No. 125621

IN THE SUPREME COURT OF ILLINOIS

CHARLES PALMER, Petitioner-Appellant, v. PEOPLE OF THE STATE OF ILLINOIS, Defendant-Appellee.	)	Appeal from the Appellate Court, Fourth District, No. 4-19-0148 There on appeal from the Circuit Court of Macon County, Illinois No. 99 CF 139

REPLY BRIEF OF PETITIONER-APPELLANT CHARLES PALMER

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In its response brief, the State skips over the substantial questions of statutory construction, constitutional law, and estoppel presented by this appeal. Instead, the State assumes that the trial court had discretion to deny Palmer a certificate of innocence if Palmer failed to disprove wholly novel theories of guilt the State had never charged or presented in the criminal proceedings. This Court should not accept the State's framing of the legal question because the important statutory, constitutional, and estoppel questions identified in Mr. Palmer's opening brief must be answered first. The COI statute, the Illinois and federal constitutions, and well-settled estoppel rules each dictate independently that the State may not charge, prosecute, and convict an individual like Mr. Palmer for committing a particular crime, vacate that conviction and drop the criminal case conceding that DNA evidence shows he is innocent of that crime, and then deny him a certificate of innocence based on an entirely novel theory of guilt that was never charged or prosecuted previously. This Court should hold that these legal doctrines entitle Mr. Palmer to a certificate of innocence as a matter of law, without ever reaching the fact-bound question whether the trial court abused its discretion. But even if the Court reached that inquiry and accepted the State's mistaken framing of the legal question, the trial court's decision was an unambiguous abuse of discretion.

ARGUMENT

A. Properly Construed, the COI Statute Required Mr. Palmer to Prove He Is Innocent of the Specific Offenses of Which He Was Charged and Prosecuted, and the State Concedes He Is Innocent of Those Offenses

The State does not respond to most of Mr. Palmer's arguments about the proper construction of subsection (g)(3) of the COI statute. Resp. at 24-30. And the statutory-construction arguments the State does make are unpersuasive and incorrect. *Id.*

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The State asserts that the plain meaning of "innocent of the offenses charged in the indictment or information" is that a COI petitioner must prove his innocence of every single possible factual theory that fits within any of the broadly defined statutory definitions of the crimes charged in the criminal case. *Id.* at 24-26. While the State acknowledges that the word "offenses" is modified in subsection (g)(3) by the words "charged in the indictment or information," and that the modifying clause "should not be rendered meaningless," Resp. at 26, the State proceeds to render that clause entirely meaningless, asserting that it is irrelevant what the charging document in the criminal case *actually says* and that the analysis should be controlled at an extremely broad level by the criminal statutes invoked in those charging documents. But if the State's interpretation were correct, one would expect more wide-ranging and general language from the legislature modifying "offenses"—for example, "innocent of any offenses meeting the definition of any of the crimes listed in the indictment or information"—and not language limiting the analysis to the content of the actual indictment or information in the criminal case at issue.

The State does not contend at all with the robust body of law explaining that charging instruments must include specific factual allegations describing the offense, which supports Mr. Palmer's view of the plain meaning of subsection (g)(3). *See* Palmer Br. at 22-24 (discussing *People v. Lutz*, 73 Ill. 2d 204, 211-13 (1978); *People v. Trumbley*, 252 Ill. 29, 31 (1911); 725 ILCS 5/111-3). The State asserts that "this Court has long distinguished between the offense, or crime . . . and facts in a charging instrument," but it cites no case supporting that assertion. Resp. at 25. In fact, this Court has rejected the State's past attempts to separate "the plain meaning of [a] charge" as set

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out in the charge's title from the factual content of the charging instrument. *People v. Smith*, 99 Ill. 2d 467, 473 (1984). As the Court explained, if the title of a charge alone were sufficient to infer what offense had been charged, then there would be "no need either for a statute requiring the State to set forth the nature and elements of an offense in addition to naming the offense," or for the rule that "even a charge phrased in the exact language of the statute alleged to have been violated, which is typically much more detailed than the bare title of the charge, is not automatically valid." *Id.* (citations omitted).[1] All the background law supports Mr. Palmer's interpretation of the plain language of subsection (g)(3).

