No. 126682

IN THE
SUPREME COURT OF ILLINOIS

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

BRIEF OF RESPONDENT-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Defendant appeals from the judgment of the Illinois Appellate Court, First District, affirming the circuit court's judgment denying leave to file his second successive postconviction petition.

A question is raised on the sufficiency of the pleadings, namely, whether defendant sufficiently established cause and prejudice to permit the filing of his petition.

ISSUES PRESENTED

1. Whether defendant failed to make a prima facie showing of "cause" that would permit him to file his second successive postconviction petition where he was aware of the factual and legal basis for his claim before trial, before direct appeal, and before his two prior postconviction petitions.

2. Whether defendant failed to make a prima facie showing of "prejudice" that would permit him to file his second successive postconviction petition where his allegations are affirmatively rebutted by the trial record, including defendant's testimony at trial.

STATEMENT OF FACTS

Investigation and Statements

On January 22, 1999, Veronica Riley was fatally shot near the corner of 51st and Racine in Chicago. TC9-10 (indictment).[1] The next day,

[1] Consistent with defendant's citation convention, "TC__" refers to the common law record of the trial proceedings; "TR__" refers to the report of proceedings and the supplemental report of proceedings (labeled as volume

eyewitness Tara Coleman went to Area 1 headquarters, where she identified defendant as the shooter, first from a photo array and later from a show-up. TRE8-10. Coleman also gave a handwritten statement to Assistant State's Attorney (ASA) Clarissa Palermo and Detective James O'Brien, in which she stated that while she was at the barbershop near that intersection, defendant came in, and they exchanged greetings before defendant went to use the pay phone. TC31. About five minutes later, three "guys" entered the barbershop, defendant ended his call, and the men argued. TC31-32. After the three men left, defendant got into the front passenger seat of a black, two-door Pontiac that was parked outside. TC32. Minutes later, Coleman saw defendant with his hands out the car window, firing a gun in the direction of Racine. *Id.* Coleman said that she was treated well by police and the ASA who took her statement, she was offered food and drink and permitted to use the restroom, and no threats or promises were made in exchange for her statement, which was voluntarily given. TC33. Coleman later testified in conformity with this statement before the grand jury. TC47-55; TRE52-61.

Following Coleman's initial identification, defendant was arrested and brought to Area 1, where he gave a handwritten statement to ASA Palermo

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A011); citations to defendant's second successive postconviction proceedings appear as "C__" and "R__"; citations to defendant's initial and successive postconviction proceedings appear as "PR__," "SuppPR__," "PC__," and "SuppPC__."

and Detective John Murray implicating himself in Riley's murder. TRE12, E107. Defendant stated that:

- On January 22, 1999, he went to the barbershop; before he went in, he saw Spider [Marcus Carpenter] driving a black, two-door car and "waved him over."

- While Carpenter was parking the car, defendant went into the barbershop, where he spoke to Tara (whom he knew from school) and then used the phone to call Patricia [Barber].

- Carpenter entered the barbershop, and defendant talked to him; two men named Rasou and Banks then entered the barbershop, and Rasou began talking with defendant about a shooting that had taken place earlier that day next to the barbershop.

- They began arguing, and defendant ended his phone call and "put on his leather gloves, in case he had to hit Rasou." Rasou and Banks then left the barbershop.

- About one minute later, Carpenter left the barbershop and got in his car; defendant followed and got into the passenger seat.

- Rasou was standing in front of Joe's Grill, which is west of the barbershop, and Banks was standing further west, by the corner store.

- Carpenter handed defendant his revolver, which defendant assumed was loaded.

- Defendant rolled down his window, Carpenter started driving, and defendant stuck the gun out the window and fired three shots at Rasou.

- As they continued to travel west, defendant fired two shots at Banks.

- Defendant did not see any weapons on Rasou or Banks.

- When defendant shot at Banks, three women were standing within three feet of Banks.

- Defendant returned the gun to Carpenter, who let defendant off at the corner of 50th and May, and defendant ran to Patricia's house. Later,

defendant called his mom and told her that he was involved in a shooting.

- Defendant went with detectives and ASA Palermo to a parking lot at Area 1, where he identified the black car from which he fired the shots.

- Defendant was treated well by police and the ASA, he was permitted food, drink, and use of the restroom, and no threats or promises were made in exchange for his voluntary statement.

- ASA Palermo reviewed the statement with defendant, and he was permitted to make changes or corrections.

TRE107-12.

Defendant was charged with Riley's murder. TC8-14 (indictment).

Suppression Hearing

In May 1999, defendant's attorney filed a motion to suppress his statement, alleging that (1) he was not advised of his *Miranda* rights; (2) Detectives O'Brien and Murray "slapped, yelled at, threatened and cut his finger nails," rendering "any statement" involuntary; and (3) the statement was obtained after defendant had invoked his rights to counsel and to remain silent. TC86-87. However, defendant presented no evidence in support of his allegations at the ensuing suppression hearing.

The People presented testimony from Detective Murray, TRA4, who testified that around 9:30 p.m. on January 23, 1999, he, Detective O'Brien, and two gang specialists arrested defendant, transported him to Area 1, and placed him in an interview room, where defendant's handcuffs were removed, TRA5-A7. Prior to Murray's first interview with defendant, for which Detective John Halloran was present, TRA25, Murray read defendant the

Miranda rights, TRA7-A8, and defendant agreed to speak with the detectives, TRA9-A11. After the detectives spoke with defendant for about 20-30 minutes, and based on defendant's statements, Murray left to speak with Patricia Barber. TRA11.

Murray returned to Area 1 around 11:15 or 11:30 p.m. and conducted a second interview with defendant, this time with Detective O'Brien (and not Halloran) present. TRA12-13. Defendant gave a statement implicating himself in Riley's murder, and Murray contacted the State's Attorney's Felony Review Unit. TRA13-14. ASA Palermo responded, and she and Murray spoke with defendant. TRA14. Palermo read defendant the *Miranda* rights, and defendant agreed to provide a handwritten statement. TRA16-17. ASA Palermo took down defendant's seven-page statement, which she reviewed with defendant before she, defendant, and Murray signed it. TRA18-19, A31. On page six of the statement, defendant stated that he was "treated well by the police and [ASA] Clarissa Palermo," no threats or promises were made to him in exchange for his statement, and he gave his statement voluntarily. TRA21.

