

No. 125891

IN THE

## SUPREME COURT OF ILLINOIS

---

PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, No. 3-17-0546.
	)	
Respondent-Appellee,	)	There on appeal from the Circuit
	)	Court of the Thirteenth Judicial
-vs-	)	Circuit, Bureau County, Illinois,
	)	No. 94 CF 37.
	)	
STEVEN A. TALIANI	)	Honorable
	)	Michael C. Jansz,
Petitioner-Appellant	)	Judge Presiding.

---

## BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

JAMES E. CHADD  
State Appellate Defender

THOMAS A. LILIEN  
Deputy Defender

LUCAS WALKER  
Assistant Appellate Defender  
Office of the State Appellate Defender  
Second Judicial District  
One Douglas Avenue, Second Floor  
Elgin, IL 60120  
(847) 695-8822  
2nndistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT

## ORAL ARGUMENT REQUESTED

E-FILED  
6/17/2020 12:54 PM  
Carolyn Taft Grosboll  
SUPREME COURT CLERK

## POINT AND AUTHORITIES

Page

## I.

<b>The trial court erred when it denied Steven Taliani leave to file a successive postconviction petition because Taliani presented a colorable claim of actual innocence based on the newly available and retroactive affirmative defense of involuntary intoxication resulting from the unwarned, adverse side effects of prescription medication . . . . .</b>	<b>17</b>
720 ILCS 5/6-3(b) (West 1994). . . . .	2
720 ILCS 5/3-2 (West 1994). . . . .	2
720 ILCS 5/6-3(b) (West 1992). . . . .	18, 28
725 ILCS 5/122-1(a)(1) (West 2016) . . . . .	19
725 ILCS 5/122-1(f) (West 2016) . . . . .	19
725 ILCS 5/122-1(f) . . . . .	19
Ill. Const. art. I, § 2 . . . . .	20
720 ILCS 5/6-2(e) (West 1994). . . . .	32
720 ILCS 5/3-2(b) (West 1994). . . . .	32
720 ILCS 5/6-2(a) (West 1994). . . . .	33
720 ILCS 5/3-2 (a) (West 1994) . . . . .	33
<i>People v. Edwards</i> , 2012 IL 111711. . . . .	17, 19
<i>People v. Warren</i> , 2016 IL App (1st) 090884-C . . . . .	17, 20, 31
<i>People v. Coleman</i> , 183 Ill.2d 366 (1998). . . . .	17, 20
<i>People v. Taliani</i> , 2020 IL App (3d) 170546 . . . . .	18, 22, 25-28, 30, 33, 34, 35
<i>Schlup v. Delo</i> , 513 U.S. 298 (1995). . . . .	19
<i>People v. Hodges</i> , 234 Ill. 2d 1 (2009) . . . . .	19

## POINT AND AUTHORITIES (Continued)

	Page
<i>People v. Ortiz</i> , 235 Ill. 2d 319 (2009) . . . . .	19, 20, 24
<i>People v. Washington</i> , 171 Ill. 2d 475 (1996). . . . .	20, 24, 26
<i>People v. Morgan</i> , 212 Ill. 2d 148 (2004) . . . . .	20, 24
<i>People v. Coleman</i> , 2013 IL 113307 . . . . .	20, 26
<i>People v. Sanders</i> , 2016 IL 118123 . . . . .	20
<i>People v. Weathers</i> , 2015 IL App (1st) 133264 . . . . .	20
<i>People v. Hari</i> , 218 Ill.2d 275 (2006) . . . . .	21, 22, 28, 35, 36
<i>People v. Alberts</i> , 383 Ill. App.3d 374 (4th Dist. 2008) . .	22, 24 - 26, 28, 34, 35
<i>People v. McCaskill</i> , 298 Ill. App.3d 260 (4th Dist. 1998) . . . . .	23
<i>In re Alfred H.H.</i> , 233 Ill.2d 345 (2009). . . . .	23
<i>In re David M.</i> , 2013 IL App (4th) 121004 . . . . .	23
<i>In re Vanessa K.</i> , 2011 IL App (3d) 100545. . . . .	23
<i>In re Shelby R.</i> , 2013 IL 114994 . . . . .	24
<i>People v. Montes</i> , 2015 IL App (2d) 140485. . . . .	24
<i>People v. Lee</i> , 2019 IL App (1st) 162563 . . . . .	33
<i>People v. Wilmington</i> , 2013 IL 112938 . . . . .	33
<i>People v. Rogers</i> , 123 Ill. 2d 487 (1988) . . . . .	34

## NATURE OF THE CASE

Steven A. Taliani, petitioner-appellant, appeals from a judgment denying him leave to file a successive postconviction petition. An issue is raised concerning the sufficiency of the postconviction pleadings.