But even supposing the text were ambiguous (meaning "capable of being understood by reasonably well-informed persons in two or more different senses," *People v. Jameson*, 162 Ill. 2d 282, 288 (1994)), every other interpretative tool available to this Court confirms Mr. Palmer's construction of subsection (g)(3). The State asserts that its reading is "the most logical and natural" considering "the context of the statute," but the State offers no analysis of the statute's other parts and no response whatsoever to Mr. Palmer's detailed analysis of the statutory structure. Resp. at 26. Mr. Palmer explained that the title of the statute, 735 ILCS 5/2-702, and its repeated references to the offenses for which the petitioner was incarcerated, 735 ILCS 5/2-702(b)&(h), and to the crime of conviction, 735 ILCS 5/2-702(b), (c), (f), all support the view that subsection (g)(3) requires evidence of innocence of the offenses actually described in the charging

[1] The State mentions that a person charged as a principal may be convicted on proof that he is an accomplice, Resp. at 25, a point Mr. Palmer made as well, Palmer Br. at 23. But the State skips right over the fact that a conviction on an accountability theory is not allowed if the facts in the indictment and evidence presented at trial support only principal liability, *id.* (collecting cases).

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document and prosecuted during the criminal case. Palmer Br. at 24-25. Similarly, the State provides no response at all to Mr. Palmer's argument that the remedial purpose of the COI statute and its placement within the Declaratory Judgment Act demands a liberal interpretation of the text in favor of Mr. Palmer and other COI petitioners. *Id.* at 29-30. The State's failure to respond to these arguments waives these points. *Hayashi v. Ill. Dep't of Fin. & Prof'l Regulation*, 2014 IL 116023, ¶ 43. The statute's structure and placement in the code firmly support Mr. Palmer's interpretation.

The State's "legislative history" argument relies principally on legislative history and views that did not win the day. Resp. at 27-29. The State quotes a statement of the bill's sponsor in which a clear and convincing evidentiary standard was discussed, *id.* at 28, which ultimately did not make it into the statute that became law, *Laborer's Int'l Union of N. Am., Local 1280 v. State Labor Relations Bd.*, 154 Ill. App. 3d 1045, 1050 (5th Dist. 1987); and the State cites a statement of an opponent of the legislation about its financial implications, Resp. at 29, which if anything, supports Mr. Palmer's view, given that the law passed over such objections, *McKinley Found. at Univ. of Ill. v. Ill. Dep't of Labor*, 404 Ill. App. 3d 1115, 1124 (4th Dist. 2010). None of these legislative discussions contradicts Mr. Palmer's proposed construction of subsection (g)(3).

The only other legislative history the State cites is the bill sponsor's statement that the purpose of the statute is to help people "who have been wrongfully convicted of a crime" and "never should have been in jail in the first place[.]" Resp. at 27 (quoting Ill. Gen. Assem., House Proceedings, May 18, 2007) (statement of Rep. Flowers). This language mirrors the statute's title and preamble, which were discussed in Mr. Palmer's opening brief because they support his interpretation of the statute. Palmer Br. at 26-27.

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All these sources of legislative intent directly contradict the State's position, for they make painstakingly clear that the legislation was designed to *remove* obstacles to obtaining certificates of innocence, particularly those caused by the passage of time and difficulties of proof. 735 ILCS 5/2-702(a). If the State's view were adopted and COI petitioners had to disprove novel and uncharged theories of criminal liability, it would represent an obstacle to relief that would be insurmountable in most cases.

The State cites this legislative history in support of its view that "[i]t was never the General Assembly's intent that everyone who had his conviction overturned be entitled to a COI." Resp. at 27. But no one in this case disputes this, and no one is arguing that every person who has a conviction reversed should automatically receive a certificate of innocence. Under the proper construction of subsection (g)(3) advanced by Mr. Palmer, a COI petitioner still must demonstrate factual innocence of the specific crimes that were charged and of which the petitioner was convicted. *Supra* at 2-3. This is a significantly more exacting and specific showing than merely demonstrating that a conviction has been reversed. Indeed, the requirement that a petitioner show his conviction has been reversed is codified in subsection (g)(2) of the statute, which is not at issue here. *See* 735 ILCS 5/2-702(g)(2)(A). All of Mr. Palmer's arguments about subsection (g)(3) acknowledge that evidence of innocence is required—and he has strong DNA evidence of innocence—and nowhere does he suggest that the only prerequisite to receiving a certificate of innocence is reversal of a conviction. The legislative history supports Mr. Palmer, not the State.