Murray testified that he was present at each interview with defendant; neither he nor anyone in his presence slapped, yelled at, or threatened defendant; no one cut defendant's fingernails while he was in custody, TRA22-23; and defendant never asked for an attorney, TRA35.

Defendant did not present any testimony or evidence, both parties waived argument, TRA35, and the circuit court denied defendant's motion to suppress, TRA36-38.

Jury Trial

In opening statement, the People explained that they expected the evidence to show that, after arguing in the barbershop with Rasou and Banks, defendant got into a car driven by Carpenter and fired at the two men near the corner of 51st and Racine, killing Riley, who was standing nearby. TR12-13. Defense counsel stated that the evidence would show that defendant had acted in self-defense because Rasou and Banks fired first. TR16-21.

Hazem Missat testified that he was waiting on customers at Marvin's Food and Liquor store, located at the corner of 51st and Racine, at approximately 6:00 p.m. on January 22, 1999, when he heard "about three" gunshots, and he and the customers laid down on the floor. TR27-28. When the shooting stopped, everyone stood up, except for a woman later identified as Riley. TR29. An employee called 911, and first responders arrived shortly thereafter. TR29-30.

Coleman testified consistently with the first part of her handwritten statement "about what [she] saw happened [*sic*] in the barber shop," TR129, but denied the remainder, TR87-95. After the men left the barbershop, she

testified, she heard "about five" gunshots, but claimed not to recall anything further about the shooting, TR67-68.

Coleman also denied her grand jury testimony, claiming that the "man" who brought her before the grand jury had not asked the questions that appeared in the transcript of that proceeding, nor had she provided those answers. TR115-19; TR123-27. And contrary to both her written statement and grand jury testimony that no one had threatened her, Coleman testified at trial that "the polices" "stuck [her] with pens." TR128.

Detective Halloran testified that he had been a violent crimes detective for ten years, eight of them at Area 1. TRE68-69. On January 23, 1999, around 10:00 p.m., he and Detective Murray spoke with defendant in an interview room at Area 1; defendant was not handcuffed. TRE69-71. Murray read defendant the *Miranda* rights, and defendant agreed to speak with the detectives. TRE71-72. Defendant denied any knowledge of, or participation in, Riley's murder and claimed to have been at his girlfriend Patricia's house. TRE73. After that interview, which lasted 20 or 30 minutes, Halloran, Murray, and a third officer went to Patricia's house, but she did not provide an alibi for defendant. TRE73-74, 77. Halloran returned to Area 1 and spoke with Detective O'Brien but had no further conversations with defendant. TRE74-75. At approximately 2:00 a.m. on January 24, 1999, Halloran arrested Carpenter and saw a two-door Pontiac Sunbird parked outside his home. TRE75-76.

On cross-examination, Halloran agreed that he had also talked to defendant about a different shooting that had occurred earlier that day, and that defendant said his brother was present for that shooting. TRE79.

Detective O'Brien testified that he had been a violent crimes detective for ten years. TRE3. On January 22, 1999, he was assigned to Area 1 with his partner, Murray. TRE4. At around 6:00 p.m., they responded to a call about a woman shot at 51st and Racine. TRE5. O'Brien learned that she had been shot on the street and fled into Marvin's Food and Liquor, where she collapsed just inside the door. TRE6. The next day, when O'Brien arrived to work the 4:30 p.m. to 1:00 a.m. shift, he learned that Coleman had been brought in. TRE8-9. Coleman identified defendant as the shooter by name and from a photo array. TRE8-10; TRE26-27.

At approximately 9:30 p.m., O'Brien and other officers arrested defendant in front of his girlfriend's home and transported him to Area 1. TRE11-12. O'Brien then conducted a show-up, in which he placed defendant in the line-up room (alone) and had Coleman view him through the one-way mirror. TRE12-14. Coleman identified defendant as the shooter, and defendant was placed in an interview room. TRE14.

Detectives O'Brien and Murray conducted a second interview with defendant around 11:15 or 11:30 that evening. TRE16-17. Defendant was not handcuffed. *Id.* Murray reminded defendant that his *Miranda* rights remained in effect, and defendant stated that he understood. TRE18.

O'Brien told defendant that Barber had not confirmed his alibi, and that Coleman had identified him as the shooter. TRE19. Defendant then implicated himself in Riley's murder. *Id.*

The detectives then contacted Felony Review, ASA Palermo responded, and O'Brien spoke with ASA Palermo about the investigation. TRE21. O'Brien was present for ASA Palermo's interview with Coleman, which occurred at around 12:15 a.m. TRE21. After Coleman related the substance of her earlier statement implicating defendant, she agreed to have her account reduced to writing, and O'Brien was present when ASA Palermo took Coleman's handwritten statement. TRE22-23. ASA Palermo then reviewed it with Coleman and had Coleman read the first couple of paragraphs aloud. *Id*. The entire statement was then read aloud to Coleman, and she signed each page. TRE23-24.

O'Brien learned that a black Pontiac Sunbird matching the description of the car used in the shooting was parked outside Carpenter's home and, after Coleman gave her statement, he asked her to go there with him to view the car. TRE24-25. Coleman confirmed that it was the car from which defendant had fired. TRE25.

O'Brien identified Coleman's statement, TRE28, and testified that he, Coleman, and the ASA initialed corrections during review of the statement, TRE30. O'Brien testified that neither he nor any other officer threatened Coleman or poked her with pens or pins. TRE32. Coleman was cooperative

but understandably concerned about the repercussions of speaking with police about the murder. TRE32.

ASA Ignatius Villasenor testified that he issued a grand jury subpoena to Coleman. TRE46. Coleman came to his office, reviewed her prior statement, and verified its accuracy and her signature. TRE46-49. Coleman agreed to testify before the grand jury. TRE50. After being sworn, she answered questions about Riley's murder, and the proceedings were transcribed by a court reporter. TRE51. Coleman's grand jury testimony was then published to the jury. TRE52-61.

ASA Palermo testified that she went to Area 1 around midnight on January 23, 1999. TRE84-85. ASA Palermo and O'Brien spoke with Coleman, who provided a handwritten statement. TRE93-94. Coleman stated that police had treated her fine and that her statement was voluntary. TRE87-88. Coleman's statement was then published to the jury. TRE97-100.