## ISSUE PRESENTED FOR REVIEW

Whether Steven Taliani should be granted leave to file a successive postconviction petition because he presented a colorable claim of actual innocence based on the previously unavailable affirmative defense of involuntary intoxication resulting from the unwarned, adverse side effects of prescription medication.

## JURISDICTION

Steven Taliani, petitioner-appellant, appeals the denial of his motion for leave to file a successive postconviction petition, entered on July 28, 2017. (C1172-74)<sup>1</sup> He filed a timely notice of appeal from the denial of his motion on August 18, 2017. (C1176) The Third District Appellate Court affirmed the judgment of the circuit court on March 18, 2020. *People v. Taliani*, 2020 IL App (3d) 170546. This Court granted the petition for leave to appeal from that judgment on May 27, 2020.

---

<sup>1</sup> The report of proceedings will be cited as “R,” the common-law record will be cited as “C,” and the secured common law record will be cited as “SCR.”

## STATUTES INVOLVED

§ 6-3. Intoxicated or drugged condition.

A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition . . . :

(b) Is involuntarily produced and deprives him of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

720 ILCS 5/6-3(b) (West 1994).

§ 3-2. Affirmative defense.

(a) “Affirmative defense” means that unless the State's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, must present some evidence thereon.

(b) If the issue involved in an affirmative defense, other than insanity, is raised then the State must sustain the burden of proving the defendant guilty beyond a reasonable doubt as to that issue together with all the other elements of the offense. If the affirmative defense of insanity is raised, the defendant bears the burden of proving by preponderance of the evidence his insanity at the time of the offense.

720 ILCS 5/3-2 (West 1994).

## STATEMENT OF FACTS

On August 9, 1994, Steven Taliani was charged by indictment with one count of first degree murder and one count of aggravated battery with a firearm. (C78-79) Specifically, Taliani was charged with first degree murder in that he, without lawful justification, knowingly shot Francee Wolf in her back with a shotgun knowing such an act created a strong probability of death or great bodily harm, thereby causing the death of Wolf. (C78) Taliani was charged with aggravated battery with a firearm in that he, in committing a battery, knowingly and without legal justification caused an injury to Clementina Frasco by means of discharging a firearm in that he shot Frasco in the head with a shotgun. (C79)

The offenses occurred on July 12, 1994. (C78-79)

During pretrial proceedings, trial counsel requested that Taliani be examined for fitness to stand trial and for his mental condition at the time of the offense. (R1036) Trial counsel told the court that Taliani was being treated by a psychiatrist at the time of the offenses and there were incidents in jail that indicated Taliani was experiencing a “mental condition.” (R1037) Trial counsel also believed that a fitness examination was necessary based on his own conversations with Taliani. (R1040) The court granted the request for a fitness examination. (R1042)

At a jury trial, Taliani proffered an insanity defense to the charges. (R318)

### **Jury Trial<sup>2</sup>**

Taliani and Wolf had been dating since the summer of 1993. (R7) Cari Carlson,

---

<sup>2</sup> The facts at trial are also laid out in the appellate court’s Rule 23 order that affirmed Taliani’s convictions and sentences on direct appeal. (C322-26)

Wolf's cousin, testified that in December 1993 she witnessed Taliani slap, bite, choke, and verbally insult Wolf before throwing Wolf to the ground. (R780-82, 797-98)

Michelle Castelli, a friend of Wolf, testified that approximately three weeks prior to the shooting, on June 20, 1994, Wolf told her that Taliani had planned on killing both Wolf and Kevin Trovero (a man Taliani suspected of dating Wolf) if he saw them talking. (R12) Wolf also said that Taliani told her that he had held a shotgun to her head while she was sleeping at night but that he "couldn't do it." (R12-13) Several other friends of Wolf also testified that, about three weeks prior to the shootings, Wolf told them that Taliani had held a gun to her head at night with the intent of killing them both but Taliani said he "couldn't do it." (R54- 55, 77-78, 115)