Lastly, the State makes passing reference to a federal statute governing compensation claims made by federal criminal defendants and the legislative history of

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that federal law. Resp. at 26-27, 29-30 (discussing 28 U.S.C. § 2513). The cases cited by the State that refer to this statute stand only for the uncontested proposition, just discussed, that not every person who has a conviction reversed is entitled to a certificate of innocence. Resp. at 29. And in any event, federal courts' interpretation of a federal statute with different language and different requirements is irrelevant to the issue before the Court. "A federal court's construction of a federal statute is not binding on Illinois courts in construing a similar state statute," *People v. Gutman*, 2011 IL 110338, ¶ 17, particularly when the different federal and state statutes "though similar, are not identical, and there is certainly some ground for saying that the construction of the two should not be the same." *Wood v. Brady*, 150 U.S. 18, 23 (1893); *see also United States v. Lane*, 252 F.3d 905, 907 (7th Cir. 2001) ("[E]ven identical language can mean very different things in different statutes or regulations, depending on purpose and context."). This Court should ignore inapt interpretations of a different statute passed by a different government when construing subsection (g)(3) of the Illinois COI statute.[2]

The plain text, legal meaning, structure and placement of the COI statute, and legislative intent all support Mr. Palmer's position that subsection (g)(3) requires proof

[2] The State and its amici make reference to the fact that an Illinois court's decision regarding a certificate of innocence may be admitted as evidence in a later section 1983 case in federal court. Resp. at 29. To be clear, this Court's interpretation of the statutory language should not take into consideration at all whether a judicial grant of a certificate of innocence is admissible in unrelated proceedings. Moreover, the COI statute expressly provides that "[t]he decision to grant or deny a certificate of innocence shall be binding only with respect to claims filed in the Court of Claims and *shall not have a res judicata effect on any other proceedings*." 735 ILCS 5/2-702(j) (emphasis added). Lastly, federal courts are perfectly capable of controlling the admission of evidence in their own civil cases and of issuing limiting instructions to explain the Illinois COI proceeding to jurors, as the Seventh Circuit recently discussed in detail. *Patrick v. City of Chicago*, 974 F.3d 824, 832-34 (7th Cir. 2020).

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only that Mr. Palmer is innocent of the factual offenses alleged in the charging instrument in his case. The State concedes Mr. Palmer is innocent of those offenses, and therefore Mr. Palmer is entitled to a certificate of innocence as a matter of law. Palmer Br. at 30-33. This Court need not go further than this statutory-interpretation question.

B. Due Process Prevents the State from Requiring Mr. Palmer to Prove His Innocence of a Crime It Never Charged or Prosecuted

But there are also constitutional reasons that the State's view of subsection (g)(3) cannot be correct. The State does not respond to most of Mr. Palmer's due process argument. Resp. at 30-34. Instead, it asserts that it would not offend due process to hold that Mr. Palmer must prove his innocence of crimes he was never charged or convicted of, arguing there is no constitutionally protected interest at stake in COI proceedings entitling Mr. Palmer to process, and that even if there were, Mr. Palmer received adequate process. *Id.* The State is wrong.

1. COI Proceedings Implicate Many Constitutionally Protected Interests

The State gives short shrift to the constitutionally protected interests implicated by COI proceedings, Resp. at 31-32, which Mr. Palmer discussed in his opening brief, Palmer Br. at 35-38. In cursory fashion, the State argues that the U.S. Supreme Court's discussion of the fundamental interest in the presumption of innocence in *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), is "inapposite," and it dismisses the other property interests identified by Mr. Palmer with the one-sentence assertion that they cannot be constitutionally protected because Mr. Palmer has not yet acquired them. Resp. at 31-32. The State's arguments misunderstand the due process case law.

Proceedings to obtain a certificate of innocence following reversal of a criminal conviction plainly implicate constitutionally protected private interests. First, a certificate

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of innocence would restore the presumption that Mr. Palmer is innocent. Mr. Palmer's interest in the restoration of the presumption that he is innocent of the crime that DNA evidence has shown he did not commit is manifestly protected by due process. The U.S. Supreme Court's teachings in *Nelson v. Colorado* on this point should not be ignored. As amici ably explain, the State's view that the burden should be placed on an exonerated individual to prove by a preponderance that he did not commit uncharged and unprosecuted crimes turns the bedrock presumption of innocence on its head. The State's view also contradicts *Nelson*'s teaching that any litigant whose conviction has been vacated is entitled to the presumption of innocence and "should not be saddled with any proof burden." 137 S. Ct. at 1256; Brief of FDLA and Nineteen Criminal Defense Attorneys at 5-11. Amici propose a sensible construction of the COI statute that avoids the constitutional problems implicated by the State's view. *Id.* at 11-18.