ASA Palermo further testified that, after taking Coleman's statement, she took defendant's statement in Murray's presence. TRE102-03. Palermo read defendant the *Miranda* warnings, and he stated that he understood them. TRE91-92. Palermo had Murray leave the room, and defendant stated that he had been treated fine by police and that his statement was voluntary. TRE90-91. Palermo then had defendant read part of his statement before she read the remainder aloud to him. TRE104. Defendant, Palermo, and Murray initialed corrections to the statement and signed each page.

TRE105-07. Defendant's statement was then published to the jury. TRE107-12.

After the People rested, TRE134, and the court denied defendant's motion for a directed verdict, TRE133, Nikki Goodman testified for the defense that she and Virginia Taylor saw defendant and Rasou arguing outside the barbershop. TRE137. Taylor asked Carpenter to take them to get Chinese food. TRE139. After defendant and Carpenter drove away, Goodman and Taylor walked back toward Marvin's, and Rasou followed. *Id.* Rasou was drunk and said that he had a "50 shot" and was "waiting on anybody to come back." TRE140. No more than five minutes later, defendant returned in a different car and parked across the street. TRE141, 158. Shortly thereafter, Goodman heard gunshots. TRE142. According to Goodman, Rasou was "standing in the middle of the intersection firing like crazy." TRE143. Defendant then "shot a little" before driving away; as he did so, Rasou continued to shoot. *Id.*

On cross-examination, Goodman conceded that she was not sure who had fired first. TRE148, 153. She was a friend of Carpenter's, TRE148-49, and she had given a court-reported statement to Carpenter's lawyer in which she stated that defendant fired first, and Rasou had returned fire, C70; TRE150-51; *see* TRE270-71. But she claimed that she was nervous when she gave that statement, and she "really didn't see who shot first." TRE151, 176. Goodman agreed that Carpenter was driving his girlfriend's black, two-door

Pontiac that evening, TRE161, and that she and defendant had been friends for about five or six years and had even briefly dated, TRE170, 185.

Defendant's testimony at trial

Defendant testified that he had prior convictions for possession of a controlled substance, delivery of a controlled substance, and unlawful use of a weapon. TRE191-92. On January 22, 1999, as he was entering the barbershop, he flagged down Carpenter, who made a U-turn. TRE192. Inside the barbershop, defendant greeted Coleman and then used the phone. TRE193. Carpenter then came in, and defendant spoke with him. *Id*. Rasou and Banks entered, and Rasou began asking defendant about an earlier shooting that defendant's brother, Michael Blalock, had been involved in. TRE193-94. Defendant told Rasou, "as long as nobody don't do nothing to my family, I've got nothing to do with it." TRE194. Rasou responded, "I'm going to kill you and that bitch ass nigger." TRE195. Defendant then put his hands in his pockets to get his leather gloves, "stepped in his face," and argued with Rasou. *Id.* Carpenter told defendant that Banks might have a gun, so defendant "stepped back off him." *Id.* Banks and Rasou left the barbershop, and defendant and Carpenter followed "a second or two later." *Id*.

After defendant spoke with Goodman and Taylor and agreed to take them to a Chinese restaurant, Carpenter drove defendant to his car, which was a bright red, two-door 1985 Cadillac, and defendant parked across the

street from Marvin's. TRE196-97, TR217. Defendant saw Rasou approaching, and "felt a vibe that something was going to happen," so he "started to pull off." TRE197-98. Rasou fired four to seven shots at him; defendant then fired two shots at Rasou before driving off. TRE198.

Defendant further testified that, the next day, January 23, 1999, an unmarked police car pulled up in front of his former girlfriend's house, and he went with three detectives to Area 1. TRE199-200. After he was placed in an interview room, officers removed the handcuffs. TRE233. The officers read him the *Miranda* rights, and he agreed to speak with them. TRE234. During defendant's first interview, he "denied ever being around the shooting or involved with the shooting" and claimed to have been at Patricia's house. TRE235-36. After Patricia denied his alibi, TRE237, defendant then told "the whole story they was feeling comfortable with, because every time [he] tried to say what [he] just told the jury," ASA Palermo "was saying that she didn't believe that." TRE238. So, defendant "told them the story [he] signed [his] statement to, and that's the one they believed." TRE238.

Defendant identified his handwritten statement and testified that he, Murray, and the ASA went into a room, where he told the ASA all of the information contained in the statement. TRE241. She reviewed it with him, and he signed it. *Id.* Defendant claimed that he "was trying to tell" ASA Palermo that Rasou fired first, but "she wasn't buying it," "she wasn't going for it," "she said she wouldn't put it in [the statement]," and "she said [he]

was lying," so he "did not try to pursue the issue any more." TRE242. Defendant did not bring it up again, even when they reviewed the statement. *Id.* Neither the detective nor the ASA told defendant to say that Carpenter gave him the gun he used to commit the shooting; it was a story that he made up. TRE244, 245. The only person to whom he ever tried to tell the same account that he told the jury was ASA Palermo, and she cut him off and told him he was lying. TRE245. Defendant testified that ASA Palermo did not tell him what to say, and when asked to confirm that, "no one ever threatened [him] to say anything in the statement, right?" defendant responded, "No, sir." *Id.*

In rebuttal, ASA Palermo testified that she read defendant the *Miranda* rights the first time she spoke with him, he did not tell her that a guy was out there shooting at him, she never told him that he was lying, defendant never mentioned that anyone other than himself had a gun, and she did not tell defendant that Carpenter (who had not yet been arrested) was telling a different story. TRE264-65.

The People then introduced certified copies of defendant's five prior felony convictions, which included convictions for possession of a controlled substance and for possession of a controlled substance with intent to deliver, two convictions for delivery of a controlled substance, and a recent conviction for unlawful use of a weapon by a felon. TRE269-70.

Following deliberations, the jury found defendant guilty of first degree murder, TRF93, and the court sentenced him to 40 years in prison, TRG22.

Direct Appeal, Initial Postconviction Petition, and First Successive Petition

On direct appeal, the appellate court rejected defendant's sole argument — that the circuit court abused its discretion in declining to instruct the jury on provocation — and affirmed his conviction. *People v. Blalock*, No. 1-00-2769 (2002) (unpublished order under Illinois Supreme Court Rule 23) (SuppPC5-9).

In July 2003, defendant, through retained counsel, filed a postconviction petition alleging that (1) he was actually innocent based on an affidavit of Andre Cross, (2) the People withheld Cross's statement, and (3) trial counsel was ineffective at sentencing. PC34 (petition). On September 2, 2003, the circuit court summarily dismissed the petition, PC47 (written order), and defendant did not appeal.