Nicole Mediwar and Terri Sibert testified that about three weeks prior to the shooting, while discussing the O.J. Simpson case, Taliani jokingly said that he "should pull an O.J." and that the murder victim in that case, Nicole Simpson, "deserved what she got." (R714, 739)

Julie Taliani, the sister-in-law of Taliani, testified that three weeks prior to the shooting Taliani was crying and in his underwear when he told her that he had a shotgun in his bedroom and that he wanted to kill himself and Wolf over his relationship with Wolf "falling apart." (R753-55) Taliani told Julie that he made an appointment with Dr. Brady in Ottawa due to being depressed and having suicidal feelings. (R760, 766) Julie's husband, Chuck, took the shotgun out of Taliani's home and put it in the basement of their home. (R759) About one week

before the shooting, Taliani took the shotgun back to his home. (R762)

Angela Tonielli, a friend of Wolf, testified that a few days before the shootings, on July 8th and 9th, Taliani and Wolf argued, culminating with Taliani showing up at Wolf's mother's house and beating on the doors for five to ten minutes while Wolf and Tonielli were inside with the doors locked. (R95-100) Joan Taber, Wolf's aunt, saw Taliani yelling and pounding on the doors. (R833-35)

Marlo Capponi testified that she was dating Taliani at the time of the shooting. (R175) She heard rumors that Taliani was also dating Wolf but he denied it. (R177) Capponi had lunch with Taliani on the day of the shooting and he was not acting unusual. (R178-79) She never saw Taliani act "unusual, or bizarre or strange." (R181) Taliani did not tell her that he made an appointment to see a psychiatrist before the shooting and he never mentioned having depression. (R181)

On the night of the shootings, Michelle Castelli met with Taliani around 7:30 p.m. at a bar named Ellie's Tap. (R5-6) Taliani told Castelli that he loved Wolf but did not think that Wolf felt the same way about him. (R9) He told Castelli that he had another girlfriend, Marlo Capponi, and questioned Castelli about Wolf's relationship with another man, Kevin Trovero. (R10) Castelli told Taliani that Wolf and Trovero were "just friends." (R10) According to Castelli, Taliani appeared "normal" and did not seem to be under the influence of drugs or alcohol. (R10-11)

Kevin Ellerbrock, the bartender at Ellie's Tap, testified that he saw Taliani at the bar with Castelli on July 12. (R25) Ellerbrock had known Taliani for eight years. (R24, 26) Taliani arrived around 7 p.m. and had three to four Miller Lite



beers over sixty to ninety minutes. (R24-25) Taliani acted normal that night and looked “totally sober” when he left the bar. (R25-26)

Arthur Verucchi was working at Verucchi’s bar and restaurant on July 12 when Taliani arrived around 9:30 p.m.<sup>3</sup> (R29) Taliani had a “stolie and water” and stayed at the bar for thirty to forty-five minutes. (R29-30) Taliani was not acting bizzare or disoriented and did not seem to be under the influence of alcohol or drugs. (R30-31) Two other bar patrons who were at Verucchi’s bar that night testified that Taliani did not appear disoriented. (R34, 38-39)

Kevin Trovero testified that he was married at the time of the shooting and that he was not involved in a romantic relationship with Wolf. (R60, 63) Taliani confronted Trovero a couple of times over his suspicions that Trovero was having sexual relations with Wolf. (R65, 67) Trovero kissed Wolf once but he did not have any romantic interest in her. (R71)

Angela Baldine, Trovero’s ex-wife, testified that she divorced Trovero on September 16, 1994. (R693) Taliani called her house on July 12 at 11:15 p.m. and asked her if she knew Trovero had been calling Wolf. (R695-96) Taliani spoke with Trovero and became more hostile and asked him why he was calling Wolf when he was a married man. (R697) Baldine thought that Taliani sounded like he was in control of his faculties and did not sound incoherent or bizarre. (R698-99)

Clementina Frasco, Wolf’s mother, testified that she got home from work around 11:00 p.m. the night of the shooting. (R147) She became concerned about

---

<sup>3</sup> In the report of proceedings, the restaurant name is spelled “Vericchi” and “Verucchi.” (R28-29)

