIFF: Nothing further.

THE COURT: Thank you, sir. You're excused.

A. Thank you.

(Witness excused.)

THE COURT: Anymore today?

MR. DARMAN: No, Judge. That's it for today.

OPENING ARGUMENT

BY MR. PAPA:

We are here today and we have been here the last several days because this defendant wanted to prove that if you come into his territory, if you're a fellow -- another rival gang member, and you come into his area of the city and you mess with one of his girlfriends, well, then there is a price that you have to pay. There's consequences to your actions.

Well, on May 6, 2001, Ernest Jenkins paid the ultimate price. He suffered the ultimate consequence for what this defendant did. Because when the defendant on May 6th fired his gun over and over and over again, Ernest Jenkins died from those gunshot wounds.

Now, after hearing the testimony in this case and seeing all of the evidence, you now know who the person is who is responsible for shooting and killing Ernest Jenkins. You now know that it is this defendant. You now know that this defendant is guilty of the first degree murder of Ernest Jenkins.

In a little while, you're going to be

going back into the jury room to decide this case. Before you do that, Judge Clay is going to read to you or give you the jury instructions. And the jury instructions are the law that you must follow when you decide this case.

And what I want to do now is go over a couple of those instructions with you and explain to you how the testimony that you have heard and the evidence that you have seen, when you put all of that together and you combine it with the law that Judge Clay is going to give you, you will know -- you will see that we have, in fact, proven that this defendant, Kevin Jackson, is guilty of the first degree murder of Ernest Jenkins.

And the first instruction that I want to talk to you about deals with the elements of first degree murder. Judge Clay is going to tell you that to sustain the charge of first degree murder, the State must prove the following propositions:

First, that the defendant performed the acts which caused the death of Ernest Jenkins by personally discharging a firearm that proximately causes death; and.

Second, that when the defendant did

so, he intended to kill or do great bodily harm to Ernest Jenkins; or.

He knew that his acts would cause death to Ernest Jenkins; or.

He knew that his acts created a strong probability of death or great bodily harm to Ernest Jenkins.

So how did we prove that this defendant, Kevin Jackson, is guilty of the first degree murder of Ernest Jenkins? Well, what do we know about what happened. We know that on May 6, 2001, in the early morning hours, the defendant was in a car with his friends. We know that those friends were Manny Stewart, Kianna Davis (phonetic), Shemika Mason, and Brandi Grant.

We know that Manny was driving the car, and that all of them -- all of those friends drove to the gas station at 55th and Damen.

We know that the defendant has a nickname. We know that his nickname is Googy, that he is a Vice Lord.

We know that once they got to that gas station, there was some other people there. We know that Ernest Jenkins was in a car with Michael

Watson and Stanley Watson, and we know that they had driven there to get gas. We know that Stanley Watson has a nickname. That nickname is Meechie. And we know that Meechie is a Gangster Disciple, and we know that the Gangster Disciples and the Vice Lords are rival gangs to one another.

We know that the area of 55th and Damen is controlled by the Vice Lords, by this defendant's gang. And we know that once the defendant and his group of friends got to that gas station, Kianna Davis, Shemika Mason, and Brandi Grant all got out of the car and began to walk to the store at that gas station.

That when they did that, when they were walking there, Kianna Davis saw Stanley Watson or Meechie, and the two of them walked together. They walked to where each other was, and they began to have a conversation with one another.

We know that at this time, the defendant saw that. The defendant got out of his car, went across the street to where one of his other friends was at, and we know that after Kianna and Meechie finished talking, finished having their conversation, Meechie then walked back to where

Michael Watson and Ernest Jenkins were by that third gas pump at the Citgo.

And we know that at this time, the defendant began to approach where they were, and at this time, the defendant was armed with a gun. And we know that at this time, the defendant began to fire that gun over and over and over again.

We know that Meechie was able to get away unharmed. The Gangster Disciple. He got away. No bullets.

But we know that Michael Watson suffered a gunshot wound to his left leg and that Ernest Jenkins suffered multiple gunshot wounds as all he was doing was sitting in his car trying to get gas. We know that Ernest Jenkins died as a result of those gunshot wounds.

But we know more. We know that the defendant ran away from the scene, got away from the crime scene, away from the murder.

But we also know that something else happened later on May 6th because we know that the defendant made his way to where Kianna Davis lives. We know that once he got to Kianna Davis' house, he met up with Kianna, Shemika, and Brandi, and he had a

conversation with those three girls, his three friends, and at that time, the defendant told them, hey, don't talk to the police, don't tell the police what you saw.

Now, we know all of that happened on May 6th, 2001. And we know all of that happened because of what's called eye witness testimony, people that were actually there at that gas station observing, seeing it with their own eyes, watching it themselves, seeing this defendant, Kevin Jackson, shooting that gun.

Now, at the beginning of this trial, my partner got up here in his opening statement and said you might meet some witnesses that you guys might not like. Well, you know what? After seeing Brandi and Shemika and Vernon Clay and Manny Stewart all testify here in court, I'm confident that none of you like them. I'm confident that none of you would want them as your friends or your next-door neighbors.

But what you have to focus on in this case, focus on what those four individuals, what they talked to the police about shortly after the murder, what they talked and told the Assistant State's

Attorney who you heard, Colleen Daly, what they told Assistant State's Attorney Kathy Lenahan, what three of them testified to before the Cook County Grand Jury under oath.

Because when you focus on that, when you look at what those witnesses said before they came into this courtroom, you will know, again, the person that they identified, the person that they tell you who did the shooting, who shot Ernest Jenkins, is the person that sits here before you, the defendant, Kevin Jackson.

Judge Clay is also going to tell you that the believability of a witness may be challenged by evidence that on some former occasion he made a statement that was not consistent with his testimony in this case. Evidence of this kind ordinarily may be considered by you only for the limited purpose of deciding the weight to be given to testimony you heard from the witness in this courtroom.

However, you may consider a witness' earlier inconsistent statement as evidence without this limitation when, one, the statement was made under oath at trial -- at a trial, hearing, or proceeding; or, two, the statement narrates,

describes, or explains an event or condition the witness had personal knowledge of; and, A, the statement was written or signed by the witness.

Okay. So what does that mean? Well, what that means is, quite frankly, you heard those four witnesses come in here and all deny either that they were there or deny that they said all that stuff.

But you also heard that they -- those four witnesses, Shemika, Brandi, Vernon Clay, and Manny Stewart, all gave what has been referred to as handwritten statements, and those handwritten statements written out by the State's Attorney after speaking with the witnesses, each one of those witnesses signed those statements acknowledging what is contained in those statements as being true.

And in each one of those handwritten statements, each one, Googy is identified, the defendant is identified as being the shooter, as being the person who had the gun, firing it and killing Ernest Jenkins.

But there's more. Because that's actual evidence. Actual evidence, substantive evidence that you can consider when you decide the

defendant's guilt in this case.

But there's more. Because you heard Kathy Lanahan tell you about the grand jury testimony from Brandi, Vernon, and Manny, and you heard Miss Lanahan explain to you what the grand jury is. It's a secret proceeding. It's a secret proceeding done outside the presence of police. The police aren't allowed in when witnesses are there. There are no detectives. There isn't a defendant. There isn't a judge.

It's the people of the grand jury, the State's Attorney who is asking the questions, a court reporter like there's one here today taking down every word that's said, and then there's the witness. The questions are asked by the State's Attorney, and the answers coming out of the witness' mouth are given, and they're transcribed just like it's happening right now.

Under oath testimony before the grand jury. Brandi, Vernon, and Manny. And in that grand jury, Googy, the defendant, is identified by all three of them again as being the shooter, as being the person who shot and killed Ernest Jenkins.

Actual, substantive evidence. Four handwritten statements, three grand jury transcripts all telling you that it is this defendant who shot and killed Ernest Jenkins.

Folks, you also have to focus on the relationship that these four witnesses have with the defendant. Manny Stewart, the defendant's cousin; Shemika and Brandi, friends of the defendant from the neighborhood, they have known him for several years; Vernon Clay, Little Man, he is -- he belongs to the same gang, the Vice Lords, that the defendant does.

Do you really expect those witnesses to come into this courtroom, as the defendant sits there looking at him or at them, do you really expect those witnesses to be able to point to the defendant and tell you that he's the shooter, that he's the killer? Of course not. Use your common sense.

One of the best things and greatest things about being jurors is that you determine who is telling the truth, what witness is telling the truth, and what witness is lying. You determine the credibility of each witness that comes into this courtroom and gives testimony.

And you're able to use your common sense. You're able to use your everyday life experiences when you go into that back room to decide this case. You get to take into account a witness' bias, their prejudice, their motive, their motive to come in here and lie.

The defendant's cousin. What do you think Manny is going to do? He's going to protect his cousin in court.

The friends, Shemika and Brandi, they're going to try and protect the defendant in court. A gang member, the same gang. Of course, they're going to come in here and tell you lies.

But they can't get out of the statements provided to the State's Attorney, the statements made under oath at the grand jury, all of which, all of those prior statements, Googy, the defendant, Kevin Jackson, is the shooter, the killer from May 6th, 2001. That's how you know that it is this defendant who performed the acts which caused the death of Ernest Jenkins.

The remainder of that first proposition is that he personally discharged a firearm that proximately caused death. Personally

discharged a firearm. He shot the gun over and over again.

And he proximately caused death. Of course, you heard the medical examiner tell you that Ernest Jenkins died from multiple gunshot wounds. That stuff is common sense. That's obvious from this case.

And as to the second proposition, that when the defendant did so, he intends to kill or do great bodily harm to Ernest Jenkins; or, that he knew his acts would cause death to Ernest Jenkins; or, that he knew that his acts created a strong probability of death or great bodily harm to Ernest Jenkins.

What that means, folks, is this. Even if you think -- if you think that the defendant was intending to kill, was trying to kill Meechie, the rival gang member, the defendant doesn't get rewarded because he missed Meechie and hit Ernest Jenkins. He doesn't get a medal put on him and say you get a free one because you missed who you were looking for.

When you go up to someone in that close of proximity, you have one intent and one

intent only, and that is to kill or do great bodily harm to those around. He does not get rewarded for being a bad shot.

At the beginning of this trial, all of you took an oath. In that oath, you swore to find the truth, to follow the law, and ultimately and most importantly, to do justice.

Well, the truth in this case is that on May 6th, 2001, the defendant had a gun. The truth is the defendant fired that gun over and over and over again, and he killed Ernest Jenkins. The truth is there were eye witnesses to that murder. And the eye witnesses happened to be the defendant's friends, his cousin, and his gang member. That is the truth.

And the truth is that those witnesses all on a prior occasion in handwritten statements identified the defendant as being the shooter, as being the killer. The truth is Brandi and Manny and Vernon all testified before the grand jury, again, identifying the defendant as being the shooter. That's the truth in this case.

Justice, therefore, demands that you follow the law. Justice demands that you find the

defendant guilty of the first degree murder of Ernest Jenkins. Find him guilty, folks, not because I'm standing up here telling you that he's guilty, not because my partner is going to get up and tell you he's guilty. Find him guilty because Brandi Grant told you that he's guilty. Find him guilty because Shemika Mason told you that he's guilty. Find him guilty because Vernon Clay told you that he's guilty. Find him guilty because Manny Stewart told you that he's guilty.

Do justice, ladies and gentlemen. Find the defendant guilty of the first degree murder of Ernest Jenkins.

THE COURT: Counsel.

MR. CONNIFF: Thank you, Judge.

CLOSING ARGUMENT

BY MR. CONNIFF:

Ladies and gentlemen, there's an old saying that a lawyer who has a bad case wants to talk about the law, and the lawyer who has a good case wants to talk about the facts.

Well, you just heard the State's Attorney talk to you about the law, and I want to talk to you about the facts and the evidence

in this case.

The State wants to talk to you that this is a case about gangs, that this is a case about the Vice Lords and the Gangster Disciples.

This isn't a case about gangs, ladies and gentlemen. This isn't a case about a rivalry between the Gangster Disciples and the Vice Lords in which there's an argument over a girlfriend in a gas station and somebody shoots at a Gangster Disciple and, lo and behold, this unfortunate, 54-year-old man seated in a car is murdered. That's not what this case is about. That's a red herring.

The State is appealing to all of our fears about gangs, about violence on the streets, and they want you to convict Kevin Jackson by calling it a gang case, by throwing all of this evidence about gangs into the case, by talking about this screwball motive, that there was some kind of a dispute over a girl which went on at the gas station and that Kevin Jackson was firing at Meechie and, lo and behold -- this 54 year old man seated in the driver's seat of the car was murdered.

The evidence in the case doesn't even come close to supporting that theory. No wonder they

want to talk to you about the law, and they don't want to talk to you about the evidence.

Yeah, you can consider these statements. The law says you can consider it. But to say that you can consider these statements doesn't say that you have to believe the statements. And I submit to you, you can toss these statements out as far as having any worth or reliability whatsoever.

Let's talk about the evidence. The evidence is that this 54-year-old man was found by the responding police officers from the Chicago Police Department seated in the driver's seat of a car slumped over.

Dr. Segovia just told you a few minutes ago that the gunshot wounds which this man suffered were all to the left side of his body. Two of the entrance wounds were in the armpit area on the left side, traveled from left to right to the right side of his body. The third entrance wound was in his abdominal area and traveled again left, right and rear. He had a through-and-through gunshot wound of his left forearm, which is consistent possibly with having his arm up, perhaps, on the wheel or, perhaps,

raising his arm, consistent with those shots being fired as he leans to his right toward the passenger seat of the car.

Now, I submit to you, ladies and gentlemen, this is not a scene where someone like Ernest Jenkins is accidentally shot by two gang members in a dispute over a girl in the service station. This evidence points conclusively to the fact that someone -- someone wanted Ernest Jenkins dead. There are three gunshot wounds to the torso of Ernest Jenkins which when you go back there and listen to the evidence, entirely consistent and unrebutted in this testimony with somebody standing outside the driver's window of the car -- and you're going to see pictures that the driver's window was shattered -- and firing into that car and assassinating Ernest Jenkins, this 54-year-old man. And this case has been transmuted into this dispute between young people.

Someone wanted Ernest Jenkins dead, and I submit to you that this was an assassination.

The shooter ran away. We know that from the evidence in the case.

Look at the testimony of Michael

Watson, who you heard in this case. Michael Watson told you that he and his partner, Ernest Jenkins, had been drinking with Stanley Watson a/k/a Meechie a/k/a Gangster Disciple at a party earlier that evening and that they ended up at the Citgo gas station at 55th and Damen. They pull up to the pump.

Michael Watson is shot in the leg as he's outside the car putting gas into the car, he tells you, and he runs home. Outside his house, there is a police car. He told you that the police asked him, who shot you? And he said, I don't know. I can't identify anyone.