But even ignoring entirely the constitutional problems imposed by the State's burden-shifting approach, there is no question that *Nelson* holds that the presumption of innocence is a fundamental interest protected by due process. 137 S. Ct. at 1255-56 & n.9. Nor does the State's argument that *Nelson* concerned property confiscated in connection with criminal proceedings change the fact that *Nelson* recognized the private interest in being presumed innocent as constitutionally paramount. The U.S. Supreme Court has recognized repeatedly that the federal due process clause confers protected constitutional interests in situations where the right at issue is fundamental, irrespective of state regulation. *Sandin v. Conner*, 515 U.S. 472, 479 n.4 (1995). The presumption of innocence (and the State's corollary recognition of that presumption following reversal of

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a conviction) is an interest arising from and protected by the due process clauses. *Taylor v. Kentucky*, 436 U.S. 478, 490 (1978).

Second, and independently, Mr. Palmer's opening brief identifies other private interests implicated by the COI statute, including provisions of law that entitle recipients of certificates of innocence to mandatory expungement of criminal records, 735 ILCS 5/2-702(h), 20 ILCS 2630/5.2(b)(8); educational and employment assistance, 110 ILCS 947/62, 20 ILCS 1015/2; and a sum certain of minimum monetary restitution, 705 ILCS 505/8(c). *See* Palmer Br. at 36-38. These are property interests created by state law and protected by due process. *Forgue v. Chicago*, 873 F.3d 962, 970 (7th Cir. 2017) (interests giving rise to due process rights "'are not limited by a few rigid, technical forms.' . . . Instead, 'property denotes a broad range of interests that are secured by existing rules or understandings.'") (quoting *Perry v. Sindermann*, 408 U.S. 593, 601 (1972)).

The State argues that the entitlements conferred by the COI statute do not implicate due process because a person must have already acquired a benefit to obtain a constitutionally protected interest in it. The State is incorrect. *Board of Regents of State College v. Roth* holds that, in order to have a constitutionally protected interest in a benefit provided by the State, a person must have more than an abstract need or desire for it or a unilateral expectation of it, and "must, instead, have a legitimate claim of entitlement to it." 408 U.S. 564, 577 (1972). "A legitimate claim of entitlement may arise from a contract, a statute, or a regulation, provided the source of the claim is specific enough to require the provision of the benefit on a nondiscretionary basis." *Citizens Health Corp. v. Sebelius*, 725 F.3d 687, 694 (7th Cir. 2013); *Bishop v. Wood*, 426 U.S. 341, 344 (1976). Contrary to the State's argument that Mr. Palmer appeals only to an

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"abstract need to have his record expunged" and "job and educational assistance and grants," Resp. at 32, each of the Illinois statutes set out above and in his opening brief uses mandatory "shall" language directing that an innocent petitioner who receives a certificate of innocence is entitled to expungement, 735 ILCS 5/2-702(h), 20 ILCS 2630/5.2(b)(8); educational and employment assistance, 110 ILCS 947/62, 20 ILCS 1015/2; and monetary restitution, 705 ILCS 505/8(c). None of these statutes provides any discretion to state officials to deny these benefits. Where language mandates an outcome if certain criteria are met, a protected interest is created. *Kentucky Dep't of Corrs. v. Thompson*, 490 U.S. 454, 462 (1989). The State is incorrect that Mr. Palmer must have already secured these benefits to establish that they are constitutionally protected.[3] The COI statute and related laws guarantee that successful petitioners will receive these benefits. As a result, petitioners cannot be denied a COI without due process of law.

2. The Parties Agree That the State Has A Single, Narrow Interest That Is Not Undermined by Mr. Palmer's Construction of the COI Statute

In his opening brief, Mr. Palmer explained that the State's interest in opposing certificates of innocence is comparatively limited: the State has an interest in avoiding error and fraud in administration of its programs. *Id.* at 39. The State's response

[3] The State points to *Segers v. Indus. Comm'n*, which concerned a widow's claim for death benefits under the Workers' Occupational Diseases Act following an earlier lump sum settlement between her spouse and his employer under the statute. 191 Ill.2d 421 (2000). There, the earlier payment had the effect of barring further payments. The Court concluded in part that the widow had no protected property interest because she "was not entitled to death benefits under the Act" after her spouse had settled his claims, and thus "her right to death benefits was anything but certain." *Id.* at 434. In that context, the Court decided that due process protects "interests that a person has already acquired in specific benefits, not merely an expectation or abstract need for such benefits." *Id*. at 435. Nothing about *Seger* affects the analysis here, where statutes create legitimate claims of entitlement.