Wolf not being home and called Tonielli who said that Wolf may have gone to Taliani's house. (R151) Tonielli called Frasco back about five minutes later and said that she called Taliani and when he answered the phone she could hear Wolf crying in the background. (R152)

Frasco drove to Taliani's house and saw Wolf's car. (R155) Frasco knocked on the front door of Taliani's house and called for Wolf. (R156-57) Frasco heard something break and then heard Wolf scream. (R157) Wolf ran out of the house and yelled at Frasco that Taliani had hit her in the head and she was bleeding. (R158) Frasco and Wolf got into Frasco's car. (R159-60) Frasco was in the driver's seat and Wolf was in the passenger seat with her head down. (R159-60) Frasco was putting her car in reverse when Taliani approached the driver's window of her car with a gun and shot Frasco in the left side of her head. (R161) Taliani then walked behind the car and fired another shot into the passenger side window. (R162-63) Frasco drove her car across the street, hit the curb, and honked the horn to try and get some help. (R163-64)

On July 12 at 11:18 p.m., Officer Richard Taylor saw Frasco's car "jump a curb" moments after he heard two gunshots. (R186-87, 194) Taylor responded to the scene and Frasco was in the vehicle yelling, "Help me, we've been shot." (R190, 194) Frasco was concerned about Wolf who was in the passenger seat and "slumped" over the side of the vehicle. (R194-95) Wolf appeared dead. (R196) Taylor radioed for an ambulance and asked Frasco who shot her. (R201) Frasco replied, "Steve Taliani." (R201) Another vehicle left the area at a "high rate of speed." (R193) Taylor radioed his partner, Officer Sangston, and told him to stop the vehicle

that had left the scene and that the driver may have a weapon. (R191, 194)

Officer Kevin Sangston drove a police car and followed the vehicle that left the scene. (R206) Ultimately the vehicle crashed into a construction barricade while speeding through a sharp turn. (R210-11) Taliani exited the vehicle with his hands up and said, "I don't have anymore shells." (R212-13) Sangston told Taliani to lay down but Taliani walked towards Sangston and said, "There is nothing to talk about, I don't have nothing left to live for." (R214) Taliani repeatedly told Sangston "to shoot him." (R214) When he was about five feet from Sangston, Taliani kept his hands in the air and said, "If you don't shoot me I'm going to take your gun away." (R215) Sangston sprayed Taliani in the face with pepper mace and told Taliani to get on the ground. (R216) Taliani got on the ground and Sangston handcuffed him. (R216) According to Sangston, Taliani appeared coherent and orientated to the time, place, and circumstances. (R214, 216) There was a shotgun laying on the passenger floorboard of Taliani's vehicle. (R217)

Sangston transported Taliani to the police station. (R219) During the drive to the station, Taliani said, "Oh, my God, I can't believe I did that," and "Why the hell does she have to show up, we had everything worked out." (R219-20) At the police station, Taliani kept asking the officers to shoot him. (R220) Taliani asked Sangston what was going on and said, "Hell of a way to get a DUI." (R221-22) There had been no discussion about drunk driving and there was no evidence that Taliani was under the influence of "anything." (R222) Sangston believed that Taliani was putting on an "act" and trying to make Sangston think he had only committed a DUI. (R227) Sangston was of the opinion that Taliani was able to appreciate

the criminality of his conduct and could have chosen not to shoot Wolf and Frasco. (R225-26)

During a search of Taliani's home, Sheriff Jack Narczewski found a note on the door that read, "Chuck and Julie do not come in alone." (R578)

Police Officer Douglas Bernabei was the lead investigator on this case. (R838) Bernabei and Officer Miroux interviewed Taliani around 1:00 a.m. on July 13, shortly after the shootings. (R841) According to Bernabei, Taliani appeared to be coherent and alert and did not display any bizarre or strange behavior throughout the interview. (R844, 852, 888, 911) Taliani said that he had six or seven beers the night of the shootings and that he was not intoxicated. (R860-61) Taliani initially told Bernabei that he went to Verucchi's bar around 9:30 p.m. and the next thing he remembered was being arrested by Officer Sangston. (R862)

Eventually, Taliani told Bernabei that Wolf and he were together at his house the night of the shooting and that they got into an argument over mutual suspicions that both of them were dating other people. (R894-96) Taliani said that his relationship with Wolf started having "problems" a month prior because he was dating Capponi and Wolf was dating Trovero. (R879)