Detective Forberg told you that he came and talked to Michael Watson a couple of days later. And what happens when Detective Forberg talks to him? Detective Forberg asks him about Stanley Watson a/k/a Meechie a/k/a Gangster Disciple, and what does the victim of the crime tell Detective Forberg? He says, I don't even know Stanley Watson, a-k-a Meechie a/k/a Gangster Disciple.

That's interesting. Isn't that interesting? That here is a victim of a crime telling and lying to the police about who was present at the time of the crime and trying to protect

Stanley Watson.

Why is he lying to protect Stanley Watson? I don't know why he's lying to protect Stanley Watson, but I know at this point when the police come to him, Detective Forberg comes to him, he has a motive to direct the police in a different direction.

So what does he do? He gives the police a description of a car, a box-style Chevy with primer front and rear, which is in the neighborhood. He knows that it's a car that's been used by Vice Lords. And he sends the police off in the direction of the Vice Lords.

And what happens after that? He tells the police, interestingly enough, in connection with this car, he says, well, I saw that car a month before the shooting, and I saw it by E&J Liquors, which is right across the street from the Citgo station, and the shooter was in that car. The shooter on this night was in that car a month before.

Is he sending the police off here in a different direction? When Detective Forberg is talking to him and comes to him after he's talked to

the police, he never mentioned Meechie's name, and then when the police talked to him and he's a victim of the crime and he says, I don't even know the guy, this is his nephew. Does he have a motive here? Is there something going on about why he's sending the police off to look for this car?

Well, what happens is the police go out on the street, they find the car, and, lo and behold, who is sitting in the car? Kevin Jackson. They bring him in. They talked to him. And they let him go. That was on May the 18th, 12 days after this shooting.

They show Michael Watson a photo spread, a group of pictures. In the photo spread is a picture of Kevin Jackson. And they say to Michael Watson, do you see the shooter in this photo spread? What does Michael Watson say? No. Whose picture is in the photo spread? Kevin Jackson. He's not identified as the shooter by Michael Watson.

So at this point, the police have a victim who's shot and who is not cooperating with the police. He's lying to protect Stanley Watson a/k/a Meechie a/k/a Gangster Disciple. He has a motive to send the police after a rival gang and he does. He

can't identify anyone.

Now, what does -- what do the police do to solve this murder? Detective Forberg told you that they have a data base with all of the gang members from both gangs in the neighborhood, and I submit to you that the Area 1 homicide detectives -- and wasn't it interesting that -- my ears heard it. I don't know if yours heard it. But when Detective Forberg was identifying himself and qualifying himself, I heard the words, "gangs," and somehow when I asked him about it, he said, no, no, I never -- I don't have anything to do with gangs. That's a tip, ladies and gentlemen. He doesn't want you to think that he's an expert in gangs.

But I'm telling you he's an Area 1 homicide detective. He admits that there's a data base, and if you folks don't think that the Chicago Police Department has names, addresses, street names, everything else about gang members on the south side of Chicago, we're all dreaming. They know the people in the neighborhood.

So what do they do with this car? They have had Kevin Jackson picked up inside the car. They start rounding up people associated with the

Vice Lords and bringing them to Area 1.

And you saw the results of that process. They pick up Vernon Clay and Shemika Mason more than a month later, June the 11th, and what do they do? These are individuals, as the State's Attorney pointed out, that no one is going to like, and we don't have to like them. But what they did was they brought these people in, they brought them to Area 1, and all of them had stuff hanging over their heads.

They bring them and put them in an interview room, which the detective told you about, a small room with a metal bench and a metal railing along the wall, and they keep them inside that room for a period of days. The interesting thing about this is they do it that way, and these people never go to a lockup. The reason they never go to a lockup, and the detective told you that, is because they have to prepare paperwork. That means there's charges. And if there's charges, that means you have to go to court and that means they see a judge.

But they didn't do that. They knew they couldn't do it. They wanted to sweat these people. They wanted to get them to do exactly what

they ended up doing, which is to sign a form statement that they could come into court and try to convict Kevin Jackson of first degree murder with. It's as plain as the nose on our faces as to what happened here.

The State's Attorney comes to Area 1. She doesn't sit with the detectives, ladies and gentlemen, while the detectives are questioning these young people behind closed doors. There's no video cameras there recording the interrogation back in 2001. She's not there at that time. This is the detective show. They're putting the case together. They want a Vice Lord off the street. They will take Kevin Jackson because they have a victim who is not cooperating with them.

What happens, the State's Attorney shows up at the end of this process. What's her job? Prepare evidence for court. Does she look for problems with the investigation? Is she going to act like a professional here and come in and say, all right, what is this case about? Show me what you have. Let me look at the case. Let me make an independent, professional determination of whether you have sufficient evidence to charge this man with

first degree murder.

And you all heard her tell you the extent of what she did. She comes to the station in the wee, small hours of the morning with one of her colleagues, with the forms that the State's Attorney's Office supplies them to prepare evidence for court, and she sits down, and she hand writes out these statements after talking to the detectives, finding out the facts of the case, and writes these statements out after these young people have been in custody all of these hours in that small room.

Does she go to the scene? Does she know anything about the scene? No. Does she know anything about the physical evidence in the case, where the shell casings were found? No. Does she talk to the medical examiner to find out where the bullet wounds are so that she can match up what she's hearing from the witnesses with the medical examiner's report? No.

You heard the testimony of somebody who is just doing a job, just following the directions of the police, just doing what she's expected to do in preparing a document that they can submit to you in support of the proposition that

Kevin Jackson committed first degree murder.

And there was a very interesting thing that happened during the testimony of Detective Forberg, and I know that you caught it, and I'm going to repeat it here. He lied to you. He lied to you, and he smirked about it.

And it came at the point having to do with whether these people chose to stay voluntarily all of these hours in the police station with the police, as though we should rename this the Marriott Area 1 and that they were given little bars of soap and toothbrushes and everything else. This is the impression that he was trying to create with you.

But do you remember what he said? And he slipped at the end of his testimony on one of these witnesses. Remember where he said, before he went to the grand jury, I informed him that he would be going to the grand jury, and then he quickly corrected himself, and he said, oh, I asked them if they would be willing to go testify before the grand jury. Isn't that something? Isn't that something? He slipped.

And I asked him, was that a slip of

the tongue? And did you watch him when he answered me? He got a half smile on his face, and he knew he had been caught, and he said, yes.

And I submit to you, ladies and gentlemen, that here was a detective who thinks that this is a game, who thinks that this is a game, that he can come in here and -- as though he's reading from a script, can come in here into a courtroom in Cook County and with good citizens like yourself, take an oath to tell the truth, and he's going to get up there and sell you this nonsense, nonsense, which you would have known even without this admission, that these young people were not sitting in this room and choosing to remain there voluntarily and that they could leave anytime they wanted to. But he got caught in it, and he smiled about it.

And I submit to you, that's the mentality of what's going on here. They're trying to fool you. And the fact that he's smiling means maybe this is the way things are done. Do you want to know how it is when people get convicted? You have some insight into this process, ladies and gentlemen, from what you have heard in this courtroom.

And this process was so sloppy and it

was so unprofessional and it was so without caring for what the facts and the evidence were that they have even got in one of these statements Vernon Clay shooting from the passenger's side of the vehicle.

And you heard the State's Attorney. And I don't know how you feel about it, but I thought this again, they want to talk about the law. We'll talk about the facts.

You heard the State's Attorney trying to get Dr. Segovia to say maybe it was consistent with this guy in the driver's seat somehow turning his body around. I suppose they're going to argue that he turned his whole body around and was facing the rear so the shots can come from the passenger's side of the car. Nonsense.

And you know why those statements are like this, because they didn't care and they didn't care because they didn't talk to the medical examiner. At the time the statements were prepared, nobody paid any attention to what happened in the case.

Had they talked to the medical examiner, they would know, hey, we got a problem

here. All of the statements say he's running from the parking lot firing towards the car, firing towards Meechie in a dispute about a girl. And this poor man got shot sitting in the driver's seat of the car.

They would have known this was nonsense. They didn't bother to check. The medical examiner could have told them, wait a minute, you got a big problem with these statements because all of the bullet wounds are on the left side of the body and the responding officer found him slumped over the wheel of the car.

This is somebody shooting on the right side of the car who was executing this man for some reason, a motive we don't know, and the State hasn't told you about it. Someone wanted Ernest Jenkins, not Meechie.

They're going to argue to you, if we were going to frame somebody, wouldn't we do a better job of doing it? No. Wouldn't you think you could make a better argument if all these statements were exactly the same?

I would argue to you, well, you can look at these statements. They're all the same.

Clearly, he's framed. That's not what it's about. They don't have to be the same.

They want to talk to you about the law. You don't think they know how to do this? To make these -- to bring in these young people who happen to be gang members, and they have these forms, and they know how to sweat them, and they get them to sign statements, and they get a gang member off the street.

He's not on trial here for being in a gang. He's on trial here for first degree murder. But this is how they do it, folks.

And they ask good people like you to rubber stamp it. That you're going to be at the end of the process like we were making macaroni and cheese dinners here, which starts with taking them off the street and putting them in the room and finishes with a jury in a courtroom in Cook County putting the last stamp on the form.

Well, that's not how things are done, ladies and gentlemen, and you know it and I know it. You took an oath. I have an oath, and I have tried to bring you the evidence.

And we've had a long fight in this

country to get trials like this, to get days in court to say that cases are going to be decided based on evidence, based on evidence, not upon bias, not upon prejudice, not upon emotion.

When you go back to the jury room, you look at the evidence. You may not like Kevin Jackson. You may think he's a gang member. You may think he's a bad guy. But he didn't commit first degree murder, and just because the Chicago Police in Area 1 want to get someone off the street and put a case together like a macaroni and cheese dinner and serve it to you, that isn't good enough.

And if you want to know how innocent people get convicted of crime and sent away to the penitentiary to rot in a cell for years --

MR. DARMAN: Judge, I'm going to object.

THE COURT: All right. Sustained, Counsel. Argue the evidence. All right.

MR. CONNIFF: You're seeing how it's done, folks.

THE COURT: Please disregard, ladies and gentlemen. The arguments of the attorneys are not evidence. It's their take on the evidence that was presented to you at trial.

Continue.

MR. CONNIFF: But that's why we have jury trials.

And I'm going to ask you, when you go back to the jury room to look at this evidence, you can take these form statements and throw them right out the window. You heard the evidence in the case. You know what happened in this case. And do the job that you took an oath to do, that we questioned you about when we selected you as jurors.

This case, there is not even -- it's not even close to being proof beyond a reasonable doubt. We ask you to find Kevin Jackson, as you properly should based upon the evidence, not guilty, and I thank you all for your attention during this trial.

THE COURT: State's Attorney? Proceed.

MR. DARMAN: Thank you, Judge.

REBUTTAL ARGUMENT

BY MR. DARMAN:

Good afternoon, ladies and gentlemen. It was a fine speech, wasn't it?

Let's talk about unsupported accusations. The detective they talked about was

actually a fellow by the name of John Clisham. You remember. Short guy, blond hair. Thank God the Chicago Police Department has better memories than the defense.

Unsupported allegations. We're going to get up here, and we're going to make accusations and allegations against people who didn't do anything, that are completely innocent, but we're going to blame the wrong guy right in front of all of you. And we're supposed to believe anything that comes out of their mouths on that side of the table. Unbelievable.

This is a police frame. This is Brian Forberg doing the Chicago Police Department number on Kevin Jackson. Can you believe that? Ladies and gentlemen, all right. If the Chicago Police Department, if Brian Forberg was going to put a case on this guy, would he have followed up on Norman?

Remember, Vernon Clay originally told the police that it was Norman that did the shooting. And Brian Forberg went to his computer data base and found a gang banger from 54th and Damen by the name of Norman MacIntosh, and he was wandering around

showing Norman MacIntosh in photo arrays to people. Is that a guy that's putting a case on Kevin Jackson? No.

What about these negative photo arrays? If Brian Forberg was going to put a case on Kevin Jackson, would Stanley Watson get up here -- be able to get up here and say he looked at this guy in a photo array and didn't identify him?

What about Meechie? Well, you heard from the witness stand that Meechie didn't identify him either. Do you think if the police were going to put a case on him Meechie wouldn't identify him?

What about Samir Ali? Probably the one witness you heard that's a civilian that didn't have a beef with anybody. Do you think the cops would let that guy get away without saying he saw who did it if they were going to put a case on Kevin Jackson? No.

I'll tell you what, ladies and gentlemen. I wouldn't want Brian Forberg's job. I wouldn't want his partner, John Foster's, job either. Not only do you have to deal with the people you saw on the witness stand and guys like this, but you've

got to come into court and get smashed by people who aren't even paying any attention to what you're doing or trying to do, which is investigate a crime. Your reputation has to get sullied by people that aren't even paying any attention.

You know what, folks? This bears a little bit of mention here. One of the jury instructions you're going to get, 1.01, the judge is going to tell you probably in the first 15 seconds, "Neither sympathy nor prejudice should influence you." Don't let it.

Physical evidence. Let's talk about the physical evidence for a minute. We don't want to talk about the law. Let's talk about the physical evidence.

All right. The setup is the car was parked there at the gas pump. Right? Michael Watson standing in front of the back of the car near the gas pump putting the gas in the car. Michael tells you that from the witness stand. It's stipulated evidence the victim, the dead victim, was in the driver's seat of the car.

What's Michael Watson tell you is happening? Michael Watson tells you that Meechie is

coming out of the gas station, and they're behind the car. Coming from Damen Avenue is a Conservative Vice Lord with a gun. And he said it three or four times from the witness stand. He was kind of proud of himself, I think. He had some knowledge of the gangs. He said, on them hooks, meaning a Vice Lord.

You don't think for a minute when he's yelling like that right there in the back of the car with Mr. Jenkins about four feet away from him that Mr. Jenkins isn't going to turn to see what's going on?

Think about the course of bullet wounds. You're sitting in the driver's seat. You turn to the left. The bullet goes into the left, comes out the right side. They're telling you that the shots were coming from the passenger's side of the car.

Well, ladies and gentlemen --

MR. CONNIFF: Objection, Judge.

THE COURT: Overruled. You heard the evidence, and you have to decide this case from the evidence that you heard, not from the arguments of the attorneys.

Proceed.

MR. DARMAN: You know what, folks? The judge is exactly right. If I'm misspeaking it, you use your recollection. But I recollect that he said that the shots were coming from the passenger side of the car. Now, remember --

MR. CONNIFF: Objection, Judge.

THE COURT: Overruled. Again, Jurors, you heard the evidence.

MR. DARMAN: Remember when Officer Tovar got up there and was talking about the shell casings? Where are the shell casings? They're in the back of the car. The car is facing west, this way. The shell casings are back here.

If the shots would have come from the passenger's side of the car, the shell casings would be over here.

But you know something? There's better evidence than that. Not the law, mind you. There's better evidence than that.