In July 2009, defendant filed a pro se successive postconviction petition alleging that (1) postconviction counsel performed unreasonably, and (2) the circuit court erred in denying the actual innocence claim raised in the first petition. PC19-32. The court dismissed the successive petition on the People's motion. *Id.* at P12. The appellate court affirmed, rejecting defendant's sole argument: that he was denied a constitutional right to an appeal of his first postconviction petition. *People v. Blalock*, 2014 IL App (1st) 102685-U, ¶ 31.

Second successive petition

On August 15, 2016, defendant filed a pro se motion for leave to file the successive postconviction petition at issue in this appeal. C19. As relevant here, defendant alleged that his custodial statement resulted from verbal and physical abuse by Detectives Halloran and O'Brien, and that newly discovered evidence of a pattern and practice of misconduct by those officers "entitles [him] to post-conviction relief and removes all procedural bars to litigate or relitigate his claim of involuntary confession." C27-28.

Defendant alleged that Halloran "split his pinkie finger nail, yelled, would not let him leave, hit, slapped, kicked him and bent his fingers back, put his gun to his head, beat[,] and harassed him," and that "O'Brien told [him] what to say to Murray and the State's Attorney." C36. Defendant's unsworn "affidavit" submitted in support of his motion added allegations that O'Brien had struck him in the face with a clipboard, C128, and that Halloran choked him until he passed out and urinated on himself, C129. The unsworn affidavit further alleged that, before trial, defendant's attorney met with him in the jail and defendant told his attorney that "they" slapped and beat him, cut his fingernail, and bent his fingers back, and his attorney filed a motion to suppress, but the attorney "withdrew" defendant's testimony upon concluding that they would not be able to "establish abuse." C131.

In October 2016, the circuit court denied leave to file the second successive petition. C216. The court found that although defendant had

only recently become aware of allegations pertaining to the treatment of other detainees by Detectives Halloran and O'Brien, defendant's supporting documents detailing that information "do not constitute the basis for the claim itself"; rather, the factual basis for his claim of physical coercion was available when defendant filed his initial postconviction petition in 2003, and he could have raised it then and supported it with existing evidence obtainable through due diligence. C209. Accordingly, defendant failed to establish "cause" that would permit him to file the second successive petition. *Id.* The court also held that defendant could not show prejudice because his claim of physical coercion was rebutted by his trial testimony that he fabricated the content of his written statement because ASA Palermo did not believe his initial account. C212. The court reasoned that, "[n]ot only was the content fabricated on petitioner's own volition, but he also explicitly testified that he was not threatened by anyone to make the statement or recite the version of events therein contained." *Id.*

The appellate court affirmed. It held that defendant failed to show cause because he was "obviously aware" of the factual basis of his physical coercion claim and provided no explanation why he did not raise, or could not have raised, that claim in any of his prior proceedings. *Blalock*, 2020 IL App (1st) 170295, ¶ 27. Indeed, "much of the evidence he now uses to support his claim was available when he filed his first or second postconviction petition." *Id.* ¶ 29.

Moreover, the appellate court held, defendant could not show prejudice because he "explicitly testified at trial that he was not abused for the purposes of obtaining his statement and that no one threatened him to make him say any part of his statement." *Id.* ¶ 31. Defendant testified that his statement was a fabrication, "but he made clear that the reason for the fabrication was to appease the investigators and, according to defendant's own trial testimony, not because he was abused." *Id.* ¶ 32. Thus, defendant's current claim was "rebutted by his own admissions in the record, which defendant made under oath." *Id.*

ARGUMENT

I. Governing Principles and Standard of Review

The Post-Conviction Hearing Act "contemplates the filing of a single petition." *People v. Coleman*, 2013 IL 113307, ¶ 81. Thus, the Act expressly provides that "[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived," 725 ILCS 5/122-3, and a petitioner may file a successive petition only with leave of court, 725 ILCS 5/122-1(f); *People v. Edwards*, 2012 IL 111711, ¶ 24. Successive petitions are disfavored because "[t]he successive filing of postconviction petitions plagues [the] finality" of criminal convictions, and "'[w]ithout finality, the criminal law is deprived of much of its deterrent effect.'" *People v. Flores*, 153 Ill. 2d 264, 274 (1992) (quoting *Teague v. Lane*, 489 U.S. 288, 309 (1989)).

To obtain leave to file a successive petition, "the court must determine [that] defendant has made a prima facie showing of cause and prejudice." *People v. Bailey*, 2017 IL 121450, ¶ 24. Section 122-1(f) provides that "a defendant shows 'cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings'" and shows "'prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.'" *People v. Lusby*, 2020 IL 124046, ¶ 27 (quoting 725 ILCS 5/122-1(f)); *see People v. Pitsonbarger*, 205 Ill. 2d 444, 462 (2002) (adopting cause-and-prejudice test). This Court reviews de novo the judgment denying leave to file a successive petition. *Lusby*, 2020 IL 124046, ¶ 27.

II. Defendant Did Not Make a Prima Facie Showing of Cause for His Failure to Raise His Claim in His Prior Postconviction Petitions.

Putting aside that defendant's allegations of physical coercion are rebutted by his own trial testimony, *see* Part III, *infra*, defendant made no prima facie showing of "cause" because he was aware of his claim's factual and legal basis before trial and identified no objective factor that impeded his ability to raise it during his initial postconviction proceedings in 2003 (or his first successive petition in 2009).

With roots in federal habeas corpus jurisprudence, section 122-1(f)'s cause-and-prejudice test requires that a petitioner undertake reasonable and

diligent investigation of his claims. In 1992, this Court in *Flores* noted that the United States Supreme Court had, in *McCleskey v. Zant*, adopted a cause-and-prejudice test applicable to successive habeas corpus petitions that was "similar to, and accomplishes no more than, our fundamental fairness concept," which governed the filing of successive postconviction petitions. *Flores*, 153 Ill. 2d at 278-79 (citing *McCleskey*, 499 U.S. 467 (1991)). In 2002, this Court "clarif[ied]" that "the cause-and-prejudice test is the analytical tool that is to be used to determine whether fundamental fairness requires that an exception be made to section 122-3" — which provides that any claim not raised in the original or an amended petition is waived, *see* 725 ILCS 5/122-3 — "so that a claim raised in a successive petition may be considered on its merits." *Pitsonbarger*, 205 Ill. 2d at 459. And "following *Pitsonbarger*, the General Assembly added section 122-1(f) to the Act, which codifies [this Court's] cause-and-prejudice case law." *People v. Davis*, 2014 IL 115595, ¶ 14.