During the argument, Taliani grabbed his shotgun and fired it inside his bedroom and Wolf ran outside. (R897) Taliani told Bernabei that he had been thinking about killing himself and Wolf "for some time." (R897, 902) Taliani followed Wolf outside and fired the shotgun in her "general direction." (R899) He said that he wanted to bring Wolf back inside the house "to kill her." (R899, 909) Wolf got into the passenger side of a car that drove up and Taliani fired a shot into the

driver's window to try and kill her. (R900) Taliani said that he did not intend to shoot the driver. (R901) Taliani then tried to shoot himself but the gun did not "go off." (R902) Taliani told Bernabei that he knew was not arrested for a DUI. (R903)

Taliani told Bernabei that he went to see a psychiatrist, Dr. Brady, two or three weeks prior to the shooting because he was feeling suicidal. (R906) Brady prescribed Taliani two types of medications and Taliani filled the prescriptions and took the medicine. (R906-07) The police seized the medications during the search of Taliani's home. (R958-59) Bernabei saw the medicine bottles but he was not familiar with the medications. (R959)

Officer Michael Miroux had known Taliani since high school in 1980. (R969) Miroux's testimony about Taliani's interview mirrored Bernabei's testimony. (R970-1008) He testified that Dr. Brady prescribed medicine for Taliani and that Taliani filled the prescription at the Granville Pharmacy. (R1009)

Bernabei and Miroux testified that, in their opinions, Taliani had the substantial capacity to appreciate the criminality of his conduct and he was able to conform his conduct to the requirements of the law at the time of the offenses. (R918-19, 1015-16, 479-80) Miroux did not believe that Taliani was suffering from a mental disease or defect at the time of the shootings. (R1019)

Psychiatrist Dr. Robert Chapman examined Taliani at trial counsel's request on September 1, 1994. (R361, 387, 390) After evaluating Taliani and "all of the official reports," Chapman determined that, among other things, Taliani was experiencing extreme anxiety and appeared to be "quite confused, disorganized,

and prone to intense feelings of panic.” (R365-66, 402, 442-44) Additionally, Taliani felt as if he was “losing his mind” and reported “bizarre and unusual sensory experiences and confused thinking.” (R365) Taliani acknowledged having suicidal thoughts. (R366) Taliani was placed on suicide watch after being arrested and he tried to commit suicide at least once while in jail for these charges. (R385)

At the time of the shootings, Taliani was experiencing a major affective disorder, or depression, with suicide ideation and obsessive-compulsive disorder. (R368) Chapman estimated that Taliani had “less severe” depression for approximately ten years and that the depression became more severe after January 1994. (R372-73, 394) Taliani told Chapman that, about three weeks prior to the killings, he had the urge to kill Wolf with the shotgun while they were in bed together. (R437) After discussing the incident with Wolf, Taliani decided to seek psychiatric help from Dr. Brady. (R374-75, 437)

Taliani told Wolf about his “suicidal wishes” and she replied, “No matter what I’ll always be with you.” (R378; SCR27-28) Taliani interpreted that to mean that Wolf agreed with his suicidal urges and that she would be with him “after death.” (R378) Taliani believed that Wolf was “willing to go through with it that night.” (R405) According to Chapman, Taliani’s primary motivation to kill himself and Wolf stemmed from Taliani’s desire for “relief from suffering” and his belief that he and Wolf would be “together in death and after death.” (R432) This was a “common distorted belief” among people who suffered from “major depression.” (R377, 432)

Chapman explained that a person who is severely mentally ill can appear

normal and not display their mental disturbance to others and Taliani made a “great effort” to do so. (R379-80) Chapman testified that because of his mental disease, Taliani lacked the substantial capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of the law at the time of these offenses. (R384, 407, 433)

Dr. Richard Brady, a psychiatrist, testified that he met with Taliani on June 27, 1994, because Taliani was experiencing depression. (R448, 450) Taliani told Brady that he had suicidal thoughts “the weekend before last” but said that he was not currently having any suicidal or homicidal thoughts and that “he couldn’t harm himself or others.” (R449-50, 454, 456) Brady found that Taliani had a depressive mental disorder and diagnosed Taliani as having recurrent major depression. (R450- 51, 468) Brady would have had Taliani hospitalized if he said he was going to kill himself or Wolf. (R477)