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recognizes that this is its only interest at stake. Resp. at 34. The State writes that it "has a significant interest in limiting certificates of innocence to that class of people who are actually innocent of the crimes of which they were convicted." *Id.* On that point, too, the parties are in accord, and nothing in Mr. Palmer's argument suggests otherwise. As discussed already, Mr. Palmer is not advocating for a regime where all criminal convictions that are reversed lead inexorably to a certificate of innocence. Under the proper construction of subsection (g)(3) advanced by Mr. Palmer, a COI petitioner still must demonstrate factual innocence of the specific crimes charged. *Supra* at 2-3. And Mr. Palmer is a member of, in the State's words, the "class of people who are actually innocent of the crimes of which they were convicted," as DNA evidence shows and as the State concedes. The interest the State identifies is served by Mr. Palmer's construction of the COI statute, and there is no State interest to justify its own proposed interpretation.

3. The State's Construction of the COI Statute Guarantees Erroneous Deprivation of Petitioners' Due Process Interests

Finally, the State's construction of the COI statute would guarantee the erroneous deprivation of the constitutionally protected interests at stake in COI proceedings. In the State's view, it should be permitted to contest a petition for a certificate of innocence by inventing new theories of criminal liability that were never charged or prosecuted. According to the State, these theories may be introduced for the first time in response to a COI petition, usually decades after the case was initially investigated and tried, when all of the evidence is gone. The State claims this process is constitutional because Mr. Palmer received a hearing. Resp. at 33. But due process requires a *meaningful* hearing, *see*, *e.g.*, *In re Robert S.*, 213 Ill. 2d 30, 48-49 (2004) (quoting *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976)), which was impossible when Mr. Palmer had to

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disprove alternative theories of guilt that he had never been given notice of during his criminal case. And it is not just Mr. Palmer who would be harmed by this tortured reading of the COI statute—any criminal defendant who can prove his innocence of the crime that was charged and led to conviction will have trouble disproving alternative theories of guilt that were never presented in the criminal case and were never investigated earlier. *See* Brief of Exonerees at 6-9. Where a COI petitioner's criminal conviction and decades-long incarceration is reversed based on DNA evidence, and the State concedes he is innocent of the crimes charged and prosecuted and drops all charges, it would offend due process to allow the State to deny the petitioner the statutory entitlements provided by Illinois law by inventing novel theories of liability *post hoc* and requiring the petitioner to disprove those theories without meaningful access to evidence.

4. The State Offers No Responses to the Remainder of Mr. Palmer's Due Process Arguments

The State also fails to address, let alone rebut, Mr. Palmer's argument in his opening brief that the State's position here offends two deeply rooted due process principles that govern criminal cases in Illinois—principles that are implicated here given the quasi-criminal nature of the COI proceedings. Palmer Br. at 41-44. First, by urging the Court to find Mr. Palmer guilty of a crime of which he was never charged unless Mr. Palmer is able to prove otherwise, the State asks the Court to abandon the presumption of innocence that attaches in all cases. The State's response fails to defend this attack on due process or to meaningfully address the U.S. Supreme Court's holding in *Nelson* that after a conviction is vacated, during litigation concerning a statutory entitlement, procedures that undermine the presumption of innocence offend due process principles. *Nelson*, 137 S. Ct. at 1255 n.9; *see also id*. at 1258-63 (Alito, J.).

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Second, the State fails to explain how the position it takes is compatible with the core principle that defendants have a constitutional right to know the State's legal theories and mount a defense during criminal proceedings. *People v. Millsap*, 189 Ill. 2d 155, 160-66 (2000); *People v. Meyers*, 158 Ill. 2d 46, 51 (1994). The State offers no justification for arguing that Mr. Palmer should now be forced to prove his innocence of crimes for which he was never charged and that were never tried to a jury. But Mr. Palmer's fundamental right to know the State's theories and the evidence against him also require this Court to reject the State's proposed approach to COI proceedings.

C. The State Is Estopped from Denying Mr. Palmer A Certificate of Innocence on a Novel Theory of Guilt

Even if this Court decided against Mr. Palmer on the statutory interpretation and due process arguments discussed already (which it should not), it should still hold that Mr. Palmer is entitled to a certificate of innocence as a matter of law on the ground that the State is estopped from opposing Mr. Palmer's petition. Indeed, the State expressly concedes on pages 35 and 36 of its brief that all the elements of judicial estoppel are met. Resp. at 35-36. The State's only argument that it is not estopped is based on an assertion that new evidence discovered between the criminal trial and the COI proceedings justifies its changed position. *Id.* at 36. But the only new evidence the State points to is DNA testing results showing that Mr. Palmer is not the person who killed Helmbacher. *Id.*[4]

[4] The State concedes the DNA evidence shows conclusively that Mr. Palmer did not beat Helmbacher to death. *See* Resp. at 14; Palmer Br. at 15-17. Amici argue that DNA evidence is generally not reliable, Decatur Br. at 10-13, which contradicts the State's position, as well as established science. In cases where a victim has defensive wounds, DNA from fingernail scrapings (inaccurately called "touch DNA" by amici) is routinely used to identify the perpetrator and exculpate the innocent, R694-95; App. ¶ 78; *People v. Rozo*, 2012 IL App (2d) 100308, ¶ 19.