You're going to get to see People's Exhibit Number 16. People's Exhibit Number 16 is the car that Ernest Jenkins was in. You see that photograph, folks, the back window of that car? That, ladies and gentlemen, is a bullet hole.

That bullet hole is not on the passenger's side of that car. That bullet hole is in the back window of that car. That bullet hole is consistent with someone shooting from the back of the car. That bullet hole is consistent with the shell casings found around the back of the car.

As a matter of fact, ladies and gentlemen, when Officer Tovar was up there and was talking to you, not only did he find the shell casings in an arc around the back of the car, he found one back this way by the driveway consistent with somebody running this way towards the car shooting. That's what the witnesses told you from the witness stand, or you'll see it in their handwritten statements.

Enough about the physical evidence, ladies and gentlemen. It is entirely consistent with what's in the handwritten statements and what's in the grand jury testimony. When I got up here in opening statements, I asked you to remember who it was that was testifying from the witness stand. And by that, I was referring to the civilian witnesses.

Vernon Clay, fellow Vice Lord of

Kevin Jackson.

Shemika Mason, friend of Kevin Jackson's, but I think moreover, somebody that has to live in the same neighborhood with this guy and his gang-banging pals.

Same thing with Brandi Grant.

Emanuel Stewart, cousin of the defendant, fellow Vice Lord.

Folks, I've got to tell you something. When these people were up here on the witness stand and they were crying and they were complaining about how the police locked them up and how this never happened and how this was all a lie, putting a case on Googy, they weren't talking for you. They weren't talking for you one bit. They were talking for this guy and the Conservative Vice Lords out there at 55th and Damen.

Why do you think they were doing that? The night after the shooting, our friend, Googy, goes over to Kianna's house. He finds Kianna and Brandi, and he tells them, what did you tell the police? You guys better not say anything to anybody. He tells them not to talk to the police about what they saw.

What do we know from Vernon Clay? We know from Vernon Clay that the defendant saw him -- well, let me stop there. He talked -- Vernon Clay talked to the police on 6-2; right? That was one of the first dates he talked to, I think, Forberg and those guys. And then shortly thereafter, like the next day or something, he's at a train stop at 55th and the Dan Ryan and up walks Kevin Jackson. Kevin Jackson says to him, What did you tell the police about me?

Folks, those are not actions of somebody that's innocent. Those are actions of somebody that's trying to work the system. Those are the actions of somebody that did something that he doesn't want them to tell anybody about.

Kevin Jackson is the person that chose to do that shooting at 55th and Damen at 1:30 in the morning. Kevin Jackson is the person that chose the witnesses that would be present, his pals. You don't think he's going to do this shooting at 9:00 o'clock on a Sunday morning in front of a convent, do you? These are the people that are out there with him when he's out there doing his gang-banging thing.

And let's talk for a minute about motive, ladies and gentlemen. Now, first of all, you're going to note, in the jury instructions, you're not going to see the word, motive. The State doesn't have to prove it. It's not my burden. But you know something, folks? There is some instructive evidence regarding motive in this case, and I think you need to think about it.

Conservative Vice Lord, this guy, Meechie, who is a Gangster Disciple, what do we hear from most of the witnesses? They all confirm the fact that Kevin Jackson is a Conservative Vice Lord, and Meechie is a GD.

We learn from Michael Watson, again, I think proud of his knowledge about gangs in the area. He's telling Meechie, don't be going up to that gas station at 55th and Damen. That's Vice Lord territory. You've got no business going up there. As a matter of fact, Michael Watson said that's the reason he went along was to protect Meechie.

So you got Meechie, a Gangster Disciple, on Vice Lord turf. Now, to add insult to injury, a lot of these witnesses told you that there was something going on -- or, well, let me stop right

there.

A lot of these witnesses told you that arriving at the gas station with Kevin Jackson in that car was Kianna Davis, Brandi Butler (sic), Manny Stewart, and I think Shemika Mason is mentioned by one witness, but be that as it may, Kianna Davis, apparently, was a girlfriend of this guy at the time. Apparently, used to go out with Meechie.

Now, Kianna gets out of the car, and then Meechie gets out of his car, and the two of them are saying, hi, to each other, and some of the witnesses are saying, well, Kianna and Meechie were talking to each other, and Meechie says to Kianna, what's up with the dip tonight, meaning let's have sex tonight. And she says, no, I've got a man, and she points at him. And he says, forgive my language, everybody forget that bullshit, referring to him.

The witnesses are saying he's sitting in the car with the window down. Here is a Conservative Vice Lord on Conservative Vice Lord turf, and a Gangster Disciple is not only hitting on his girlfriend, but telling her, forget that guy. He's nothing. Come on with me. I'll show you a good

time.

And you know something, folks? That's consistent with the manner in which this shooting took place. Think about the direction of the shooting.

Well, you got the map on the other side here, but think about it. Somebody is in back of the -- that car shooting towards Meechie. Where is Meechie standing? He's standing next to the gas pumps.

Whoever did this shooting, this wasn't a planned hit on Ernest Jenkins. This was somebody that was so mad they could hardly see straight. This guy was ticked. A GD on his turf messing with his girl.

He goes across the street to the Marathon station, talks to Ernie, probably gets his piece over there, and gets to shooting. Hits Ernest Jenkins four times, hits Michael Watson once in the leg.

But you know something, folks? Again, use the motive if it helps you. We don't have to prove motive, but use it if it helps you. I would submit to you that his motive may have been either

one or both, probably both of those reasons. The gang reason as well as he's got my girl.

The State's Attorneys weren't doing their job. The State's Attorneys -- can you believe it, ladies and gentlemen? Poor, poor Kevin Jackson. Brian Forberg is after you. John Clisham? No. Brian Forberg, he's putting a case on him. The State's Attorneys are putting a case on him.

Colleen Daly didn't go to the crime scene, didn't review the crime scene reports. She didn't do that, and she went in and spoke to him. That's how you know that the statement she took was true. She didn't know any of that stuff.

Her job that night wasn't to approve charges for the Chicago Police Department. Her job was to come to the police station and talk to witnesses, and that's what she did.

You don't think for a minute that if these handwritten statements matched the physical evidence that they wouldn't be up there telling you, well, folks, this matches too good. She reviewed all these reports and talked to the detectives before she took these handwritten statements. This is a setup.

That's exactly what they would be telling you. Colleen Daly and the other State's Attorney -- the other State's Attorney did their jobs.

What about Kathy Lanahan? We weren't talking much about her. It's like a hippopotamus sandwich. Piece of bread, hippopotamus, another piece of bread. It's hard to swallow.

These witnesses, the three witnesses, Brandi, Manny, and Vernon, are taken to the grand jury. They talk to Kathy Lanahan. Assistant State's Attorney Lanahan is alone with them in a room. She says to them, Is this your handwritten statement? Yeah. Is this stuff in this statement true? Yeah.

Okay. And she tells them a little bit with about what's going to happen in the grand jury, how she's going to conduct their examination. And they go in the grand jury, and she asks them questions, and they tell their story.

In the grand jury, who do they identify? Yeah, this guy right here, Kevin Jackson. And who do all of them identify in their handwritten statements? This guy here, Kevin Jackson. Signed

photographs. He's the shooter. That's a pretty tough one to swallow.

And you saw the demeanor of these witnesses on the witness stand. You saw Brandi. You saw Shemika. I got more attitude out of those two women than I think I've got in my whole life. Do you think for one minute that if something bad would have been happening to them they would hold their breath and not say anything as soon as they were out of the hearing of the police? Absolutely not. Those two ladies would have been screaming to high heaven.

But you know something? They weren't. They weren't because what they told the police and what they told the detectives and the state's attorneys was true.

Now let's talk about holding these witnesses at the police station. Shemika Mason wasn't at the police station but several hours. So right away, we can get rid of that one. Vernon Clay came into the police station on June the 2nd, talked to the police, gave them some story about Norman, went home.

Well, when the police couldn't find everything they needed to know about Norman, we think

maybe we got the wrong photo because nobody has identified Norman and this guy is telling us that Norman is there. They want to talk to Vernon some more about Norman. They go out and say, we want to talk some more about Norman. Do you want to come with us? Sure.

Vernon tells them, I don't remember what the heck I told you about Norman. And then he outs with the defendant was there that night and he had a gun in his hand.

Can I stop right there, ladies and gentlemen? I have another thought I need to impart to you.

If the police were putting a case on this defendant with Vernon Clay, do you think they would have ever allowed Vernon Clay to say the defendant was there and he was in the car but he wasn't the shooter? Because that's the statement that Norman (sic) gave on 6-2 if you remember. He said the shooting happened, Googy was there in the car with Manny, but he wasn't the shooter. The shooter was the guy by the name of Norman. You think that's the statement that the police would put in their report if they were putting a case on this guy?

Absolutely not.

Back to where we were. Norman MacIntosh tells the police now that the defendant has a gun. This is the first time that Brian Forberg and the police officers had somebody identifying Kevin Jackson as having a gun, and now they think, uh-oh, I'm smelling a rat. Somebody is not telling me the entire truth. You know, we're going to have to check this stuff out. Do you want to stay with us?

And what does Vernon say to them? Yeah, I don't want the people around in the neighborhood to know that I'm cooperating with the police.

He doesn't want the people in the neighborhood seeing the police car dropping him off and picking him off. What do you think the Conservative Vice Lords would say or do, more importantly, if they knew that Vernon Clay was going back and forth to the police station? I can tell you this, folks. Whatever it is, it wouldn't be pleasant.

So Brian Forberg and his partner, John Foster, did what they had to do. They went out, and they checked out these stories by all the

witnesses. Were the witnesses forthright with the detectives at the very beginning? No. But they weren't going to tell the detectives the truth until they knew the detectives knew a little bit more, and that's what happened.

Then when the detectives started approaching people and telling them that we heard Googy was there with a gun, that's what somebody else is saying, they're like, all right.

This was good police work, folks. This wasn't somebody putting a case on Kevin Jackson. You have in front of you a veritable mountain of evidence that tells you that Kevin Jackson is guilty. You have witnesses that were there. You have their handwritten statements to State's Attorneys telling them Googy is the shooter. You have their grand jury testimony telling you that Googy is the shooter.

And you have to remember the circumstances under which these statements were given. The handwritten statement was given to the State's Attorney, not to the police anymore. The police were there, but the State's Attorney is there now.

As a matter of fact, Kelly Daly said she was alone with the witness. Kathy Lanahan was alone with all three people that went in front of the grand jury. No complaints, folks. What's that tell you?

Let's talk for a minute here about the execution of Ernest Jenkins. Ernest Jenkins was a 54-year-old guy in a gas station sitting in his car, and somebody is going to execute him. That's what they want you to believe. There's no evidence of that from the witness stand. That's just they want you to believe that.

Well, let's talk about red herrings, folks. They want to make you go off this way.

Same as the shell casings being out on the passenger's side of the car or the shooting coming from the passenger's side of the car. It didn't happen. It's nonexistent. It's something to get you folks to take your eye off the ball.

The fact that the physical evidence in this case actually corroborates every statement that's here -- every one of these handwritten statements and every one of these grand jury transcripts is corroborated by the physical evidence.

Michael Watson lied about his nephew, Meechie. You think Michael Watson would even hardly tell the police his name if he had the chance? I doubt it. But the police -- again, they did a good job. They investigated. They're not going to just say, okay, if that's your name, let me see your driver's license, let me see your identification.

And it's not because they're trying to harass people or do bad things. It's because, unlike normal folks, some of these folks that you have seen and heard from, ladies and gentlemen, the truth is not the first thing that comes to their lips. It's not forced out of them, but you have to make them understand that you know what you're talking about, you know what happened out there on 55th and Damen, or you had a good idea.

Meechie is the shooter. Meechie is the shooter now.

What evidence did we hear that Meechie was the shooter? Any? I didn't hear any. As a matter of fact, if Meechie was the shooter, don't you think these witnesses would have rolled on Meechie in a heartbeat?

The Conservative Vice Lords that got

up there on the witness stand. Vernon Clay, Conservative Vice Lord. He does say, I'll give you this, that he and Meechie are buddies from school and that the two of them didn't have a beef.

But Manny Stewart, Manny Stewart is this guy's cousin. Manny Stewart is a Conservative Vice Lord. If Manny Stewart had seen Meechie shoot, don't you think he would have been screaming it to the heavens? Absolutely, he would have been.

Manny Stewart is a shooter. That's like them accusing Detective Forberg of saying something from the witness stand that they didn't like when it was the wrong guy. You can put that in the same compartment. I think it's the trash can, we call it.

Folks, the standard here is not beyond any doubt, it's not beyond all doubt, but beyond a reasonable doubt. I would submit to you that the physical evidence and the testimonial evidence that you heard coming out of these handwritten statements is more than sufficient to convict this guy of the murder of Ernest Jenkins and the aggravated battery of Michael Watson.

Googy is a Conservative Vice Lord.

Googy and the Conservative Vice Lords control the neighborhood of 55th and Damen. Googy can do anything he wants there. Googy and the Conservative Vice Lords have intimidated the neighborhood. They have instructed Brandi Grant not to talk. They've got Vernon Clay scared to even get picked up by the police in his own neighborhood.

This defendant showed up at the bus stop where Vernon Clay was and was questioning him about what he may have told the police. They show up at her house. They show up at the bus stop. They're trying to work the system.

But when the witnesses do tell the truth to the police and the Assistant State's Attorneys, they're the folks that live near Googy. And they don't realize until they get into court or they're notified that they may have to testify that there's no way out for them. They have to come into court and face the Conservative Vice Lords right here. They've got to do it, and they don't know what to do.

Vernon Clay didn't know whether to go blind when he was sitting up there on the witness stand. Did you see him? I was home sleeping. I

don't know what was going on. They're scared to death.

But, ladies and gentlemen, remember, you heard the truth from the witness stand. The handwritten statement of Vernon Clay identifying Googy as the shooter. The handwritten statement of Shemika Mason identifying Googy as the shooter. The handwritten statement of Brandi Grant identifying Googy as the shooter. The handwritten statement of Emanuel Stewart identifying Googy as the shooter. The grand jury transcripts of Brandi Grant, Vernon Clay, and Emanuel Stewart identifying Googy as the shooter.

These people are calling out to you not from the day before yesterday, but from two years ago, because they can't tell you what they need to tell you now.

Can you imagine what will happen to them? Can you imagine what will happen to them if the Vice Lords find out they came in here and put it on him and said what he did?

Googy and the Conservative Vice Lords, ladies and gentlemen, have worked hard to hide the truth from all of you, but in the end, Kevin

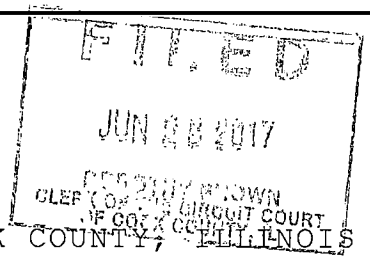
Jackson's own actions only shed further light on what's going on here. Innocent men don't threaten witnesses. Innocent men don't go to witnesses' homes and tell them, don't talk to the police. That's not something innocent men do.