Dr. Paul Velamparampil, M.D., treated Frasco’s injuries, which consisted of a large wound on the left side of her head that was consistent with being shot in the head. (R569) Velamparampil testified that he pronounced Wolf dead when he saw her in the hospital and that it was obvious she suffered a gunshot wound to her back. (R571, 573)

Dr. Larry Blum, M.D, an expert in forensic pathology, conducted the autopsy on Wolf. (R647) Blum testified that Wolf’s death was caused by a shotgun wound to her back which injured her lung and heart and resulted in blood loss. (R148, 668-69)

The jury was instructed on Taliani’s insanity defense and ultimately found

Taliani guilty of both charges. (C261, 269, 294-95) The record contains a jury note in which the jury asked to “see both Dr. reports.” (C293)<sup>4</sup> It is unclear whether the jury was ultimately allowed to see the reports but neither Dr. Brady’s report nor Dr. Chapman’s report was admitted into evidence during trial.

The trial court sentenced Taliani to an extended term of 70 years of incarceration for first degree murder and a consecutive prison term of 30 years for aggravated battery with a firearm. (C300-01; R543-44) The presentence report indicated that Dr. Brady prescribed Taliani the medications Buspar and Desyrel. (SCR8) Dr. Brady’s and Dr. Chapman’s reports were attached to the presentence report for the trial court’s review. (SCR14-33)

### **Motion for leave to file a successive postconviction petition**

On May 18, 2017, after an unsuccessful direct appeal and several other collateral pleadings, Taliani filed the instant motion for leave to file a successive postconviction petition claiming actual innocence based on the newly available and retroactive affirmative defense of involuntary intoxication, which was based on the unwarned, adverse side effects of his prescription medications. (C1096-1103)

Specifically, he claimed that this new and retroactive affirmative defense was unavailable at the time of his trial and that he should be allowed to raise the defense now as part of an actual innocence claim. (C1098-99, 1103) Taliani asserted that Dr. Brady had prescribed him psychotropic medications Buspar

---

<sup>4</sup> The report of proceedings does not contain any discussion of this note and the transcript on this day ends with the court beginning to give the jury instructions. (R349) The docket indicates that the jury note was filed during jury deliberations. (C23) Appellate counsel was informed that OSAD staff was told by Bureau County Circuit Clerk that there are no additional transcripts available.



and Desyrel, which when taken together can cause “serotonin syndrome.” (C1099) Information about serotonin syndrome was not available at the time of trial and was only “developed in the last several years.” (C1103) And even if it had been available, Taliani could not have raised the affirmative defense because it was not made available until this Court’s decision in *People v. Hari*, 218 Ill. 2d 275 (2006). (C1103)

Taliani claimed to have been suffering from symptoms associated with serotonin syndrome at the time of the offenses, including heightened irritability, confusion, altered consciousness, and increased suicidal ideation. (C1100) Dr. Brady never advised Taliani that serotonin syndrome was a risk associated with these medications and Dr. Chapman had found that Taliani could not appreciate the criminality of his conduct or conform his conduct to the law. (C1100-01) Taliani continued to receive the medications while he was in jail for this offense. (C1100) Taliani claimed that he would “undoubtedly be acquitted” if he could raise this affirmative defense at trial. (C1103)

Taliani attached an affidavit and exhibits to the motion. (C1104-67) Specifically, he attached Dr. Brady’s report (C1106-15), information on the drugs Buspar and Desyrel (C1116-46), a medical report by Quad County Counseling Center (C1147-55), and Dr. Chapman’s report (C1156-57).

On July 28, 2017, the trial court denied leave to file the successive postconviction petition finding that Taliani’s claim of actual innocence failed to raise the probability that no reasonable juror would have convicted him of the offenses. (C1172-74)

On appeal, Taliani argued that the trial court erred when it denied him leave to file his successive postconviction petition because he had set forth a colorable claim of actual innocence based on the affirmative defense of involuntary intoxication resulting from the unwarned, adverse side effects of prescription medication.