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That evidence is not "new" within the meaning of the collateral estoppel case law, and even if it were it would not justify the State's switch to a theory of criminal liability mutually exclusive of the one it pursued during criminal proceedings.

While the expert analysis of DNA evidence found under Helmbacher's fingernails and in his hands is new, the physical evidence at issue has been in the record since 1998. Additionally, there has been substantial other evidence in the record since 1998 that Mr. Palmer did not commit the killing. Palmer Br. at 9-10. The new DNA analysis merely corroborates that evidence. A party is not forgiven for taking mutually exclusive positions and judicial estoppel is not avoided merely because the party has finally acceded to a fact that has existed all along. *See*, *e.g.*, *Smeilis v. Lipkis*, 2012 IL App (1st) 103385, ¶ 34 (party did not avoid judicial estoppel merely because it retained a new medical expert who took a view of the case at odds with the party's prior view).

Similarly, even assuming the DNA exclusion of Mr. Palmer were new, the State still cannot rely upon it to avoid estoppel. Estoppel cases permit a change in position only when facts essential to the prior judgment have changed. *Montana v. United States*, 440 U.S. 147, 159 (1979). Here, none of the facts essential to the prior judgment have changed—the State's paltry evidence used to wrongly convict Mr. Palmer of beating Helmbacher to death exists today as it did in 1998. To avoid estoppel, the State would need to point to new evidence that *supports* Mr. Palmer's guilt of a crime. The opposite is true here: scientific evidence now conclusively proves Mr. Palmer is innocent of beating Helmbacher to death. That the facts now make the State's old theory impossible does not entitle the State to pivot to a new theory of criminal culpability that is not as badly undermined by the DNA. Put simply, there is nothing about the DNA evidence that

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supports the State's new theories of culpability. Instead, the State adopts a new theory of culpability to *avoid* the DNA evidence. That is the definition of a bad-faith change of positions, which estoppel seeks to avoid.

The only case cited by the State to support its argument, *People v. Runge*, 234 Ill. 2d 68, 131-33 (2009), is readily distinguishable. In *Runge*, the State changed its position as follows: in an earlier proceeding, it argued a defendant was a sexually violent person who could not control his actions; and in a later proceeding, after obtaining a new expert opinion on the matter, the State took the view that the defendant could control his actions. *Id.* at 131-33. First, as this Court observed in *People v. Caballero*, 206 Ill.2d 65, 81 (2002), estoppel does not apply where the change in position concerns "matters of opinion, not of fact." The change in position in *Runge*, unlike here, was the State's opinion about whether a defendant was uncontrollably violent. Second, the new facts that came to light in *Runge* dictated a change in the State's opinion about the defendant's nature, and they supported that change in opinion. Here, the inverse is true. The DNA evidence in Mr. Palmer's case proved him innocent of the offense the State thought he had committed, and the State switched factual theories to avoid that new evidence.

The State is estopped from challenging Mr. Palmer's entitlement to a certificate of innocence using mutually exclusive factual theories of culpability. For that reason as well, this Court should reverse and remand with instructions to issue the certificate.

D. If This Court Reaches the Issue, the Trial Court Abused Its Discretion

This appeal should be resolved on the legal questions presented above. However, even if this Court were to agree with the State on the statutory construction, constitutional law, and estoppel issues, it should still hold that the trial court abused its discretion by

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ruling that Mr. Palmer failed to prove his innocence of uncharged crimes by a preponderance of the evidence. This is because, as explained in Mr. Palmer's opening brief, the preponderance standard asks which party has the stronger evidence. Mr. Palmer has presented evidence of his innocence, and the State has not presented evidence that Mr. Palmer committed murder under any theory. Palmer Br. at 47-50.