Ladies and gentlemen, there is a mountain of evidence that tells you that Kevin Jackson is guilty of the murder of Ernest Jenkins and the aggravated battery of Michael Watson. But you know what? Don't find him guilty because I'm telling you. Find him guilty because that's what the evidence shows and that's what justice demands. And by the way, give the neighborhood of 55th and Damen a break from this guy.

THE COURT: Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

When I use the word "he" in these instructions, I mean a male or a female.



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

vs. No. 01-CR-17492-01

KEVIN JACKSON,

Defendant.

REPORT OF PROCEEDINGS had of the above-entitled cause, before the HONORABLE EVELYN B. CLAY, one of the judges of said Court, on the 15th day of June, A.D., 2017.

APPEARANCES:

HON. KIMBERLY M. FOXX,
State's Attorney of Cook County, by:
MS. CATHERINE MALLOY,
Assistant State's Attorney,
appeared on behalf of the People;

MR. BRANDON CLARK,
MR. THOMAS HILL,
MS. ELIZABETH BACON,
appeared on behalf of the Defendant.

KATHY SZOTEK
Official Court Reporter
Criminal Division
CSR: #084-004657

THE CLERK: Kevin Jackson.

MR. CLARK: Morning, your Honor.

THE COURT: Good morning. Now, attorneys you are?

MR. CLARK: Brandon Clark. I have with me Tom Hill from my firm as well as Elizabeth Bacon from Brooks, Tarulis, Tibble.

If I may, before we get started, your Honor, a brief housekeeping matter. Mr. Hill is not an Illinois --

THE COURT: Wait. Is anyone here from the prosecutor's office? Are you going to be handling this?

MS. MALLOY: No, your Honor, I'm not.

THE COURT: This is a PC matter.

MS. MALLOY: I'm not sure who's on this. This apparently is a postconviction.

THE COURT: Right.

MS. MALLOY: I am not handling this. Our postconviction unit would be.

THE COURT: Where are we on this omnibus motion for leave to file a successive petition?

MR. CLARK: Correct.

THE COURT: That's been filed by you all?

MR. CLARK: Correct.
THE COURT: Is that right?
MR. CLARK: Yes, your Honor.
THE COURT: All right.
MR. CLARK: And we have not been contacted, your Honor, by the postconviction unit.
THE COURT: All right. So let's get a copy. Let's get a date. The State to notify that unit, postconviction unit. And let's get --
MR. CLARK: If I may, your Honor.
THE COURT: Yes.
MR. CLARK: At this point we're seeking leave to file. And it's not clear from my reading of the case law that the State --
THE COURT: Is involved --
MR. CLARK: -- is involved at this stage.
THE COURT: -- at this stage. All right.
MR. CLARK: If your Honor would be inclined to grant leave to file the motion today and advance it to second stage hearing, at that point it is clear that the State becomes involved.
THE COURT: Of course, yeah, at that stage.
I need to take a look at this, Counsel. Before I grant you leave to file successive, I have

to see that you've met all of the requirements to do so.

MR. CLARK: If you would indulge me, Judge, I'd be happy to present argument on that this morning.

THE COURT: Well, let me read your petition first, young man.

MR. CLARK: Sure. Understood.

THE COURT: You want to come back next week for arguments on your motion for leave to file?

MR. CLARK: We can be available at your Honor's convenience. I would note that Mr. Hill and I are out of D.C. --

THE COURT: Oh, is that right.

MR. CLARK: -- and flew in for this.

Right.

THE COURT: Is that right. Okay. Later today.

MR. CLARK: All right.

THE COURT: How about that. Off the top of my head, I'll say 1:00 o'clock this afternoon.

MR. CLARK: We'll be here, your Honor.

THE COURT: We'll pass this until 1:00.

That's Hill, Clark -- you're Clark?

MR. CLARK: Clark.

THE COURT: And this is Hill.

And you, young lady?

MS. BACON: Elizabeth Bacon from Brooks, Tarulis. I'm out in Naperville.

THE COURT: All right.

MS. BACON: I've been assisting on the ground here in Illinois.

THE COURT: I see. All right.

MR. CLARK: And if you'd like, you know, we have an additional courtesy copy for you or your clerk.

THE COURT: This is of the filing?

MR. CLARK: Of the filing, correct.

THE COURT: I see. A courtesy copy. All right.

MR. CLARK: Yes. I'm not sure how many you would like, so we brought an extra.

THE COURT: All right. Wonderful. Then we'll pass the matter.

MR. CLARK: Thank you very much. See you at 1:00 o'clock.

MS. BACON: Thank you.

(The case was passed.)

THE CLERK: Kevin Jackson.

THE COURT: What's pending before the Court is leave to file a petition for successive postconviction; is that correct?

MR. CLARK: Yes, your Honor.

THE COURT: Now, again, identify yourselves. We're going to probably go into a hearing on your leave to file.

MR. CLARK: Brandon Clark, representing petitioner.

MS. BACON: Elizabeth Bacon, also representing petitioner.

MR. HILL: Thomas Hill on behalf of petitioner as well, you Honor. Thank you.

THE COURT: All right. Now, proceed.

MR. CLARK: So if I may, your Honor, to begin with a slight housekeeping matter. Mr. Hill is not admitted in Illinois at this point. We have Rule 707 papers to file for him and were about to do so but haven't gotten to it quite yet. Is it all right if he stays here at the bench for now?

THE COURT: It's quite all right. But you're arguing, right?

MR. CLARK: Yes, your Honor. We're going to argue.

THE COURT: All right.

MR. CLARK: So as your Honor pointed out, the matter before the Court is whether or not to grant

leave to file a successive petition under the Postconviction Act for petitioner Kevin Jackson. I would like to initially point your Honor to a very similar case that I think is directly on point, which is People v. Almodovar, if I'm pronouncing that correctly. It's 2013 Illinois App (1st) 101476. In that case, the petitioner was seeking leave to file a successive petition. The petitioner in that case had been convicted on the basis primarily of police testimony. There had been recanted evidence, recanted statements presented at trial of eyewitnesses. And at the trial --

THE COURT: What's the citation?

MR. CLARK: 2013 Illinois App (1st) 101476.

The issue of police misconduct had been raised at the trial and then subsequently, and a petition was brought based on the fact that there had been police misconduct that was further -- further evidence of police misconduct was found after the conviction. Specifically, there was a single trial that had -- or a case that had involved the same officer and there was a newspaper article. On that basis the trial level court dismissed, did not grant leave to filed, and they were overturned by the First

Circuit saying that that was enough information to warrant second stage proceedings and remanded and docketed for second stage proceedings. I think this case is very similar to ours in which there are allegations of police misconduct that led to false testimony. We have identified evidence of police misconduct of the actual officers involved in the investigation. And we are also seeking a successive petition based on actual innocence. So I would suggest that that case controls here.

But moving on from that, if your Honor would like.

THE COURT: All right.

MR. CLARK: We recognize that the burden is on the petitioner to obtain leave to file a successive petition and that in order to be granted leave, we must present the Court with sufficient evidence to determine whether or not there's merit and we raise the likelihood of a different result on trial if we are able to prove up that evidence at later stages of the postconviction proceedings.

I would suggest, your Honor, that the more than 150 citizen complaints involving the seven officers primarily involved in this investigation,

the several civil suits that have been filed against those officers, many of both the citizen complaints and the civil suits involving very similar misconduct in relation to witnesses, in relation to suspects, in relation to arrest -- improper arrest procedures, and other related sorts of misconduct does raise the probability that if that had been introduced at trial there would have been a different result.

The fact that that -- Pardon. Strike that.

We recognize that in order to file a successive petition, we must allege either cause and prejudice or actual innocence. We've raised both -- We've made both arguments in our papers, but I think for today I will focus on actual innocence because I think that's the more appropriate of the two standards. Under an actual innocence case, we must show that we have discovered new evidence, that that evidence is material and noncumulative, and that it would likely change the result on trial. As I mentioned, much of this evidence related to police misconduct. The citizen complaints and the civil suits occurred after Mr. Jackson was convicted. By definition, that makes it new. In addition, the evidence that was actually existent at the time of

his conviction can still be considered newly discovered evidence under Illinois Supreme Court case People v. Patterson, in which they say -- the Court said that subsequent events may change the nature of prior events and, therefore, create -- and view that evidence with a newness that it wouldn't have otherwise. Essentially, what the Court is saying is that if there are additional allegations of misconduct that together they can create new evidence by establishing that there's a pattern and practice as opposed to individual instances of misconduct that in and of themselves don't show that there's a pattern of practice. I think that we have that here.

Additionally, under People v. Williams, the newness requirement of -- that's required of us can be relaxed in instances where there's a strong showing of actual innocence. Essentially, it's on a sliding scale. If your Honor feels that the evidence that we presented gives pause as to whether or not the conviction was correct then the newness requirement may be relaxed.

Next, under People v. Serrano and People v. Tyler, evidence of police misconduct is always material. Furthermore, evidence that tends to

contradict evidence that was presented at trial is noncumulative under People v. Ortiz. In this instance we are presenting evidence to the Court that would contradict the credibility of the police officers and their testimony at trial in a way that they were not able to be contradicted because we did not have this evidence. Therefore, it's also noncumulative.

And finally, like I said initially, we must show that the evidence we're presenting would likely have changed the result at trial. It's important to note that probability, not certainty, is the standard here. We do not need to show at this point that we would certainly reach a new -- a different decision. In fact, we don't even need to make a substantial showing, which is what's required at the second stage. And under People v. Jones, it's clear that in order to be granted leave to file, we must meet a lower standard. We must just, if your Honor will allow me a metaphor, just move the ball down the line. We just need to move in the direction of changing the jury's mind.

And I would note for the Court that the cases of People v. Coleman, People v. Jones, and as

I've also mentioned, People v. Almodovar have found that leave to filed was appropriate under similar circumstances, in some cases even lesser -- in fact, I believe in all those cases I just cited, a lesser showing of evidence of police misconduct that leave to file was appropriate.

As I mentioned, we have primarily seven officers who were involved in the investigation of Kevin Jackson. They are responsible for more than 150 citizen complaints. 42 or more of those complaints have been filed since 2004 and involve a range of misconduct, including improper arrest, improper search and procedure, improper interrogation, abuse of suspects and witnesses, and the list goes on. All of them, I would submit, are highly probative of the claims that we are making that the police should not have been given the benefit of the credibility determination that they were by the jury. In addition to those, there are civil suits. And I would point your Honor to one in particular involving one of the lead detectives, Brian Forberg. That is City of Chicago v. Bridewell, B R I D E W E L L. And the citation for that is 2012-WL-2458548. It's a nonpublished opinion on a

motion for summary judgment in which the parties, both the City --

THE COURT: Will you repeat the citation.

MR. CLARK: Of course. 2012, WL for Westlaw, 2458548.

As I was saying, it's an opinion on a motion for summary judgment in which both parties stipulated to very similar misconduct in relation to witnesses by Officer Forberg as we have alleged here, including very long detentions, denying bathroom breaks, denying foods, coercing statements by witnesses to implicate someone who was uninvolved in the case -- or I'm sorry -- uninvolved in the crime.

So based on these records that we've uncovered and then the subsequent events that under People v. Patterson can transform prior evidence into new evidence that is important and material to a postconviction petition, we think we've met the standard. Some of these subsequent events are that we have identified citizen complaints in relation to this specific case that was filed by the mother of one of the coerced witnesses who was not called at trial and so defense counsel at the time had -- even through the exercise of due diligence would have no

reason to have uncovered it. There have been, as I mentioned, over 40 new CRs filed since the time of Mr. Jackson's conviction. All of the civil suits that we've identified involving these officers postdate Mr. Jackson's conviction. And then in addition, somewhat of an oddity, Mr. Norman McIntosh was recently exonerated by this Court. He was initially a suspect in this case. And we think that reading his case, other cases that we've found that involved him that we've cited in our papers, and then the accounts of his recent exoneration indicates that these officers were more interested in clearing cases by finding the usual suspects and not doing good police work, as the State's Attorney suggested in its closing argument in this case. I think that all of these together show very clearly that is not the case, that these officers were not engaged in good police work.

And finally, I would note for the Court that in relation to all of these citizen complaints, I recognize -- we recognize that many of them are unsustained, many of them have been even ruled unfounded by OPS and then subsequently IPRA. I would note for the Court that recently the Department of

Justice issued its report about the Chicago police internal investigations. It was part of its report. And it noted that substantial improprieties in the investigation of these complaints that causes me to question whether or not they should have been found to be unsustained, unfounded, and so forth. If nothing else, the sheer volume indicates that there is evidence of misconduct in relation to these officers here. So for all these reasons, your Honor, we would ask that we be granted leave to file Mr. Jackson's motion and continue on to second stage proceedings at which point the State would become involved and move this matter forward.

THE COURT: All right. You're claiming actual innocence; is that right --

MR. CLARK: Yes, your Honor.

THE COURT: -- as the reason why you should be allowed leave to file this successive postconviction?

And the actual innocence theory requires that you show newly discovered, not cumulative, evidence that would change the result on trial.

Now, you set forth the fact that there are reports of police misconduct.

MR. CLARK: Yes, your Honor.

THE COURT: And you've tendered to the Court a printout of complaints --

MR. CLARK: Yes, your Honor.

THE COURT: -- from the internal police investigation of citizen complaints of these officers that were involved in the case.

MR. CLARK: Yes, your Honor.

THE COURT: Now, over lunch break, the Court reviewed your petition and the exhibits. And as you've stated yourself, these are unfounded. Most are. Most are. And a few that were sustained involved infractions like taking office supplies, that kind of thing. It was just 90, 95 percent of these complaints, allegations were not sustained, they were not founded. There's no way you could have used any of that material at the first trial nor could you use it on retrial.

MR. CLARK: If I may your Honor.

THE COURT: Yes, you may.

MR. CLARK: Under People v. Jones, admissibility of the evidence that we present in furtherance of the postconviction petition does -- is immaterial. The evidence presented at People v. Jones -- if I give you the citation --

THE COURT: I have it.

MR. CLARK: -- okay -- makes clear that the evidence need not be admissible for a postconviction petition to move forward, even a successive petition.

THE COURT: But one of the things that -- one of the elements that you must show is that it would change the results -- this evidence would change the results at trial.

MR. CLARK: Yes.

THE COURT: So I do have to address the quality of this misconduct evidence that you are presenting to sustain your request for leave to file. The allegations, this is what you are talking about, the allegations of police misconduct, I do have to consider that that's what it is and it remains that totally. And the results of that investigation into those allegations was that it was unfounded. Most of this. Most of this. It cannot sustain -- change the results. Allegations -- Allegations cannot change the results of any trial -- of a prior trial or be effective or maybe not even be allowed to present it at a new trial. Now --

MR. CLARK: Your Honor, if I may. The civil suits, however, are a different animal here. And in

prior cases, like I mentioned earlier, Almodovar in particular, substantially less information was found to be sufficient to advance to a second stage hearing. In that case there was a single court decision citing misconduct by the detective at issue, a Detective Guevara, I believe is his name, and a newspaper report about the detective, which obviously would not have been admissible at trial. And based on those facts alone, the First Circuit said that the petition should have been advanced to second stage proceedings.