McCleskey identified three types of "objective factors" that constitute cause, which this Court has adopted: (1) "interference by officials that makes compliance. . . impractical"; (2) constitutionally ineffective assistance of counsel; and (3) "a showing that the factual or legal basis for a claim was not reasonably available." 499 U.S. at 493; *see also Pitsonbarger*, 205 Ill. 2d at 460 (noting that the United States Supreme Court, "whose lead we followed in adopting the cause-and-prejudice test" had recently observed that "'a

showing that the factual or legal basis for a claim was not reasonably available to counsel . . . would constitute cause under this standard'") (quoting *Strickler v. Greene*, 527 U.S. 263, 293 n.24 (1999)).

In the circuit court, defendant cited *Pitsonbarger* and *McCleskey* for the proposition that a defendant shows cause when he shows that the factual or legal basis of the claim was not reasonably available. C29-30 (pro se second successive petition, citing *Pitsonbarger*, 205 Ill. 2d at 460, and *McCleskey*, 499 U.S. at 493-94). But *McCleskey* itself illustrates why defendant cannot show cause here. McCleskey argued, as cause for his failure to raise a *Massiah* claim[2] in his first petition, that the police had disclosed a piece of supporting evidence (a document discussing his inculpatory statements) only a month before he filed his successive petition. *McCleskey*, 499 U.S. at 474. The Supreme Court rejected that argument, explaining that the fact that McCleskey "did not possess or could not reasonably have obtained certain evidence fails to establish cause if other known or discoverable evidence could have supported the claim in any event." *Id.* at 497. "The question is whether petitioner possessed, or by reasonable means could have obtained, a sufficient basis to allege a claim in the first petition." *Id.* at 498. The "cause" requirement, the Court explained, "is based

[2] *Massiah v. United States*, 377 U.S. 201, 206 (1964), held that the petitioner was denied his Sixth Amendment rights "when there was used against him at his trial evidence of his own incriminating words, which federal agents had deliberately elicited from him after he had been indicted and in the absence of his counsel."

on the principle that petitioner must conduct a reasonable and diligent investigation aimed at including all relevant claims and grounds for relief in the first federal habeas petition," and "[i]f what petitioner knows or could discover upon reasonable investigation supports a claim for relief . . . , what he does not know is irrelevant" and "[o]mission of the claim will not be excused merely because evidence discovered later might also have supported or strengthened the claim." *Id.*

McCleskey's reasoning dictates the same outcome in this case. The appellate court below noted that section 122-1(f) of the Post-Conviction Hearing Act "discusses not when the documentation to support a claim becomes available, but whether the claim itself can be made," *Blalock*, 2020 IL App (1st) 170295, ¶ 26, and correctly concluded that defendant "could have made the claim of a coerced confession at any time — he was obviously aware of the facts that might give rise to such a claim," and "[n]o objective factors impeded defendant's ability to raise the claim of a coerced confession in his direct appeal, or in his first or second postconviction petition," *id.* Therefore, defendant did not make a prima facie showing of cause to allow the filing of a successive postconviction petition. *Id.* ¶ 34.

Indeed, the record confirms that defendant was aware of the factual and legal basis for his claim in 1999. Defendant's 1999 pretrial motion to suppress alleged that O'Brien and Murray "slapped, yelled at, threatened and cut his finger nails," rendering "any statement" involuntary. TC86. And

although defendant did not raise any allegations regarding Halloran at that time, *see* C26, he would have known of them. Because defendant was aware of the factual and legal basis for his current claim long before he filed his second successive postconviction petition, and no external factor prevented him from raising it in his initial petition (or his first successive petition), he cannot show cause. *See, e.g., People v. Guerrero*, 2012 IL 112020, ¶ 18 (where petitioner learned before his initial postconviction petition that he would have to serve an MSR term, he could not establish cause for his failure to raise his MSR admonishment claim in the first petition); *People v. Williams*, 394 Ill. App. 3d 236, 245-46 (1st Dist. 2009) (lack of supporting documentation did not prevent petitioner from raising claim in initial postconviction petition; Act requires petitioner to attach supporting documentation *or* explain why it is not attached).

Contrary to defendant's assertion, neither the text of the Act nor *People v. Wrice*, 2012 IL 111860, establishes that "a police abuse claim satisfies the 'cause' test when it is corroborated by evidence that was not reasonably available to the defendant during the initial post-conviction proceedings." Def. Br. 18 (citing 725 ILCS 5/122-1(f), and *Wrice*, 2012 IL 111860, ¶¶ 40-43, 49). As explained above, section 122-1(f) codified the federal cause-and-prejudice test. Under that test, because defendant was aware of the factual and legal basis for his claim long before he filed his two prior petitions, and because no external factor prevented him from raising it,

he cannot show cause. *Wrice* merely noted that the People conceded the "cause" prong in that case and challenged only the appellate court's ruling that use of a coerced confession as substantive evidence of guilt is never harmless error; 2012 IL 111860, ¶ 49; it did not hold that new evidence can be used to demonstrate cause where defendant had been aware of the factual and legal basis for his claim in time to include it in a prior petition.

Similarly meritless is defendant's contention that section 112-1(f) should be read together with section 122-2 (providing that a "petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached") to excuse waiting 16 years, until his second successive petition, to bring his present claim because he purportedly lacked corroborating pattern and practice evidence at the time of his initial petition. Def. Br. 20. Tellingly, defendant quotes only the first portion of section 122-2 and omits the remainder, which permits a defendant instead to explain why such evidence is not attached. *See Williams*, 394 Ill. App. 3d at 245-46 (lack of supporting documentation did not prevent defendant from raising claims in initial postconviction petition because under section 122-2, defendant could have explained that counsel had failed to supply supporting documentation). Indeed, defendant's position would justify raising any claim in a successive petition whenever new supporting evidence comes to light, and the United States Supreme Court

has explicitly rejected that argument when interpreting the federal provision analogous to section 122-1(f). *McCleskey*, 499 U.S. at 497.