The evidence of Mr. Palmer's innocence is voluminous: DNA evidence exonerates him of beating Helmbacher to death, as the State concedes, Resp. at 14; Palmer Br. at 15-17; he has sworn repeatedly under oath he had nothing to do with the crime, *id.* at 9-10; and there is a more likely perpetrator, Douglas Lee, who is not excluded by the DNA evidence, *id.* at 6-7. That is more than enough to shift the burden to the State to present contrary evidence. And given the State's concession that Mr. Palmer did not beat Helmbacher to death, Resp. at 14, it was incumbent upon the State to rebut Mr. Palmer's evidence with record evidence proving the essential elements of its new position that Mr. Palmer assisted someone else in the killing. *Zank v. Chicago, R. I. & P. R. Co.*, 17 Ill. 2d 473, 476 (1959).

The appellate court acknowledged that "the State offered no proof that a robbery or burglary was committed on [the day of the murder], or that Palmer elicited Helmbacher's murder or aided or abetted its commission," *People v. Palmer*, 2019 IL App (4th) 190148, ¶ 170, which should have made unavoidable the conclusion that the State had failed to prove its new felony-murder and accountability theories, and thus that the preponderance of evidence demonstrated Mr. Palmer's innocence of those crimes, Palmer Br. at 49-50. The lower court's failure to recognize this result was error.

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In this Court, the State does not dispute these evidentiary shortcomings; and it still does not advance evidence supporting its novel theories. First, the State has pointed to *no evidence* supporting certain essential elements of its felony-murder and accountability theories, which means there is *no evidence* on the State's side of the preponderance balance to show Mr. Palmer is *not innocent* of these crimes. *Zank*, 17 Ill.2d at 476 (party must advance record evidence to support each essential element of its case); *accord People v. Murdock*, 321 Ill. App. 3d 175, 176-77 (2d Dist. 2001) (a criminal conviction cannot be sustained where the State fails to present any evidence supporting an element of the crime). Specifically, a conviction for murder on an accountability theory would require evidence that Mr. Palmer either shared the criminal intent of the principal to commit murder and aided or abetted the commission of the crime, or that he agreed to a common criminal design and a killing was the result. 720 ILCS 5/5-2; *People v. Nelson*, 2017 IL 120198 ¶¶ 39-40; *People v. Dennis*, 181 Ill. 2d. 87, 97 (1998). But the State has presented zero evidence of criminal intent, actions to aid or abet another, or agreement. Similarly, felony murder requires proof of a predicate felony and intent to commit that felony. 720 ILCS 5/9-1(a)(3); *People v. Morgan*, 307 Ill. App. 3d 707, 717-18 (4th Dist. 1999). The indictment listed robbery and burglary as predicate felonies. Palmer Br. at 31. But the State has presented no evidence that Mr. Palmer intended to commit either of those crimes; and in addition, it has failed to offer any proof of the essential elements of those predicate felonies.[5] Given the total absence of evidence to prove the essential

[5] Robbery requires evidence that the perpetrator intended to take property from the victim, 720 ILCS 5/18-1; *People v. Smith*, 2019 IL 123901, ¶ 27; *People v. Parker*, 192 Ill. App. 3d 779, 787 (1989), and the residential burglary charged in the indictment requires proof of unauthorized entrance with the intent to commit theft, which can only

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elements of the State's alternative theories, it has failed wholesale to rebut Mr. Palmer's evidence of innocence as a matter of law. Deciding otherwise was an abuse of discretion.

Second, even if this Court ignores the State's failure of proof on these elements, the decision to deny Mr. Palmer a certificate of innocence was an abuse of discretion because the evidence the State relies on to support its new theories of guilt is utterly contradicted by the evidence and theories it advanced previously in the criminal case. *Balthazar v. City of Chicago*, 735 F.3d 634, 636 (7th Cir. 2013) (noting that it would be a "travesty of justice" for a party to prevail when it advances a legal theory that contradicts its own version of the evidence). Moreover, the State depends on a wholly unidentified principal, whom it never mentioned until these proceedings and about whom it has never made out a *prima facie* case. 720 ILCS 5/9-1; *People v. Chirchirillo*, 393 Ill.App.3d 916, 922-26 (2d Dist. 2009) (for a defendant to be found liable on an accountability theory, the State must establish all elements of the crime against the principal) (citing *Fagan v. Washington*, 942 F.2d 1155, 1157-59 (7th Cir. 1991), for the proposition that a principal must be identified as well).

Finally, the evidence the State relies upon has been fatally undermined—as the State had acknowledged—and to the extent the State suggests otherwise, its arguments in this Court are based on factual errors. For instance, the State relies on the testimony of Ray Taylor, Resp. at 19-20, 23, but it has already acknowledged that Taylor's testimony

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be demonstrated by the taking of property, 720 ILCS 5/19-3(a); *People v. Hamilton*, 179 Ill. 2d 319, 325 (1997). Nowhere in its brief does the State argue that property was taken from Helmbacher or identify any stolen property.