We've cited half a dozen civil cases that related to our officers, seven of them that were primarily involved in the investigation. These were the individuals who had the most substantial role in the investigation and each of them have had some allegations that have been unfounded, you're absolutely right, your Honor, but several --

THE COURT: Most were, Counsel.

MR. CLARK: Yes, but most of the civil suits --

THE COURT: Most were.

MR. CLARK: -- most of it involved civil suits, I mean.

THE COURT: And -- Yes. And I'm also aware of

the Almodovar case, very much so, and those issues that were presented in that petition.

I'm looking at the evidence that you set forth as the reason why you should be allowed to file this. And I question that allegations, allegations -- bald face allegations. And they have been decided on -- they've been decided upon, unfounded in most of these cases. They have been reviewed and decided on, and maybe you think wrongly -- wrongly, as that's what the police department was doing at that time. However, I am -- I do have the fact that they were unfounded, most all of them. And so those that were not, it just wouldn't carry the day in terms of any type of misconduct that's being alleged -- that you're alleging that took place -- that you believe took place toward these witnesses and these victims in this case. Now --

MR. CLARK: Your Honor, if I may. The prosecution put the police officers' credibility directly at issue in the case by --

THE COURT: The credibility of all witnesses --

MR. CLARK: Of course, your Honor.

THE COURT: -- is on display in every trial,

Counsel. Officers are no different.

MR. CLARK: Of course, your Honor. But --

THE COURT: The credibility of officers is no different. And, Counsel, allegations cannot be used for impeachment. Allegations cannot be used for impeachment in any trial.

MR. CLARK: Understood, your Honor.

THE COURT: All right. The closing -- And you indicate that some of these reports contradicts the State's closing about the credibility of the witnesses. And you're well aware, you're a veteran attorney, I believe --

MR. CLARK: I'm glad you think so, your Honor. This is my first hearing.

THE COURT: Is that right.

(Continuing.) -- closing arguments, openings arguments is not evidence.

MR. CLARK: Your Honor --

THE COURT: Young man, that is not evidence. Now --

MR. CLARK: If I may, your Honor, return back to the CRs for just a minute.

THE COURT: I'm allowing you to do this, but I think I've heard your position on all of these issues

that you're presenting for as reasons why you should be allowed to file this successive PC. But I'm going to allow you to give your commentary here before I complete my ruling. What else do you have to say, young man? But you normally won't be given this opportunity.

MR. CLARK: Understood, your Honor. Thank you.

THE COURT: Go ahead.

MR. CLARK: And I will keep it brief. I only want to mention that the CR allegations would not themselves be admissible but may have led to admissible information. Had we known about them, we could have asked about and conducted further investigation that may have led to useful information, that's all, for impeachment purposes.

THE COURT: Entirely too nebulous, Counsel. Entirely too nebulous. Had not the witnesses recanted, then maybe you could engage in that kind of -- you could take that spool of thread all the way down to maybe if the witnesses hadn't recanted or maybe if a lot of things. They may be ifs. You cannot rely on that, Counsel, as a reason why you should do something that you are proposing to this Court, that you're using this information as a reason

why you should be allowed to file this successive PC.

Now we get to the affidavits. And you have to show newly discovered -- actual innocence, as you know, can be based on newly discovered evidence. Now, what Keena Davis had to say, that's not newly discovered information. She did not testify at the Grand Jury or at the trial, but she was interviewed by the detectives a week after the incident. What she had to say about this case was known back then at the time. She was interviewed by police officers one week after the incident. It's not cumulative. It would not change the results on trial. She claims that Kevin Jackson was not the shooter, but four other eyewitnesses gave statements that he was. She was not an alibi witness for Kevin Jackson. She says in her affidavit that she took a lie detector test and said that Kevin Jackson was not the shooter, but she said also in the affidavit she failed that test. She failed the test. She said he was not the shooter. She took a lie detector test and she failed the test. This is her giving this information.

Manuel Stewart. The Manuel Stewart affidavit is not newly discovered. He recanted at trial and he said the same thing at the trial, police

coerced him. He said that at trial. This is not newly discovered. He also gave a statement to the public defenders saying the same thing. So back then at the time of the trial, before the trial -- leading up to the trial, at the trial he said he was coerced. It's unlikely his -- what he had to say at a new trial is unlikely to change the results of any new trial. And in addition, he's Kevin's -- Kevin Jackson's cousin. So there could be some bias there, folks, in terms of what he has to say at trial about his cousin. Now, he gave -- he says that he was the shooter at the Grand Jury and he signed a statement.

Now, the Brandy Grant affidavit is not newly discovered evidence, same analysis, told the Grand Jury defendant was the shooter. And what he has to say would not be considered -- would not -- at a new trial would not in any way change the results from the first one.

I've already indicated that closing arguments are not evidence. Whatever is raised in closing arguments on any issue that came up in the trial, that is not evidence and jurors are always told to disregard if it doesn't comport with what they heard at the trial.

So I do not find that you have met your burden to file -- for the Court to grant leave for you to file a successive postconviction. The affidavits, the record of -- the CR records from IPRA of these police complaints, they were looked into. We have to determine that because they're designated unfounded. And so if only they had done a more thorough job, maybe you're saying that, but there's a lot of ifs that don't apply in courts of law.

Accordingly, folks, your petition for leave to filed successive postconviction is denied.

MR. CLARK: Thank you, your Honor.

(End of proceedings.)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, KATHY SZOTEK, an Official Court Reporter within and for the Circuit Court of Cook County, Criminal Division, do hereby certify that I have reported in shorthand in the report of proceedings had in the above-entitled cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify is a true and accurate transcript of the proceedings had before the Honorable Evelyn B. Clay, Judge of said court.

Kathy Szotek
Official Shorthand Reporter
Circuit Court of Cook County
County Department - Criminal Division
Certification No. 084-004657

Dated this 19th day of
June, 2017.

APPENDIX 16

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

No. 1-17-1773

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from Cook County
	)	Circuit Court No. 01-CR-17492
Plaintiff-Appellee,	)	Hon. Evelyn B. Clay, Presiding
	)	Post-Conviction Proceeding
v.	)	Appellant In Custody
	)	Date of Ruling
KEVIN JACKSON,	)	June 15, 2017
	)	Appealed
	)	Notice of Appeal Filed
Petitioner-Appellant.	)	June 28, 2017

ORAL ARGUMENTS
JUNE 27, 2018

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APPEARANCES:
JUSTICE SHELDON HARRIS
JUSTICE MARY MIKVA
JUSTICE DANIEL PIERCE

ON BEHALF OF THE APPELLEE:

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(Thereupon:)

THE CLERK: 17-1773, People v. Kevin Jackson.

UNIDENTIFIED JUSTICE: Would the attorneys who are going to argue the case please approach the bench, identify yourselves and the party you represent, and indicate to the Court how much time you would like to argue your position.

MR. CLARK: Good afternoon, Your Honors. Brandon Clark for appellant Kevin Jackson. I think approximately 20 minutes.

UNIDENTIFIED JUSTICE: Very well.

MR. WALTERS: Assistant state's attorney Jon Walters for the People, and about the same amount of time.

UNIDENTIFIED JUSTICE: Very well. Have a seat. Mr. Clark.

MR. CLARK: Thank you, Your Honor. May I also save time for rebuttal, just a couple of minutes?

UNIDENTIFIED JUSTICE: Sure.

MR. CLARK: Thank you.

UNIDENTIFIED JUSTICE: Now, that

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microphone is for records purposes only, not for amplification, so if you want to be heard by the masses out there in the courtroom, keep your voice up so they can hear you.

MR. CLARK: Yes, Your Honor, I will.

UNIDENTIFIED JUSTICE: Very well, proceed.

MR. CLARK: Thank you. Your Honor, I represent -- my name is Brandon Clark. I represent appellant Kevin Jackson. We are here today to discuss the denial of his motion to file successive post-conviction petition.

There are primarily two errors that I would like to discuss with the Court here today that were made by the circuit court, the first of which is that the -- excuse me, the Court considered what it termed the quality of Mr. Jackson's evidence, and the second is that it ruled that his evidence was insufficiently conclusive to warrant further proceedings.

In all other respects, Mr. Jackson rests on his briefs unless, of course, the

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Court has any questions about anything else within the briefs.

JUSTICE MIKVA: Well, just make sure, I mean, our review is de novo here, it really kind of doesn't matter what the trial court did, there's no deference here to the trial court's discretion, is there?

MR. CLARK: No, Your Honor, but I think by highlighting the few errors that the Court did make, it will illuminate for the Court why it should have reached a different decision, and why we're asking for a different decision from this Court.

JUSTICE MIKVA: Okay.

MR. CLARK: Before I turn to these -- these two errors, as I mentioned, I think will illuminate to the Court why Mr. Jackson should be granted leave, there are three facts that I'd like to keep -- for everyone to keep in mind. The first is that at trial not a single witness, nobody that testified at trial identified Mr. Jackson as the shooter.

The second is that, in fact, when called, one of the surviving victims

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testified that, and I quote, "He looks nothing like the man who shot him." And third, the jury had a difficult time convicting in this case, and passed a question to the judge about law of hung juries. I think this --

UNIDENTIFIED JUSTICE: Well, how do you define a "difficult time"? Just because they took seven or eight hours over two days?

MR. CLARK: No, Your Honor, because the jury specifically passed a question to the Judge inquiring about the law of hung jury. I think that indicates that it was having a difficult time reaching consensus. It goes to the - the weight of the evidence that was -- to the amount of evidence that was presented at trial.

Let's turn now to the first of the two errors that the circuit court committed in denying Mr. Jackson's motion, that is considering the so-called quality of his evidence.

The Court didn't specifically say it, but by reading its ruling, it was very

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clear that was concerned with primarily three things. One was the admissibility of evidence, the second was the credibility of the evidence, and the third were conflicts in the evidence. All three of these were impermissible for the Court to consider at this stage. The none of them would be permissible until at least a third-stage evidentiary hearing.

Under Illinois Rule of Evidence, 1101(b)(3), admiss -- excuse me.

JUSTICE MIKVA: The rules of evidence don't apply on post conviction. We understand that.

MR. CLARK: Thank you, Your Honor. That is exactly my point. So the Court's concern with that was error. Second, concerning itself with the credibility of the evidence. The Court specifically stated that it found Manny Stewart's affidavit to be not credible because of his inherent bias as Mr. Jackson's cousin.

The Court also said that it did not find Quina Davis's affidavit to be credible, because in her affidavit, after

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stating that she told the police the truth during a polygraph examination, she was then told that she had failed the polygraph examination, and on that basis the Court said that she found her to be not credible. Both of these are inappropriate, and under Illinois's recent decision of People v. Sanders, are reversible error.

Third, the Court was concerned with resolving conflicts in the evidence. Specifically, Mr. Jackson's petition presented the Court with evidence of misconduct by the officers most involved in his investigation.

I won't go through all that now, I'm sure the Court is aware of the long history of citizen complaints and civil suits filed against these officers, however, the Court credited the CPD and the dispositions of these complaints over the conflicting evidence of the recent DOJ report stating that those investigations have primarily -- or maybe not primarily, but in large part been poorly done. Now, whether --

JUSTICE MIKVA: But the burden is on

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you at this point. I mean, the burden is not on anybody other than you at this point, right?

MR. CLARK: Yes, Your Honor, (Inaudible.)

JUSTICE MIKVA: Okay. So putting aside the quality issues, you needed to come forward with evidence, and the reality is that, even though you had to work very hard to get those logs, and I understand that, they don't really say anything.

MR. CLARK: Well, Your Honor, turning to those -- to those logs, the Court found, which I would note was inappropriate, she should not be making factual findings at this point, but the Court found that the CR's were primarily for minor things, in the Court's words, such as stealing office supplies.

That's simply not borne out by the record. Of the 150 CR's involving these seven detectives, 48 were for use of excessive force. 30 were for --

UNIDENTIFIED JUSTICE: How many were sustained?

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MR. CLARK: Very few.

UNIDENTIFIED JUSTICE: Like how many?

MR. CLARK: A handful. I'm not sure of an exact number. Less than 10.

UNIDENTIFIED JUSTICE: (Inaudible.)

JUSTICE MIKVA: And of those, on those ones, we really don't know what the facts are of any of those or whether they're similar. We really don't know based on the logs.

MR. CLARK: Correct, Your Honor.

JUSTICE MIKVA: That what you're alleging happened here is similar to what happened in any of those other cases.

MR. CLARK: Correct, Your Honor.

JUSTICE MIKVA: Which is what you would need to show ultimately, is it not?

MR. CLARK: At an evidentiary hearing, that is exactly what we need to show.

JUSTICE MIKVA: Okay.

MR. CLARK: You're right.

I think that on this point, this Court's decision in People v.

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Tyler and People v. Reyes are illustrative. Beginning with People v. Reyes, in that case, similar to here, there was a murder conviction based on witness testimony.

There was also a confession in that case, which we do not have here. The defendant in that case filed his motion and provided a newspaper article, 23 CR's, and an FBI report that suggested that the single detective that was being accused of misconduct, had a pattern and practice of such misconduct.

This Court found that on the basis of just those few allegations against a single detective that the defendant had made a showing of actual innocence in spite of the fact that most of the claims had occurred as many as five years -- I'm sorry, excuse me, most recently five years prior to his trial, and yet found that the evidence was new, material, noncumulative, and conclusive of innocence.

Similarly, in People v. Tyler, which I think is --

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JUSTICE MIKVA: All right. Well, let's -- let's talk about your evidence of factual innocence. Really looking at the misconduct part of your evidence, right -- I sort of look at yours as the eyewitness part and the misconduct part. Is that fair?

MR. CLARK: Uh-huh, sure.

JUSTICE MIKVA: So looking at the misconduct part, I don't see how that goes to actual innocence at all. I don't see how that's free-standing proof of actual innocence at all, and I think the Supreme Court has made clear in Hobley that it's got to be free-standing. You've got to look at that evidence and say, that guy didn't do it.

All we know from that evidence is these cops might be lying, because they've lied before, and they've done what you've said they've done, they've done in other cases. That doesn't mean that by itself in a free-standing way that your guy is innocent.

MR. CLARK: Well, Your Honor,

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I think that, like I mentioned, People v. Tyler and Reyes has gone the other way on very similar facts.

JUSTICE MIKVA: See, if the Supreme Court goes one way and we go another way, we're bound by what the Supreme Court says.

MR. CLARK: Of course, Your Honor, and so for that I would say -- I would turn, then, to our claim or Mr. Jackson's claim under the cause and prejudice test.