A majority of the appellate court affirmed the denial of Taliani's motion. *People v. Taliani*, 2020 IL App (3d) 170546. Initially, the majority questioned "the propriety" of treating Taliani's claim as an actual innocence claim because it appeared that the claim was "based on a newly available affirmative defense rather than newly discovered evidence." *Id.* at ¶ 25. Specifically, the majority noted that it was known at the time of trial that Taliani was taking the prescription medications Desyrel and Buspar. *Id.* The majority went on to find that "even assuming" that the evidence in support of Taliani's claim could properly be considered "newly discovered," the circuit court did not err in denying his motion for leave to file a second successive postconviction petition. *Id.* at ¶¶ 25-30.

The appellate court acknowledged that Taliani "may have shown" that he suffered from unwarned-of side effects of prescription medication at the time of the offense including serotonin syndrome, heightened irritability, confusion, altered consciousness, and suicidal ideation. *Id.* at ¶¶ 27-29. However, the appellate court found that it was "not apparent" that these side effects would have deprived Taliani of a substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. *Id.* at ¶¶ 28-29. The symptom of altered state of consciousness was too vague and Taliani did not claim that Dr. Brady failed to warn him of increased suicidal ideations. *Id.*

The majority also noted that Dr. Chapman's opinion, that Taliani's capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of the law was substantially impaired, stemmed from Taliani's depression and Chapman did not "opine" on the effects of serotonin syndrome that Taliani was allegedly experiencing. *Id.* at ¶ 30. Moreover, the jury heard Chapman's opinion and rejected Taliani's insanity defense. *Id.*

A dissenting justice, Justice McDade, did not "share the majority's concerns about the propriety of framing defendant's claim as an actual innocence claim on the basis that the claim is based on a newly available affirmative defense rather than newly discovered evidence." *Id.* at ¶ 35 (Justice McDade, dissenting). Because the facts supporting the newly available involuntary intoxication defense could not have been used at trial, the facts should be considered "new" for purposes of establishing an actual innocence claim despite having been known to Taliani at the time of trial. *Id.*

Additionally, Justice McDade in her dissent found that Taliani presented a colorable claim of actual innocence such that he should have been granted leave to file. *Id.* at ¶ 36. The side effects Taliani claimed to have suffered at the time of the offense could have been severe enough to have deprived him of the substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law such that the involuntary intoxication defense would apply. *Id.* Justice McDade would have reversed the trial court and remanded the cause for further post-conviction proceedings. *Id.* at ¶ 37.

This Court granted leave to appeal.

## ARGUMENT

**The trial court erred when it denied Steven Taliani leave to file a successive postconviction petition because Taliani presented a colorable claim of actual innocence based on the newly available and retroactive affirmative defense of involuntary intoxication resulting from the unwarned, adverse side effects of prescription medication.**

This Court should reverse the majority of the appellate court which erroneously affirmed the trial court's denial of Taliani's motion for leave to file a successive postconviction petition. Contrary to the majority's holding, Taliani set forth a colorable claim of actual innocence based on the newly available and retroactive affirmative defense of involuntary intoxication resulting from the unwarned, adverse side effects of prescription medication. Moreover, despite the majority's refusal to definitively find so, this Court should clarify that the facts supporting the newly available affirmative defense constitute newly discovered evidence for purposes of an actual innocence claim.

**Standard of Review:** Whether a defendant's petition and supporting documents state a colorable claim of actual innocence is reviewed *de novo*. *People v. Edwards*, 2012 IL 111711, ¶ 30; *People v. Warren*, 2016 IL App (1st) 090884-C, ¶ 72, citing *People v. Coleman*, 183 Ill.2d 366, 388 (1998).

On November 16, 1994, after a jury trial where he presented an insanity defense, Steven Taliani was found guilty of first degree murder for killing Francee Wolf by shooting her in the back with a shotgun and aggravated battery with a firearm for shooting Clementina Frasco in the head with a shotgun. (C78-79, 294-95) He was sentenced to consecutive prison terms of 70 years for first degree murder and 30 years for aggravated battery with a firearm. (C300-01)

On May 18, 2017, Taliani filed a motion for leave to file a successive postconviction petition, which presented a claim of actual innocence based on the affirmative defense of involuntary intoxication resulting from the unwarned, adverse side effects of prescription medication. (C1096-1103) The trial court denied Taliani leave to file, finding that the actual innocence claim failed to raise the probability that no reasonable juror would have convicted him. (C1174)