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simply cannot be true;[6] it has no answer to the fact that Taylor's testimony, if taken as true, would mean that Mr. Palmer had supposedly confessed to a killing at a time when the victim was still alive;[7] and nothing in Taylor's testimony, even if believed, supports either of the State's new theories of liability (in fact, Taylor undermines those theories because he claims Mr. Palmer confessed to acting alone).[8]

In addition, the State misstates the facts regarding Mr. Palmer's shoes to improperly enhance their inculpatory value. The State asserts that the ISP lab conducted minimal testing of the shoes the first time it received them, ISP lab, Resp. at 11, 21, when in fact that testing was comprehensive.[9] The State attempts to explain away the strange appearance of the victim's blood on the shoes on their second trip to the ISP lab, *see* Palmer Br. at 10-13, by pointing to DPD detective Carlton's testimony that he never touched the shoes between the first and second ISP trips, Resp. at 11. But the credibility of Carlton's testimony is undermined by the fact that Carlton gave false testimony about

[6] The State's acknowledgment that Mr. Palmer did not beat Helmbacher to death cannot be reconciled with Taylor's testimony that Mr. Palmer told Taylor he beat Helmbacher to death alone. Palmer Br. at 9.

[7] Taylor testified that the supposed confession occurred at 7 p.m. on the evening of the murder, a time at which Decatur police reports state that the victim was still alive. Palmer Br. at 8-9.

[8] Absent from Taylor's testimony is any suggestion that another felony was committed on the night of Helmbacher's murder, any discussion of a principal perpetrator, or any mention of Mr. Palmer aiding or abetting another or entering an agreement with another.

[9] During the first analysis, ISP Analyst Lu carefully searched the interior and exterior of the shoes for blood, she examined the shoes, including the see-through mesh exterior layer, with a bright light, she removed the laces, taped the shoes for hair and fibers, and cut apart the tongue, determining that there was no blood, R327-28, 340; C719.

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the shoes.[10] And even if this Court accepted the shoe evidence without question (which it certainly should not), that evidence arguably might establish presence at a crime scene, which is a far cry from establishing all of the elements of felony or accountability murder. *See supra* at 17-18.

Considering all of the State's evidence and construing it in the State's favor despite credibility issues, the State has not presented evidence to establish the essential elements of its new theories of Palmer's guilt. Palmer, on the other hand, has presented ample evidence of innocence. Even accepting the State's strained and constitutionally problematic reading of the COI statute, and even ignoring that its new theories utterly contradict its theories in the criminal case, the State has not rebutted Mr. Palmer's evidence of innocence on the State's novel theories of guilt. The trial court abused its discretion by concluding otherwise.

CONCLUSION

For all of the foregoing reasons, this Court should reverse and remand with instructions to enter an order granting Mr. Palmer a certificate of innocence.

RESPECTFULLY SUBMITTED,

CHARLES PALMER

BY: /s/ Rachel Brady
One of Mr. Palmer's Attorneys

[10] At Mr. Palmer's preliminary hearing, Carlton falsely testified that ISP found "human blood" on Mr. Palmer's shoes *during their first trip to the ISP lab*, which absolutely did not happen. R18-19. He falsely said the shoes were sent to the ISP lab for a second time only "to be checked for DNA along with the standard from William Helmbacher," which is also not true. *Id.* Similarly, at a hearing on motions to suppress, Carlton testified that the shoes were sent to the ISP lab for testing and were returned five months later with results showing that Helmbacher's blood was present, without any mention of the fact that the shoes went to the ISP lab twice and that blood was not found the first time. Carlton's testimony about the shoes was false.

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No. 125621

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, Fourth District,
Respondent-Appellee,	)	No. 4-19-0148
	)	
vs.	)	Original Appeal from the Circuit
	)	Court of Macon County,
CHARLES PALMER,	)	No. 99 CF 139
	)	
Petitioner-Appellant.	)	Hon. Jeffrey Geisler,
	)	Judge Presiding.

CERTIFICATE OF COMPLIANCE

I, Rachel Brady, an attorney, hereby certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this reply, excluding the pages or words contained in the Rule 341(d) cover, 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 20 pages.

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NOTICE OF FILING AND PROOF OF SERVICE

I, Rachel Brady, an attorney, certify that on December 10, 2020, this Reply Brief of Petitioner-Appellant Charles Palmer was electronically submitted to the Clerk's office, and was served by email to the following counsel of record:

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Within 5 days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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