JUSTICE MIKVA: Okay.

MR. CLARK: Where, as the Court surely knows, we must show a cause for not having raised the claim previously and prejudice flowing therefrom. I think that the cause element we've already covered, the fact that the evidence was new, difficult to find, so on and so forth.

The prejudice flowing therefrom is clearly that without the ability to impeach these officers at trial on the basis of this evidence, the jury was left with recanted testimony from witnesses, and a seemingly stellar record of the police in front of them upon which to determine

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whether or not those recantations were -- were true or not.

JUSTICE MIKVA: But that's where the point you started out with, which was how close the evidence was in this case --

MR. CLARK: Yes, Your Honor.

JUSTICE MIKVA: -- which is relevant.

MR. CLARK: Yes, Your Honor. This is very much like People v. Almodovar in that case, in essence that there are allegations of police misconduct, there were coerced statements, there's no physical evidence tying that defendant or Mr. Jackson to their -- to their claims.

And on the basis of recanted witness statements and a single, I believe, article out of the Tribune about this officer, this Court held that this --

UNIDENTIFIED JUSTICE: How many years after the trial?

MR. CLARK: Excuse me, Your Honor?

UNIDENTIFIED JUSTICE: How many years after the trial was the article in the newspaper?

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MR. CLARK: I -- I don't recall, Your Honor.

UNIDENTIFIED JUSTICE: Well over ten.

MR. CLARK: Yes, Your Honor.

UNIDENTIFIED JUSTICE: Correct?

MR. CLARK: That very well could be. I would have to check.

UNIDENTIFIED JUSTICE: So how -- how could you impeach an officer about events that took place 10 to 12 years after the incident on trial?

MR. CLARK: Are you -- are you speaking in -- in People v. Almodovar or in our case, Your Honor?

UNIDENTIFIED JUSTICE: In your case.

MR. CLARK: In our case. So --

UNIDENTIFIED JUSTICE: You -- you just said that you want -- that the defendant was entitled, if he had this information, he could impeach the officer's testimony.

MR. CLARK: Yes, Your Honor.

UNIDENTIFIED JUSTICE: Well, how could he impeach the officer's testimony

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with -- in 2003, when the trial was, with complaints that were lodged in 2009, '10, '11, '12, a newspaper article in '13, a justice department report in '14 and '15, how do you do that?

MR. CLARK: Your Honor has actually -- absolutely hit on the crux of the post conviction proceedings. It's a collateral attack. We actually are required to have new information. So the fact that the allegations were not known at the time of the trial is actually in favor --

UNIDENTIFIED JUSTICE: It didn't even happen at the time of trial.

MR. CLARK: Exactly, Your Honor. So there's a -- say this Court at this stage and the circuit court previously should not engage in fact finding on the basis of these CR's.

So taking petitioner's allegations as true that these CR's show misconduct similar to the type that has been alleged here, they show that these officers have over the course of many years engaged in

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this pattern and practice of misconduct, and that -- the fact that it has continued beyond his conviction actually weighs in favor of granting a third-stage evidentiary hearing, or even, for that matter, a second-stage hearing in order to further probe the evidence of actual innocence or cause and prejudice as the case may be.

UNIDENTIFIED JUSTICE: Well, the -- the entire trial consisted of witnesses who gave statements to the police the night of or the next day implicating the defendant.

MR. CLARK: Not quite, Your Honor. If I may?

UNIDENTIFIED JUSTICE: Pretty much so, and that those same witnesses who were called to testify, not all of them --

MR. CLARK: Uh-huh.

UNIDENTIFIED JUSTICE: -- but those who did testify, all recanted.

MR. CLARK: Yes, Your Honor.

UNIDENTIFIED JUSTICE: And they all recanted essentially saying that they were coerced into making these statements against the defendant by these police

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officers.

MR. CLARK: Yes, Your Honor.

UNIDENTIFIED JUSTICE: That issue was entirely in front of the jury.

MR. CLARK: Yes, Your Honor.

UNIDENTIFIED JUSTICE: How would this purported relevant evidence that took place allegedly, none of -- most of which, the overwhelming majority of which have never been sustained by anyone --

MR. CLARK: Your Honor --

UNIDENTIFIED JUSTICE: -- how would that all change.

MR. CLARK: Your Honor, this is actually not a novel situation. We think that this case fits squarely within, as I mentioned, Tyler and Reyes. In both cases allegations of police misconduct were before the jury but without the supporting evidence, and this Court as well in People v. Mitchell said that -- let me get the exact quote here, "Any evidence of prior misconduct by the detectives, testifying detectives, significantly shifts the balance of credibility against those

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detectives, and that's exactly the point here.

The recanted -- the witnesses who were recanting already had questionable credibility on the basis of those recantations. The fact that there was no supporting evidence of the police misconduct at the trial is -- is, I believe, dispositive here of the fact that had that evidence been presented to the jury, it would have made a different credibility determination, and the jury's credibility determination is all that supports Mr. Jackson's conviction.

UNIDENTIFIED JUSTICE: At what -- at what point is the post-conviction judge supposed to make a determination that what you think is -- is probative and impeaching of the officer's testimony not relevant, because if -- if a complaint was made five years after this incident that was not sustained, and we don't even know what the complaint was about, even though it may have been against an officer, what basis does that give any court to say, oh, that

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was really important information that the defendant should have had available to him. When do you make that decision?

MR. CLARK: So I can -- I sense Your Honor's concern about relying on the CR's, and I admit that at this stage we have less information about them than we would like. I think it's an entirely different situation with the civil suits that had been brought against these officers.

For example, I think People v -- I'm sorry, Bridewell v. Eberle, which we cite in our papers, is a very similar factual situation in which Det. Forberg, who was one of the primary detectives, one of the arresting officers in this case, was sued in a civil -- in a civil case along with other officers who had been involved.

The allegations were that the suspect was held for more than 63 hours before being brought before a judge, a witness -- two witnesses were held for extended periods of time, coerced into giving statements that were later recanted,

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and eventually charges three years later were dropped against the suspect.

Now, I recognize that that decision, it was a federal decision, resulted in a dismissal, but that's because there was a prior class action suit that the plaintiffs should have been part of. The allegations --

UNIDENTIFIED JUSTICE: What, a Gerstein hearing.

MR. CLARK: I'm sorry.

UNIDENTIFIED JUSTICE: Is that under Gerstein.

MR. CLARK: I'm sorry, I'm not aware.

UNIDENTIFIED JUSTICE: Gerstein, he was holding people for more than 42 hours or 48 hours without charging.

MR. CLARK: It must have been, Your Honor. I -- the decision didn't actually reference what the case had been, however, the -- both sides, the detective's side and the plaintiff admitted to these facts.

This is troubling conduct,

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I believe, and it's exactly the type of conduct that we've alleged here. Had that been in front of the jury, I think it would very likely have made a difference, especially keeping in mind that the relatively little evidence of guilt that had been presented at trial and under recent Illinois Supreme Court case, People v. Coleman, we should consider the conclusiveness of the evidence presented in a post-conviction petition against the evidence that was adduced at trial.

I think we're balancing the -- the evidence presented against Mr. Jackson with the evidence that he's presented in his motion, whether it's the CR's, whether it's the civil complaints, whether it's the information we have about the -- from the DOJ report about the veracity of the dispositions of the CR's.

I think balancing all that information and keeping in mind that at this point all Mr. Jackson is seeking is leave to file successive petition. He still must make a substantial showing of

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constitutional violation at the second stage and still must get to an evidentiary hearing at which point he would present evidence before he would be granted a new trial.

And even at that stage the Court's not to redetermine his guilt or innocence, but rather simply to determine whether or not he's made a sufficient showing of -- of probability of a different result on retrial that would grant him the right to have a retrial.

So I think the circuit court put -- put the cart well in front of the horse here. The circuit court here should have looked at Mr. Jackson's petition, his allegations of misconduct, his supporting evidence of misconduct, and should have docketed it for a second-stage proceeding, which is what we would ask the Court to do here today.

And unless there are any other questions, I would yield the rest of my time. Thank you very much.

UNIDENTIFIED JUSTICE: Thank you.

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Mr. Clark.

MR. WALTERS: May it please the Court. The standard that was before this Court, and -- before this Court and also before Judge Clay is whether the defendant made a credible claim.

UNIDENTIFIED JUSTICE: Excuse me, I misspoke, Mr. Walters.

MR. WALTERS: Correct.

It's whether the defendant made a credible claim of actual innocence, and the Supreme Court --

JUSTICE MIKVA: Or cause and prejudice. He doesn't --

MR. WALTERS: Or cause and prejudice, that's true, but I would -- I'm directing the first part of this towards actual innocence, because that's been the main thrust of defendant's presentation both below and in his briefs. I'm going to start there, but I will also address cause and prejudice.

Now, with respect to cause and prejudice, the -- the standard is well-known. It's -- it's set out in People

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versus Edwards by our Illinois Supreme Court, and that is that the evidence that the defendant presents is the burden is on the defendant to present evidence that raises the probability that it is more likely than not that no reasonable juror would have convicted the defendant in light of the new evidence. That's the standard.

This is not a first-stage standard. This is not a low-threshold gist or arguable -- arguableness sort of the standard. This is a standard the defendant must meet in order to proceed on a successive post-conviction petition, and there are very good policy reasons behind that.

Now, with respect to the -- the evidence that defendant has presented, his documentation, it does not -- it is totally insufficient. It does not meet that standard, so Judge Clay's ruling ultimately was correct. Defendant --

JUSTICE MIKVA: Was she really focused on the affidavits which go much -- which are really not about the police

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misconduct, correct?

MR. WALTERS: Correct.

JUSTICE MIKVA: That's where her focus was, and then she focused on the laws, but she really didn't focus on People versus Harris or the case that your opposing counsel just mentioned in which there were findings, there were stipulations that these same detectives actually did keep people 63 hours, kept the witness somewhere until she peed in her pants.

That really happened. There's a finding that that happened. Why wouldn't where -- you know, where it's so closely balanced, as this case was, with people telling one story one time and a different story another time, why wouldn't that be prejudice? Why wouldn't that suggest that it could have come out the other way if they knew these cops had done the same thing in other cases?

MR. WALTERS: Well, I think particular attention to Judge Leinenweber's ruling in -- that's Bridewell versus

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Eberle. There's actually a series of --

JUSTICE MIKVA: Right, but I'm not talking about his ruling, I'm talking about the stipulation that the parties did in that case. They stipulated to this stuff.

MR. WALTERS: Well, let me be very clear about this. It was a motion for summary judgment, so the facts had to be taken as pled, but I guess one thing --

JUSTICE MIKVA: It says it's a stipulation is what it says in the opinion.

MR. WALTERS: Well --

JUSTICE MIKVA: Parties stipulated. Nobody's saying -- it's a motion for summary judgment, so you put in evidence, you put in stipulations, it's not taking allegations as true.

MR. WALTERS: Here's something else I want to point out, though. Jury -- Judge Leinenweber specifically said that there was -- there was conflicting evidence on that point. He said that the police said --

JUSTICE MIKVA: I'm sorry, the following facts on which the parties agreed

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unless otherwise indicated.

MR. WALTERS: Unless otherwise indicated, that's the (Inaudible.)

JUSTICE MIKVA: And there's nothing indicating that there's any disagreement on Bridewell was interrogated for 63 hours. "Rhodes was questioned in a windowless room for many hours without a bathroom break and at one point urinated in the interrogation room."

Nothing that suggests there's any question about either of those things.

MR. WALTERS: In that paragraph.

JUSTICE MIKVA: Yeah.

MR. WALTERS: But with respect --

JUSTICE MIKVA: Is there somewhere else that I haven't seen?

MR. WALTERS: With respect, Judge Leinenweber, it may not be that particular ruling, there was -- there was a series of three.

JUSTICE MIKVA: Did you cite this in your brief? Do you want -- do you need this --

MR. WALTERS: I believe I did.

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JUSTICE MIKVA: Okay.

MR. WALTERS: I'm not sure if I cited that particular -- that particular point. I know it's there. I know --

JUSTICE MIKVA: Okay. What do you say is there.

MR. WALTERS: That Judge Leinenweber indicated that there was -- there was conflicting evidence on that point, that the police said that they gave her bathroom breaks.

JUSTICE MIKVA: They may have given her bathroom breaks at some point, does that mean she was held anyway.

MR. WALTERS: The 63 hours.

JUSTICE MIKVA: I will review your brief.

MR. WALTERS: The 63 hours.

JUSTICE MIKVA: Okay.

MR. WALTERS: Um, and with respect to that, Judge -- Judge Leinenweber at the time, in view of all that evidence, still found that there was no cause of action, that the defendant had failed to state a claim.

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JUSTICE MIKVA: That's not the issue before us. We don't care whether there's cause of action in that case or not. What we care is if these police officers, if there's evidence, as opposed to allegations, evidence that we think police officers acted in the way that these witnesses say they acted in this case.

If there's evidence of that, that could tip it, could it not?

MR. WALTERS: With respect, that evidence has to be substantiated.

JUSTICE MIKVA: Yes.

MR. WALTERS: There has to be something to it.

JUSTICE MIKVA: The burden is on them, totally.

MR. WALTERS: It can't just -- it can't just be a mere allegation. As the Supreme Court has set out in the Coleman case, Dedrick Coleman that I cited. It's cited in the Nelson case, there's a series of cases, Porter Bowens, Cacini that I cited to.

All of them require there be some

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substantiation, and this is with respect to both the allegations regarding civil lawsuits and the OPS complaints. There has to be something which substantiates it.

So there was -- what -- regardless of whether there was a stipulation, the point is that in that particular case Judge Leinenweber made a finding that didn't -- that didn't substantiate that there was a -- a illegal coercion, illegal police conduct in that case, and that was affirmed by the Seventh Circuit.

JUSTICE MIKVA: Okay. But there's no finding that what they say happened didn't happen by Judge Leinenweber.

MR. WALTERS: That's true. That's true.

JUSTICE MIKVA: It may not have risen to the level he was looking for. They're not trying to prove a civil case against these police officers in this case, they're trying to say the way these witnesses say these police acted, boy, they acted like that a lot or they acted like that in other cases.

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That's all they're trying to do, and if they can make that showing, don't you think that could change the outcome here, could.

MR. WALTERS: No, not on -- not on the facts of this case.

JUSTICE MIKVA: Because?

MR. WALTERS: Not given all the other evidence that we had.

JUSTICE MIKVA: All what other evidence? What -- there is no other evidence. The evidence is that the witnesses said one thing to the police, something different at trial. They said, "The reason we said that to the police is the police coerced us." Is there any other evidence?

MR. WALTERS: Yes, there is.

JUSTICE MIKVA: What am I missing?

MR. WALTERS: Well, for one thing, there was evidence that they were intimidated to flip their testimony by the defendant.

JUSTICE MIKVA: What was the evidence? I know that was the theory, but

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what was the evidence of that?