Nor does this established construction of section 122-1(f) frustrate the purpose of the Act, for, contrary to defendant's contention, it in no way prevents defendants from "'asserting that their convictions were the result of a substantial denial of their constitutional rights.'" Def. Br. 21 (quoting *People v. Hommerson*, 2014 IL 115638, ¶ 12). Rather, section 122-1(f) merely requires that a defendant bring his claim as soon as he is aware, with the exercise of reasonable diligence, of its factual and legal basis.

Defendant's assertion that "the factual basis of police torture claims includes evidence that the interrogating officers also abused *other persons*, to show that the officers were engaged in a pattern and practice of misconduct similar to the defendant's allegations," Def. Br. 22 (emphasis in original), erroneously conflates the factual basis of a claim with proof of a claim. The factual basis of defendant's coerced-confession claim is his purported abuse by Halloran and O'Brien. Neither of the cases on which defendant relies — *People v. Jackson*, 2021 IL 124818, and *People v. Patterson*, 192 Ill. 2d 93 (2000) — held that pattern and practice evidence constituted the factual basis of a coercion claim for purposes of establishing cause to file a successive petition under section 122-1(f). These cases merely considered how to determine when evidence that the interrogating officers abused other persons is relevant and thus admissible in the complaining defendant's case:

"whether new evidence of police misconduct in other cases establishes a pattern and practice of certain behavior" (i.e., constitutes proof a coerced-confession claim) will depend on "whether there is sufficient similarity between the misconduct at issue in the present case and the misconduct shown in other cases." *Jackson*, 2021 IL 124818, ¶ 34 (citing *Patterson*, 192 Ill. 2d at 145). These cases have no bearing on the question whether defendant can establish cause to file a successive petition.

For similar reasons, defendant's argument that police concealment of pattern and practice evidence "makes it unlikely" that a defendant can present a coercion claim that is corroborated by such evidence, Def. Br. 21-24, is not material to the question before this Court. As explained, pattern and practice evidence is not part of the factual basis for a coercion claim, and its absence does not prevent a defendant from bringing his claim, as demonstrated by defendant's own cited cases, including *Patterson*, 192 Ill. 2d 93 (cited at Def. Br. 23). Patterson alleged in a pretrial motion that Area 2 officers "struck him, attempted to suffocate him, and threatened him with a gun," *id.* at 104, and he renewed this claim on direct appeal, *id.* at 139. Plainly, the absence of pattern and practice evidence (which Patterson did not identify until later, during postconviction proceedings, *id.*) did not prevent him from presenting his claim on direct appeal, nor would it prevent anyone else from doing so.

As *Patterson* demonstrates, if a defendant is aware of the factual basis for his claim, he must bring it on direct appeal (if it is supported by sufficient record evidence) or in an initial postconviction petition (if it is not). If that petition is unsuccessful, and he later discovers new evidence that is "of such conclusive character that it will probably change the result upon retrial," and that "could not have been discovered prior to trial by the exercise of due diligence," then he may relitigate his claim in a successive petition. *Jackson*, 2021 IL 123818, ¶¶ 31-39. But he may not raise for the first time in a successive postconviction a claim he has known about for over 16 years. *See People v. Terry*, 2016 IL App (1st) 140555, ¶¶ 33-35 (defendant could not show cause for his failure to raise his coerced confession claim because he knew "all of the facts necessary to raise this claim prior to the filing of his initial petition" and petitioner's additional evidence — the 2006 Report of the Special State's Attorney — "does not explain why defendant could not have raised this specific claim in his first postconviction proceeding"); *Williams*, 394 Ill. App. 3d at 246 (defendant could not show cause for failure to raise claims in initial petition where he was "aware of these claims, if not all of the evidence that could be used to support them"). In other words, if a defendant raises a claim at the first opportunity and then becomes aware of new, material evidence, then he may relitigate the claim in a successive petition, but new evidence does not excuse the failure to raise a claim of which defendant was aware in a prior pleading.

To be sure, the First District has sometimes conflated these standards in cases alleging physical coercion by police. The First District recently applied section 122-1(f), rather than the rule set forth by this Court in *Jackson* and *Patterson*, to permit a defendant to file a successive petition "raising a claim he *did* raise in an earlier petition, if he has since obtained new evidence to support that claim and can demonstrate cause for the failure to discover and present that new evidence in the earlier proceeding." *People v. Brandon*, 2021 IL App (1st) 172411, ¶ 42 (emphasis in original) (citing *People v. Wrice*, 406 Ill. App. 3d 43, 52 (1st Dist. 2010)); *see also People v. Jackson*, 2018 IL App (1st) 171773, and *People v. Almodovar*, 2013 IL App (1st) 101476 (cited at Def. Br. 26). But by its own terms, section 122-1(f) has no application to a defendant who *did* raise the claim in a prior petition. *See* 725 ILCS 5/122-1(f) (requiring a defendant seeking to file a successive postconviction petition to "demonstrate[ ] cause for his or her *failure to bring the claim* in his or her initial post-conviction petition") (emphasis added)). Accordingly, to the extent that the defendants in these cases were entitled to file a successive postconviction petition, that was pursuant to this Court's decisions *Jackson* and *Patterson* and not under section 122-1(f).

And even if these appellate court cases correctly invoked section 122-1(f) rather than *Jackson* and *Patterson*, that would not help defendant. In contrast to this line of cases, in which defendants presented new evidence in support of claims that they had already raised in a prior petition, defendant

did *not* raise his claim in a prior petition. As the appellate court noted, defendant "is not arguing that the now-available evidence would have corroborated the claims he made in his original petition; he is instead arguing that he would have made different claims." *Blalock*, 2020 IL App (1st) 170295, ¶ 27.