MR. WALTERS: That was in -- in Shemika Mason's statement, that was in Vernon Clay's statement. Shemika mentioned that defendant himself came over to Quina Davis' house right after -- I think the night after the shooting. Shemika was there, Brandy Butler, another one of the witnesses, was there.

JUSTICE MIKVA: This was all in the statements they gave the police initially.

MR. WALTER: Yes.

JUSTICE MIKVA: Okay. Okay. They told the police -- their story is they told the police initially exactly what the police wanted them to tell them, and then they said later, that we only told them that because we were intimidated.

Is there anything else? Is there any other evidence in this case that -- that pins this on the defendant?

MR. WALTERS: There's evidence that corroborates the witnesses.

JUSTICE MIKVA: What is that? There were shots fired. Everybody knows there

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were shots fired, there was somebody killed.

MR. WALTERS: Right.

JUSTICE MIKVA: What is the corroborating evidence that it was the defendant?

MR. WALTERS: Well, there was -- there was evidence that this was a gang-motivated shooting, and that defendant belonged to the rival gang of the other victim.

JUSTICE MIKVA: Okay. Okay. So do a lot of people, I'm afraid.

MR. WALTERS: And this case was passed on several times, the sufficiency of the evidence was passed on several times (Inaudible.)

JUSTICE MIKVA: One time.

MR. CLARK: On -- well, and in habeas corpus review as well.

JUSTICE MIKVA: I think that was really on a different issue, but, yeah, okay, I'm not saying the evidence is insufficient, I'm just saying it all comes down to the cops either did what these

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people say or they didn't. That's really becomes the issue in a lot of ways, because if the cops did what these people say, then there's really no evidence to convict this defendant.

MR. WALTERS: Yeah, but the bottom line here is that, whether it's civil suits or OPS complaints, even -- even the Bridewell case, and as I said, it's not substantiated, and that makes a difference.

It's an important fact. Because looking at these cases like Coleman and Porter Bowens and Cacini, it matters whether the officers face discipline or whether -- whether there was no finding in the case.

So based on the law, the fact that Judge Leinenweber found the cause of action, that it was affirmed by the Seventh Circuit Court of Appeals, indicates that that's not a case that can be used to demonstrate bias on the part of the officers. It can't be used to impeach them.

UNIDENTIFIED JUSTICE: Was there

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any -- was there any restriction on the cross-examination of the recanting witnesses as to their treatment by the police officers, was the defendant allowed to explore their treatment in front of the officers to explain or to highlight their recantations.

MR. WALTERS: My recollection was that was -- that was their trial testimony, and they were committed to testify to what they were saying was now the case at trial.

UNIDENTIFIED JUSTICE: So presumably, whatever mistreatment or maltreatment they contend they received that evening as the reason for the recantations, that was all brought out for the jury?

MR. WALTERS: Right, and that brings up another interesting point. With respect to Quina Davis' affidavit, that one affidavit does go somewhat to this police misconduct issue.

Now, Quina Davis filed an OPS complaint against -- against two of the detectives, and not all of them. Only

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detective -- Detectives Forberg and Foster, and that -- that complaint went to alleged harassment, meaning that the police doggedly and persistently tried to contact an eyewitness to a murder, and they didn't give up simply because she kept hiding in the attic and wouldn't talk to them.

What's -- what's glaring -- what's glaring in its omission, though, from Quina Davis' OPS complaint, is she does not complain about police misconduct in that OPS complaint, which was made at this time, which was made in 2001 at the time of this trial.

Fast forward to her affidavit, which is -- which is submitted somewhere around 2016, I believe, 2015, 2016, 2017, in that neighborhood, this is the first time that she's -- she's raising issue of how she was improperly or the police officers attempted to improperly influence her.

Now, in addition to that, there were a number of witnesses that these police officers talked to that were not allegedly improperly influenced. The police never

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got a statement out of Mario Brown. They never got a statement out of Michael or Stanley Watson. They never got a statement out of petitioner, and apparently they -- clearly, they never got a statement out of Quina Davis.

So this is not -- this is not a sort of overwhelming presence of police overbearing interrogation that -- that is creating this situation. It's clear that they -- that the police talked to a number of people and did not coerce them into making statements that they didn't want to make.

So there -- therein lies another issue of law that -- that defendant has brought up that we need to consider, and that is that at this stage, yes, well-pled facts are taken as true, but there's a caveat in that, a very important one, and that is unless they are rebutted by the report, and in this case there are contradictions, there are things that rebut the complaints of police misconduct in this case.

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JUSTICE MIKVA: The fact that they didn't -- they didn't do this to everybody is the rebuttal that they did it to the people that say they did it to them? I -- I don't understand what you say is rebuttal.

MR. WALTERS: I would -- I would use Occam's razor in this case. The -- Occam's razor, well known, you probably all know it, is the simplest explanation is best. It's still used today in philosophy and in science.

The simplest examination here is that defendant was the one that intimidated these witnesses, and the jury already heard all of this. The -- the part that has more moving parts in it is defendant's claim that the police somehow intimidated some witnesses but not others. That's not the simplest explanation for what happened here.

JUSTICE MIKVA: But what -- what about the fact that the victim, the only living victim said that's not him, doesn't look anything like him, right?

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MR. WALTERS: He did say that, but he also identified the defendant's car as being on the scene, and said the shooter got out of the defendant's car.

JUSTICE MIKVA: He said the shooter got out of the car a month before. That's what he said. That's what the police officer said he said, a month before the shooting he saw the shooter get out of that car, correct? Isn't that -- isn't that correct?

MR. WALTERS: You may be right. You may be right. I don't --

JUSTICE MIKVA: A month before.

MR. WALTERS: I don't -- I don't want to argue with you, you may be right.

JUSTICE MIKVA: And like you said, there -- it seems to be pretty un -- not really an issue that there are vice lords, they probably all know each other, right?

MR. WALTERS: On one side they're vice lords, on the other side (Inaudible.)

JUSTICE MIKVA: Right, they're talking about the --

MR. WALTERS: And there is a

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tendency to not want to address these issues in court and rather to address them on the street.

JUSTICE MIKVA: Right, but I'm just saying, the only person who really is -- has nothing to gain here, nothing -- not intimidated by the police or possibly by the defendant, the victim, says that's not him, doesn't look anything like him, correct?

MR. WALTERS: He does say that, but again, gang members tend to not to -- even -- even in rival gang situations, they tend not to testify against each other. That's a real-world problem that we have to deal with.

UNIDENTIFIED JUSTICE: Seeing that you had a number of questions thrown at you, are there any other issues or points you want to address before your time is completed?

MR. WALTERS: Well, Justice Mikva pointed out that defendant has raised cause and prejudice. I just -- I would just quickly make the point that essentially for

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the same reasons, that the evidence is not new, it's cumulative, and that it -- it is not of such a conclusive nature that it would -- that it would change the outcome.

For the same reasons that it doesn't meet the actual innocence test, it doesn't rise to the level of -- of the cause and prejudice test, and I realize it's worded differently, but certainly the same things need to be shown, new evidence that -- that the defendant was not able to get to previously and that there was prejudice.

JUSTICE MIKVA: But it doesn't need to be free-standing, right? And that to me is the difference.

MR. WALTERS: To meet cause and prejudice.

JUSTICE MIKVA: For cause and prejudice.

MR. WALTERS: Correct.

JUSTICE MIKVA: It can go right to what they were fighting about at trial, which is which story should we believe, right?

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MR. WALTERS: That's true.

JUSTICE MIKVA: And that's what most of their evidence goes to is which story should be believed, right?

MR. WALTERS: Yes, yes.

JUSTICE MIKVA: Okay.

MR. WALTERS: That (Inaudible) -- the requirement that the evidence actually go to show that it exonerate and it vindicate is not a requirement in cause and prejudice, but as I said before, for all the -- for all the reasons that I've outlined, it doesn't meet the cause and prejudice test in this case.

Respectfully, the People request that this Court affirm defendant's -- I'm sorry, affirm the ruling below, denying leave to file a successive petition, especially given the fact that successive petitions are -- are roundly disfavored.

UNIDENTIFIED JUSTICE: Thank you.

Mr. Clark, briefly.

MR. CLARK: I just have one point I'd like to make on rebuttal, and that is that the only evidence in the record that

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Mr. Jackson had any gang affiliation whatsoever are the statements that we claim were coerced, and with that I would yield the rest -- or I guess I conclude and would ask that the Court reverse the decision below and remand Mr. Jackson's petition for further proceedings. Thank you, Your Honors.

UNIDENTIFIED JUSTICE: Thank you. I would like to thank the parties for their briefing on this matter. We'll take the matter under advisement. The Court stands in recess.

(End of recording.)

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CERTIFICATE

- - -

I, Matthew J. Haas, Court Reporter and Transcriptionist, do hereby certify that I was authorized to and did listen to and stenographically transcribe the foregoing recorded proceedings and that the transcript is a true record to the best of my professional ability.

Dated this 18th day of July, 2018.



MATTHEW J. HAAS
Court reporter

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APPENDIX 17

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff/Petitioner
v.
KEVIN JACKSON, Defendant/Respondent

Date Filed	Witness	Document	Record Begin Page
		COMMON LAW RECORD	
7/26/2001		Indictment	C 4
8/14/2001		Motion for Pre-Trial Discovery	C 20
10/10/2001		Appearance by David Eppenstein	C 22
10/10/2001		Motion for Discovery	C 23
2/8/2001		Answer to Discovery (Bill of Particulars)	C 30
5/13/2003		Answer to People's Motion for Pre-Trial Discovery	C 35
5/13/2003		Answer to People's Motion for Pre-Trial Discovery (Zupancic name added)	C 36
7/21/2003		Motion for Continuance (due to unavailability of a material witness Michael Watson)	C 37
7/25/2003		Verdict	C 39
7/28/2003		Impounding Order	C 44
8/22/2003		Defendant's Motion for a New Trial	C 47
12/12/2003		Amended Motion for a New Trial; Clements' note re Michael Watson at C 65; Clements' note re Ricky McShan at C 66-70	C 49
2/5/2004		Response to Amended Motion for a New Trial	C 71
2/13/2004		P.S.I. Report (Sealed; no document)	C 91
3/25/2004		Order crediting time served (1011 days)	C 92
3/25/2004		Order of commitment and sentence to IL Department of Corrections	C 93
4/20/2004		Motion to Reconsider Sentence	C 94
5/5/2004		Motion to Reconsider Sentence (handwritten by defendant's attorney Raymond Prusak)	C 96
5/14/2004		Order of commitment and sentence to IL Department of Corrections	C 97
6/8/2004		Notice of Appeal	C 98
6/11/2004		Notice of Notice of Appeal	C 99
9/15/2005		Motion for Trial Transcripts and Common Law Records	C 100
9/15/2005		Motion to Proceed in Forma Pauperis and Request for Free Transcripts	C 101
9/15/2005		Application to Sue or Defend as a Poor Person	C 102
8/30/2006		Motion to Enforce Order of 10-21-2005 Granting Petitioner's Motion for Trial Transcripts and Common Law Records (pro se; handwritten motion)	C 107
11/9/2006		Mandate of the Appellate Court	C 113
4/19/2006		Order affirming conviction	C 115
3/16/2007		Motion for Leave to File and Proceed in Forma Pauperis (second page is missing)	C 142
3/16/2007		Motion for Appointment of Counsel	C 143
3/16/2007		Petition for Post Conviction Relief	C 146
3/16/2007		Petition for Post Conviction Relief. Ex. 1. Hearing Transcript Excerpt re Stanley Meechie Watson subpoena	C 173

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Date Filed	Witness	Document	Record Begin Page
3/16/2007		Petition for Post Conviction Relief. Ex. 2. Post-Trial Motion Excerpt re Stanley Meechie Watson and Michael Watson	C 174
3/16/2007		Petition for Post Conviction Relief. Ex. 3. Kevin Jackson Affidavit re relationship between Quiana Davis and Stanley Jackson	C 175
3/16/2007		Petition for Post Conviction Relief. Ex. 3-A. Quiana Davis Affidavit.	C 177
3/16/2007		Petition for Post Conviction Relief. Ex. 4. Mario Brown Affidavit (not executed)	C 178
3/16/2007		Petition for Post Conviction Relief. Ex. 5. Hearing Transcript Excerpt re Vernon Clay statement	C 179
3/16/2007		Petition for Post Conviction Relief. Ex. 6. Hearing Transcript Excerpt re Vernon Clay Grand Jury transcript	C 184
3/16/2007		Petition for Post Conviction Relief. Ex. 7. Hearing Transcript Excerpt re Shamika Mason statement	C 192
3/16/2007		Petition for Post Conviction Relief. Ex. 8. Shemika Mason statement	C 197
		Petition for Post Conviction Relief. Ex. 9. 8/13/2003 Jackson's Motion to Enforce Order of 10-21-2005 Granting Petitioner's Motion for Trial Transcripts and Common Law Records (pro se; handwritten motion)	C 198
3/16/2007		Petition for Post Conviction Relief. Ex. 10. Hearing Transcript Excerpt re Ricky McShane recant	C 201
3/16/2007		Petition for Post Conviction Relief. Ex. 11. Hearing Transcript Excerpt of Ricky McShane re-direct and re-cross testimony	C 202
3/16/2007		Petition for Post Conviction Relief. Ex. 12. Clements' note re Michael Watson	C 204
3/16/2007		Petition for Post Conviction Relief. Affidavit of Stanley Watson (not executed)	C 205
3/19/207		Motion for Copies of Charging Instruments/ Public Investigators' Reports (handwritten; pro se)	C 207
3/30/2008		Notice informing copies of reports and charging instruments will be sent.	C 211
5/25/2007		Order dismissing petition for post conviction relief	C212
5/25/2007		Notice of Disposition	C 228
6/12/2007		Notice of Appeal from post conviction relief petition	C 230
6/19/2007		Notice of Notice of Appeal	C 231
6/22/2007		Order appointing a public defender	C 232
12/4/2013		Motion Ordering the Preservation of Evidence (handwritten; pro se)	C 233