Other cases, in which the defendant had not raised the claim in a prior petition and the First District found that a defendant nevertheless demonstrated "cause" for his failure to bring a claim in a prior petition when his claim was corroborated by evidence that was unavailable when the prior petition was filed, *see People v. Mitchell*, 2012 IL App (1st) 100907, and *People v. Weathers*, 2015 IL App (1st) 133264 (cited at Def. Br. 26), were wrongly decided.[3] Again, for the reasons discussed above, the discovery of new evidence is irrelevant to the "cause" requirement, which looks at claims rather than evidence. And a defendant cannot show cause for his failure to

[3] *People v. Whirl*, 2015 IL App (1st) 111483 (cited at Def. Br. 26), held that the circuit court erred in denying Whirl's successive petition on the merits, *id.* ¶ 113; it did not hold that Whirl's new evidence established cause permitting him to file his successive petition. The Torture Inquiry and Relief Commission (TIRC) had found by a preponderance that Whirl's confession was coerced, which led to the filing of a combined petition under the Post-Conviction Hearing Act and the Illinois Torture Inquiry and Relief Commission Act, and, ultimately, a third stage hearing on Whirl's claim. *Id.* ¶ 52. *Whirl* has no application here. In 2013, defendant submitted his present claim to the TIRC; on August 19, 2020, the TIRC concluded that there was "insufficient evidence of torture to merit judicial review of Harold Blalock's claim of torture." https://www2.illinois.gov/sites/tirc/Documents/Blalock%20Denial%20signed%208.20.2020.pdf. As defendant concedes, this Court may take judicial notice of public documents. Def. Br. 45 n.5.

raise a claim where he was aware of the factual basis for that claim when he filed his initial petition, even if he later discovers new supporting evidence. *Terry*, 2016 IL App (1st) 140555, ¶¶ 33-35; *Williams*, 394 Ill. App. 3d at 246.

In any event, even if new evidence could sometimes be relevant to establishing cause under section 122-1(f), defendant's falls short here. As the appellate court correctly held, much of the evidence defendant relied upon in support of the claim set forth in his second successive postconviction petition was available when he filed his initial and first successive petitions. *Blalock*, 2020 IL App (1st) 170295, ¶ 29. Indeed, defendant concedes that much of his supporting pattern and practice evidence predates even his initial petition. Def. Br. 29 (conceding that 1988, 1992, and 1993 internal affairs complaints, Malik Taylor's 2000 affidavit, 2001 Chicago Tribune article, and decisions in *People v. Morales*, 281 Ill. App. 3d 695 (1st Dist. 1996), *People v. Clemon*, 259 Ill. App. 3d 5 (1st Dist. 1994), and *Ewing v. O'Brien*, 60 F. Supp. 2d 813 (N.D. Ill. 1999), predated his first, 2003 postconviction petition). *People v. Pico*, 287 Ill. App. 3d 607 (1st Dist. 1997) (cited at C44), and *People v. Edwards*, No. 1-00-0016 (2002) (cited at C48) also predated the first petition. Other supporting evidence predated his first successive postconviction petition, which he filed in 2009, including the July 2006 Report of the Special State's Attorney (cited at C36) and *People v. Brown*, No. 1-05-0928 (1st Dist. 2007) (cited at C34). In fact, defendant admits that the 2006 Report supports his current claim because "it named Halloran as one of the officers subpoenaed in

relation to the abuses at Areas 2 and 3" and "shows that Halloran and O'Brien worked at Area 3 when [Jon] Burge was there in the early 1990s, and worked alongside other abusive detectives." Def. Br. 45. Thus, the appellate court correctly held that, even if the discovery of new evidence could support a showing of cause under section 122-1(f), defendant could have brought his current claim — complete with evidence of a pattern and practice of misconduct — in his 2009 petition, at the latest.

Contrary to defendant's criticism of the appellate court's opinion, Def. Br. 30-37, the appellate court neither held nor implied that "no police torture claim can ever be raised in a successive petition," nor does its reasoning "procedurally bar[] police torture claims from *any* review," Def. Br. 33 (emphasis in original). A defendant simply must raise his claim at the earliest opportunity (on direct appeal or in an initial petition). Moreover, where new, material evidence emerges that meets the *Patterson/Jackson* standard, he can relitigate a timely brought claim in a successive petition. *Jackson*, 2021 IL 123818, ¶¶ 31-32

Defendant's concern that an initial petition without corroborating evidence "will be swiftly dismissed," Def. Br. 34, overlooks both that section 122-2 permits a defendant to explain why supporting evidence is not attached to the petition and, more importantly, that many defendants *will* be able to support their claims with some evidence, such as a contemporaneous outcry of abuse, a photograph, or a jail intake evaluation. Here, for example, ASA

Palermo took a Polaroid photo of defendant at the time of his statement. E112-13; E132. Had that photo depicted any signs of physical abuse, defendant could have attached it to his petition. Moreover, requiring litigants to bring their claims in an initial petition poses no risk of revocation of good conduct credit for a frivolous lawsuit. *See* Def. Br. 34. Under 730 ILCS 5/3-6-3(d)(2), "a second or subsequent petition for post-conviction relief," can constitute a frivolous "lawsuit," but an initial petition under the Act is omitted from the definition.

Finally, defendant ignores that the Illinois Torture Inquiry and Relief Commission Act, 775 ILCS 40/1, *et seq.*, provides a remedy for persons who, like him, forewent a coerced confession claim on direct appeal and in their initial postconviction petition but now would like to present one. *See* 775 ILCS 40/10 (TIRC Act "establishes an extraordinary procedure to investigate and determine factual claims of torture related to allegations of torture[.]"). The TIRC Act provides that if a majority of the Commission's members "conclude[s] by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County[.]" 775 ILCS 40/45(c). Such a referral has been likened to a third-stage evidentiary hearing under the Post-Conviction Hearing Act. *People v. Christian*, 2016 IL App (1st) 140030, ¶ 78. And if the circuit court concludes that the defendant has shown by a preponderance of the evidence that his confession was the result of physical

coercion, "it shall enter an appropriate order," up to and including relief from conviction, "[n]otwithstanding the status of any other postconviction proceedings." 775 ILCS 40/50(a). Thus, defendant is incorrect to suggest that affirmance of the decision below will "procedurally bar[]" any torture claims; rather, it will ensure that those claims that are not timely raised are brought, as the General Assembly intended, under the TIRC Act.

III. Defendant Made No Prima Facie Showing of Prejudice Because His Claim Is Rebutted by His Own Sworn Trial Testimony About the Circumstances of His Police Statement.

Even if defendant had made a prima facie showing of cause, he has not made a prima facie showing of prejudice, for his claim is rebutted by the trial record. *See Pitsonbarger*, 205 Ill. 2d at 464 ("cause-and-prejudice test . . . is composed of two elements, both of which must be met in order for the petitioner to prevail"). At the pleading stage, including motions for leave to file, "all well-pleaded allegations in the petition and supporting affidavits that are not positively rebutted by the trial record are to be taken as true." *People v. Robinson*, 2020 IL 123849, ¶ 45; *Pitsonbarger*, 205 Ill. 2d at 455.