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff/Petitioner
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Date Filed	Witness	Document	Record Begin Page
1/15/2014		Notice informing evidence will be preserved	C 235
3/18/2014		Motion to Vacate Conviction/ Sentence as Void	C 237
3/25/2014		Criminal Disposition Sheet	C 272
5/9/2014		Order denying Motion to Vacate Conviction	C 274
5/9/2014		Criminal Disposition Sheet	C 280
5/19/2014		Notice that Motion to Vacate Conviction was denied	C 282
5/19/2017		Affidavit of Brandon Clark re pro bono and Application to Defend as an Indigent Person	C 283
5/25/2017		Criminal Disposition Sheet	C 286
5/25/2017		Order granting Application to Defend as an Indigent Person	C 288
6/2/2017		Omnibus Motion for Leave to File a Successive Petition for Relief Under the Illinois Post-Conviction Hearing Act and Petition for Relief Under That Act. (Table of Authorities is cut off and page 1 of the Motion is missing).	C 291
6/2/2017		Omnibus Motion for Leave. Appendix A. Complaint Histories.	C 342
6/2/2017		Omnibus Motion for Leave. Appendix B. Hearing Transcript. Day 1.	C 360
6/2/2017		Omnibus Motion for Leave. Appendix B. Hearing Transcript. Day 2.	C 408
6/2/2017		Omnibus Motion for Leave. Appendix B. Hearing Transcript. Day 3.	C 416
6/2/2017		Omnibus Motion for Leave. Attachment 1. CPD Complaint Register #272791.	C 429
6/2/2017		Omnibus Motion for Leave. Attachment 2. Pillsbury Complaint (Pages 1-3 of the Complaint are missing).	C 466
6/2/2017		Omnibus Motion for Leave. Attachment 3. Vernon Clay identification as a shooter and alibi as being incarcerated at the time.	C 487
6/2/2017		Omnibus Motion for Leave. Attachment 4. Affidavit of Quina Davis.	C 491
6/2/2017		Omnibus Motion for Leave. Attachment 5. Affidavit of Manuel Stewart.	C 500
6/2/2017		Omnibus Motion for Leave. Attachment 6. Manuel Stewart handwritten statement to Clement.	C 505
6/2/2017		Omnibus Motion for Leave. Attachment 7. Affidavit of Brandi Grant.	C 511
6/15/2017		Criminal Disposition Sheet	C 519
6/19/2017		Report of Disposition denying Motion for Leave to File a Successive Petition for Relief Under the Illinois Post-Conviction Hearing Act	C 522

Date Filed	Witness	Document	Record Begin Page
6/28/2017		Notice of Appeal of order denying leave to file	C 523
7/7/2017		Notice of Notice of Appeal	C 525
7/7/2017		Criminal Disposition Sheet	C 526
7/7/2017		Order allowing Brandon Clark to represent the defendant pro bono and free record on appeal	C 528
		SUPPLEMENTAL RECORD (2d)	
6/2/2017		Omnibus Motion for Leave to File a Successive Petition for Relief Under the Illinois Post-Conviction Hearing Act and Petition for Relief Under That Act.	SUP C 4
6/2/2017		Omnibus Motion for Leave. Appendix A. Complaint Histories.	SUP C 58
6/2/2017		Omnibus Motion for Leave. Appendix B. Hearing Transcript. Day 1.	SUP C 76
6/2/2017		Omnibus Motion for Leave. Appendix B. Hearing Transcript. Day 2.	SUP C 130
6/2/2017		Omnibus Motion for Leave. Appendix B. Hearing Transcript. Day 3.	SUP C 138
6/2/2017		Omnibus Motion for Leave. Attachment 1. CPD Complaint Register #272791.	SUP C 151
6/2/2017		Omnibus Motion for Leave. Attachment 2. Pillsbury Complaint.	SUP C 192
6/2/2017		Omnibus Motion for Leave. Attachment 3. Vernon Clay identification as a shooter and alibi as being incarcerated at the time.	SUP C 216
6/2/2017		Omnibus Motion for Leave. Attachment 4. Affidavit of Quina Davis.	SUP C 220
6/2/2017		Omnibus Motion for Leave. Attachment 5. Affidavit of Manuel Stewart.	SUP C 229
6/2/2017		Omnibus Motion for Leave. Attachment 6. Manuel Stewart handwritten statement to Clement.	SUP C 234
6/2/2017		Omnibus Motion for Leave. Attachment 7. Affidavit of Brandi Grant.	SUP C 238
		SECURED RECORD	
2/13/2004		Adult Probation Department Investigative Report. Investigator P.O. P. Dunaway	SEC C 4
		REPORT OF PROCEEDINGS	
8/3/2001		Compilation of indexes of hearing transcripts	R 4
8/3/2001		First hearing. Plead Not Guilty. Continued to 8/14/2001	R 4, 45
8/14/2001		State's Motion for Discovery. Continued to 9/10/2001	R 49
10/16/2001		Continued to 11/15/2001. Discovery continues	R 53
11/15/2001		Continued to 12/10/2001. Discovery continues	R 57

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Date Filed	Witness	Document	Record Begin Page
12/10/2001		Continued to 11/15/2002. Discovery continues, crime lab and ambulance reports outstanding	R 60
1/15/2002		Continued to 2/8/2002. Discovery continues, labs are still outstanding	R 64
2/8/2002		Firearms report tendered. End of discovery. Continued to 5/16/2002	R 67
5/16/2002		Continued to 6/13/2002	R 72
6/13/2002		Continued to 7/18/2002	R 76
7/18/2002		Continued to 8/20/2002	R 79
8/20/2002		Continued to 9/27/2002	R 82
9/27/2002		Continued to 10/30/2002	R 85
10/30/2002		Continued to 11/15/2002	R 88
11/15/2002		Continued to 12/19/2002	R 91
3/10/2003		Continued to 4/14/2003	R 95
4/14/2003		Continued to 4/29/2003. Defendant's answer due on the same date	R 99
4/29/2003		Continued to 5/13/2003. Defendant's answer due on the same date	R 103
5/13/2003		Jury trial date is set for 7/21/2003.	R 107
7/21/2003		Jury Trial. Day One. Jury Selection.	R 112
7/21/2003		Michael Watson has not been served with a subpoena.	R 121
7/21/2003		Motion in Limine re gang evidence	R 130
7/21/2003		Case summary for voir dire	R 140
7/21/2003		Jury Selection. (Pages Y-40, Y-196-Y-200 are missing)	R 141
7/22/2003		Jury Trial. Day Two.	R 362
7/22/2003		Motion in Limine to preclude Michael Watson from being questioned about his subpoena	R 365
7/22/2003		Opening Statement	R 376
7/22/2003	Jenkins, Robert	Direct Examination	R 384
7/22/2003	Jenkins, Robert	Cross. No re-direct.	R 388
7/22/2003	Ali, Samir	Direct Examination	R 391
7/22/2003	Ali, Samir	Cross. No re-direct.	R 395
7/22/2003	Butler (Grant), Brandy	Direct Examination	R 397
7/22/2003	Butler (Grant), Brandy	Cross.	R 436
7/22/2003	Butler (Grant), Brandy	Re-direct	R 446
7/22/2003	Butler (Grant), Brandy	Re-Cross	R 450
7/22/2003	Clay, Vernon	Direct Examination	R 454
7/22/2003	Clay, Vernon	Cross	R 510
7/22/2003	Clay, Vernon	Re-direct. No re-cross.	R 522
7/22/2003	Mason, Shemika	Direct Examination	R 528
7/22/2003	Mason, Shemika	Cross. No re-direct.	R 554
7/22/2003	Stewart, Manuel	Direct Examination	R 556

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7/22/2003	Jackson	Side bar re Manuel Stewart recanting his testimony	R 600
7/22/2003	Stewart, Manuel	Cross	R 606
7/22/2003	Stewart, Manuel	Re-direct. No re-cross (called back by State on 7/23/2003)	R 609
7/22/2003	Watson, Michael	Direct Examination	R 611
7/22/2003	Watson, Michael	Cross. No re-direct.	R 624
7/22/2003		Move for mistrial based upon introducing polygraph evidence	R 632
7/23/2003		Jury Trial. Day Three.	R 635
7/23/2003		Motion in limine re polygraph testing of Manuel Stewart (pages AA10, AA12 is missing)	R 637
7/23/2003	Stewart, Manuel	Direct Examination. No cross.	R 653
7/23/2003	Det. Howley, Kevin	Direct Examination.	R 655
7/23/2003	Det. Howley, Kevin	Cross. No re-direct.	R 657
7/23/2003	Off. Tovar, Robert	Direct Examination.	R 659
7/23/2003	Off. Tovar, Robert	Cross.	R 686
7/23/2003	Off. Tovar, Robert	Re-direct. No re-cross.	R 687
7/23/2003		Motion for mistrial based on State recalling Manuel Stewart.	R 689
7/23/2003	Jackson	Motion in limine to limit Det. Forberg's testimony [pages AA61-64 are missing]	R 692
7/23/2003	Det. Forberg, Brian	Direct Examination. (page AA67 is missing. Also, at R 743-744, duplicate pages AA1-AA2 inserted. Testimony continues at R 745.)	R 693
7/23/2003	Det. Forberg, Brian	Cross. No re-direct.	R 756
7/23/2003	Det. Clisham, John	Direct Examination.	R 771
7/23/2003	Det. Clisham, John	Cross.	R 789
7/23/2003	Det. Clisham, John	Re-direct.	R 793
7/23/2003	Det. Clisham, John	Re-cross.	R 794
7/23/2003	ASA Daly, Colleeen	Direct Examination. (pages AA185 and AA 187 are missing).	R 795
7/23/2003	ASA Daly, Colleeen	Cross.	R 825
7/23/2003	ASA Daly, Colleeen	Re-direct.	R 833
7/23/2003	ASA Daly, Colleeen	Re-cross.	R 836
7/23/2003	ASA Lanahan, Kathaleen	Direct Examination. (pages AA237, AA 239-AA240, AA245 are missing).	R 837
7/23/2003	ASA Lanahan, Kathaleen	Cross. No re-direct.	R 881
7/24/2003	Cook County Court	Jury Trial. Day Four.	R 894
7/24/2003	Cook County Court	Jury instructions for the record.	R 895
7/24/2003	DeMuth, William	Stipulation re firearms expert and his report.	R 897
7/24/2003	Dr. Segovia, Adrienne	Direct Examination. Medical Examiner.	R 900
7/24/2003	Dr. Segovia, Adrienne	Cross.	R 922
7/24/2003	Dr. Segovia, Adrienne	Re-direct.	R 923
7/24/2003		Motion to admit exhibits.	R 924

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7/24/2003		Motion for directed verdict at end of the defense case.	R 927
7/24/2003		Stipulation re Officer McGlynn.	R 934
7/24/2003		Defendant will not testify.	R 935
7/24/2003		Second motion for directed verdict based on close of all evidence.	R 936
7/24/2003		State exhibits admitted before the jury.	R 937
7/24/2003		Stipulation re Officer McGlynn before the jury. Defense rests.	R 938
7/24/2003		Closing Argument.	R 940
7/24/2003		Closing Argument.	R 953
7/24/2003		Rebuttal	R 970
7/24/2003		Judge's instructions to the jury.	R 993
7/24/2003		Discussion of evidence for the jury back room.	R 1016
7/24/2003		Question from the jury re possibility of a hung jury.	R 1019
7/25/2003		Jury Trial. Day Five.	R 1024
7/25/2003		Verdict. Jury polled.	R 1026
7/25/2003		Jury questions summarized. Trial concluded.	R 1029
8/22/2003		Post trial motions continued to 10/2/2003	R 1036
10/2/2003		Continued to 11/13/2003	R 1039
11/13/2003		Continued to 12/12/2003	R 1042
12/12/2003		Jackson is filing Amended Motion for a New Trial. Continued to 2/13/2004	R 1045
2/6/2004		Continued to 2/17/2004	R 1049
2/17/2004		Amended Motion for a New Trial presented.	R 1056
2/17/2004	Martinez, Gustavo	State witness. Direct examination.	R 1072
2/17/2004	Martinez, Gustavo	Cross.	R 1084
2/17/2004	McShane, Ricky	State witness. Direct examination.	R 1090
2/17/2004	McShane, Ricky	Cross.	R 1093
2/17/2004	McShane, Ricky	Re-direct.	R 1098
2/17/2004	Miles, Holly	State witness. Direct examination.	R 1100
2/17/2004	Miles, Holly	Cross.	R 1102
2/17/2004	Clements, Mary	Defense witness. Direct Examination	R 1105
2/17/2004	Clements, Mary	Cross	R 1113
2/17/2004	Clements, Mary	Re-direct.	R 1120
2/17/2004	McShane, Ricky	Defense witness. Direct Examination. No cross.	R 1121
2/17/2004		Stipulation re Duwan Armfield examination for marks and tattoos.	R 1124
2/17/2004		Continued to 3/2/2004	R 1125
3/2/2004	Armfield, Duan	Defense witness. Direct Examination	R 1129
3/2/2004	Armfield, Duan	Cross.	R 1133
3/2/2004	Armfield, Duan	Re-direct.	R 1145
3/2/2004	Armfield, Duan	Re-cross.	R 1146
3/2/2004		Stipulation re photograph of Ricky McShane	R 1147
3/2/2004		Michael Watson has been released as a witness due to being intoxicated and hostile.	R 1148
3/2/2004	Martinez, Gustavo	State witness. Direct examination.	R 1149

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3/2/2004	Martinez, Gustavo	Cross. No re-direct.	R 1153
3/2/2004		Stipulation re Manuel Stewart's recant and related exhibits.	R 1154
3/2/2004		Argument.	R 1156
3/2/2004		Rebuttal	R 1163
3/2/2004		Rebuttal	R 1195
3/2/2004		Continued to 3/18/2004 for ruling	R 1203
1/28/2004		Continued to 1/28/2003.	R 1205
3/18/2004		Continued to 3/25/2004 for ruling	R 1208
3/25/2004		Ruling denying motion for a new trial.	R 1212
3/25/2004		Sentencing discussions.	R 1215
3/25/2004	Jackson, Kevin	Kevin Jackson addresses the court.	R 1222
3/25/2004		Sentencing. Continued to 4/20/2004 for motion to reconsider.	R 1223
4/20/2004		Continued to 5/5/2004	R 1126
5/5/2004		Raymond Prusak advises court he will file handwritten motion to reconsider	R 1230
5/5/2004		Continued to 5/14/2004	R 1231
5/14/2004		Argument on motion to reconsider filed on 4/20/2004. Motion denied. The mittimus to issue.	R 1234
6/15/2017		Argument on the omnibus motion for leave to file a successive petition. Motion denied.	R 1242

No. 124818

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Illinois Appellate Court,
	)	First District
v.	)	No. 1-17-1773
	)	
KEVIN JACKSON,	)	There Heard on Appeal from the
	)	Circuit Court of Cook County
Defendant-Appellant.	)	No. 01-CR-17492
	)	
	)	Honorable Evelyn B. Clay (Ret.),
	)	Presiding
	)	

NOTICE OF FILING OF
BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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PLEASE TAKE NOTICE that on this 30th day of October, 2019, I caused to be electronically filed with the Clerk of the Supreme Court of the State of Illinois, the attached ***Brief and Argument for Defendant-Appellant***. Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned hereby certifies that the statements set forth in this instrument are true and correct.

Date: October 30, 2019

/s/ *Brandon R. Clark*

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2019, true and correct copies of Defendant-Appellant's ***Brief and Argument for Defendant-Appellant*** was sent via electronic mail to the following counsel of record:

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Under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned hereby certifies that the statements set forth in this instrument are true and correct.

Date: October 30, 2019

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