"[T]his [C]ourt has consistently upheld the dismissal of a postconviction petition when," as here, "the allegations are contradicted by the record from the original trial proceedings." *People v. Torres*, 228 Ill. 2d 382, 394 (2008); *see People v. Knapp*, 2020 IL 124992, ¶ 58 (affirming dismissal where allegation that defendant was denied his right to testify was rebutted by the record); *People v. Boykins*, 2017 IL 121365, ¶ 25 (same where

allegations of insufficient admonishments were refuted by the record); *People v. Rogers*, 197 Ill. 2d 216, 222 (2001) (same where record refuted defendant's claim that he was not properly admonished of the possible length of his sentence); *People v. Brooks*, 44 Ill. 2d 35, 38 (1969) (same where defendant's claim that he did not waive presentment to grand jury was contradicted by the record); *People v. Arbuckle*, 42 Ill. 2d 177, 182 (1969) (same where allegations were contradicted by trial record).

The appellate court has also consistently applied this rule, including in cases involving allegations of police coercion. *See People v. Deloney*, 341 Ill. App. 3d 621, 629 (1st Dist. 2003) (affirming dismissal where allegation that Detectives O'Brien, McKay, and McWeeney interrogated defendant and "subjected him to repeated threats, beatings and intimidation" was contradicted by the defendant's trial testimony denying that he was interrogated by these officers); *see also People v. Mabrey*, 2016 IL App (1st) 141359, ¶ 22 (same where allegation that defendant was "nowhere near the scene" of the crime was contradicted by record showing that defendant requested to strike his alibi defense before trial, maintaining that he was "in the vicinity" of the crime scene but "was not the shooter"); *People v. Mujica*, 2016 IL App (2d) 140435, ¶ 19 (same where record rebutted defendant's claims that the People had made a second plea offer and that he intended to accept it).

Defendant's allegations of coercion — that Halloran engaged in acts of physical abuse and O'Brien told him what to tell the ASA — are contradicted by his sworn trial testimony that no one had threatened him to give the statement he provided to ASA Palermo or told him what to say. TRE238-45. Instead, defendant testified that while his written statement was a fabrication, it was a fabrication of his own invention concocted to appease Palermo and not because he was physically abused by Palermo or any officer. *Id.* As the appellate court found, the circumstances of defendant's discussion were "a major topic at trial," but he "never stated that he was tortured or that he was otherwise coerced into giving the statement that he gave." *Blalock*, 2020 IL App (1st) 170295, ¶ 31. Instead, defendant "explicitly testified at trial that he was not abused for the purposes of obtaining his statement and that no one threatened him to make him say any part of his statement." *Id.*

Significantly, defendant has never alleged that his trial testimony, which directly contradicts the claim he now seeks to raise, was coerced, such that it might also be tainted by the alleged abuse. Nor is there any merit to, or evidence to support, present counsel's apparent suggestion in this Court that defendant lied at trial about the circumstances of his police interviews on the advice of his trial counsel. Def. Br. 51-52. Rather, defendant claimed below that he relied on counsel's advice when he declined to testify at the suppression hearing. In his "affidavit" submitted in support of his motion to file the second successive petition, defendant explained that "when [trial

counsel] came to visit [him] in the county jail," defendant related to counsel the same allegations of abuse raised in his motion to suppress, and counsel "filed a motion suppress & later withdrew [his] testimony," purportedly based on counsel's conclusion that they would be unable to establish abuse. C131. In other words, while there is evidence that defendant's trial counsel discouraged him from testifying at the hearing on his motion to suppress, defendant *did* testify at trial, and there is no support for the current suggestion that trial counsel instructed defendant to give false testimony.

The bulk of defendant's argument about prejudice, Def. Br. 37-51, rests on the false premise that his allegations must be taken as true even where rebutted by the record (specifically, his sworn trial testimony that no one coerced his statement or told him what to say). Contrary to defendant's argument (at Def. Br. 52), *Robinson*, 2020 IL 123849, does not require this Court to ignore his contrary trial testimony in evaluating his claim of prejudice. In *Robinson*, the petitioner sought leave to file a successive petition alleging actual innocence, and this Court declined to hold that the testimony of three purported eyewitnesses was affirmatively rebutted by Robinson's confession to the crime, such that it could not support a colorable showing of innocence to file a successive petition. 2020 IL 123849, ¶ 83. But as this Court noted, claims of innocence intrinsically involve contradictory evidence. *Id.* ¶ 57. Here, by contrast, defendant seeks leave to bring a claim of constitutional error in a successive petition that requires a showing of

cause and prejudice, and the fact that the claim defendant now seeks to raise is belied by the record is relevant to whether he can meet that standard. *See supra* pp. 34-35.

Defendant's reliance on *Harrison v. United States*, 392 U.S. 219 (1968), is also misplaced. *Harrison* does not hold, as defendant would have it, that this Court may not consider his trial testimony in determining whether he can show prejudice. Def. Br. 51. Instead, as the United States Supreme Court explained in *Oregon v. Elstad*, 470 U.S. 298, 316-17 (1985), "[i]f the prosecution has actually violated the defendant's Fifth Amendment rights by introducing an inadmissible confession at trial, compelling the defendant to testify in rebuttal, the rule announced in *Harrison v. United States* . . . precludes use of that testimony on retrial." That rule has no application here.

In the end, like the petitioner in *Escamilla v. Jungwirth*, 426 F.3d 868, 870 (7th Cir. 2005), *abrogated on other grounds by McQuiggin v. Perkins*, 569 U.S. 383 (2013), defendant would now like to argue that his trial testimony — that no one coerced his statement or told him what to say, and that it was just a story he made up — was false. But as the Seventh Circuit explained in a similar context, "[i]t is difficult to see how a collateral attack based on the proposition that the petitioner's own trial testimony was a pack of lies has any prospect of success. Litigants must live with the stories that they tell under oath." *Id.* Because defendant's current allegations of police coercion

are directly contradicted by his sworn trial testimony, defendant did not make a prima facie showing of prejudice, and the appellate court correctly affirmed the circuit court's judgment denying leave to file the second successive petition.

CONCLUSION

This Court should affirm the judgment denying leave to file defendant's second successive petition.

January 28, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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. 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) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 38 pages.

/s/ Katherine M. Doersch
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On January 28, 2022, the **Brief of Respondent-Appellee, People of the State of Illinois**, was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which will serve the following counsel for petitioner-appellant:

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