A majority of the appellate court affirmed the trial court. Initially, the majority questioned the propriety of treating Taliani's claim as an actual innocence claim because it was "based on a newly available affirmative defense rather than newly discovered evidence." *People v. Taliani*, 2020 IL App (3d) 170546, ¶ 25. However, the majority found that even if the facts supporting the claim could be considered "newly discovered," it still failed because it was not apparent that the side effects Taliani claimed to suffer from at the time of the offense could cause him to be intoxicated to the degree that he lacked "substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." *Id.* at ¶ 27, quoting 720 ILCS 5/6-3(b) (West 1992). The majority found that the side effect of altered state of consciousness was vague and that Taliani did not allege that Brady failed to warn him that suicidal ideation was a potential side effect. *Id.* at ¶¶ 28-29. Finally, the majority noted that Chapman did not testify that Taliani was impaired due to the effects of serotonin syndrome but instead found that Taliani's impairment was a result of his depression and the jury heard and rejected Taliani's insanity defense. *Id.* at ¶ 30.

This Court should reverse the appellate court and find that the trial court

erred when it denied Taliani leave to file a successive postconviction petition because Taliani presented a colorable claim of actual innocence based on the newly available and retroactive affirmative defense of involuntary intoxication resulting from the unwarned, adverse side effects of prescription medication. Taliani's petition and accompanying affidavit and exhibits presented evidence that is newly discovered, material, not merely cumulative, and raises the probability that "it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." *Edwards*, 2012 IL 111711, ¶ 24, quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995).

The Post-Conviction Hearing Act ("the Act") allows a person serving a criminal sentence to challenge his conviction under the federal or Illinois constitutions. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009); 725 ILCS 5/122-1(a)(1) (West 2016). While a defendant generally may file only one postconviction petition, he may file a successive petition with leave of the court. 725 ILCS 5/122-1(f) (West 2016). Successive petitions generally face the additional burden of obtaining leave to file by satisfying the "cause-and-prejudice test." 725 ILCS 5/122-1(f). However, this requirement does not apply where, as here, the petition "sets forth a claim of actual innocence." *People v. Ortiz*, 235 Ill. 2d 319, 330 (2009) (following *Pitsonbarger*, 205 Ill. 2d at 459). Where a successive petition alleges actual innocence, leave to file "should be denied only where it is clear, from a review of the successive petition and the documentation provided by the petitioner that, as a matter of law, the petitioner cannot set forth a colorable claim of actual innocence." *People v. Edwards*, 2012 IL 111711, ¶ 24.

A claim of actual innocence based on newly discovered evidence is cognizable under the Act as a due process violation. Ill. Const. art. I, § 2; *People v. Washington*, 171 Ill. 2d 475, 489 (1996). A defendant proves such a claim by bringing evidence that is “newly discovered; material and not merely cumulative; and ‘of such conclusive character that it would probably change the result on retrial.’” *Ortiz*, 235 Ill. 2d at 333, quoting *People v. Morgan*, 212 Ill. 2d 148, 154 (2004). “New means the evidence was discovered after trial and could not have been discovered earlier through the exercise of due diligence.” *People v. Coleman*, 2013 IL 113307, ¶ 96. Material and not cumulative evidence means it “is relevant and probative of the petitioner's innocence” and it “adds to what the jury heard.” *Id.* Conclusive evidence means it would probably lead the jury to a different result. *Id.*

In determining whether leave should be granted, all “[w]ell-pleaded factual allegations” must be “liberally construed in favor of the petitioner and taken as true.” *People v. Sanders*, 2016 IL 118123, ¶¶ 31, 48, citing *People v. Coleman*, 183 Ill. 2d 366, 382 (1998); see also *People v. Warren*, 2016 IL App (1st) 090884-C, ¶ 72 (“The decision on granting leave is akin to a decision whether to dismiss a postconviction petition, which likewise considers the legal sufficiency of the allegations, taken as true and liberally construed”); *People v. Weathers*, 2015 IL App (1st) 133264, ¶ 22 (construing allegations as true at the leave to file stage of successive post-conviction proceedings).

In his motion for leave to file a successive postconviction petition, Taliani presented a claim of actual innocence based on the newly discovered and retroactive affirmative defense of “involuntary intoxication” due to the unwarned and adverse

side effects of prescription medication, namely Buspar (anxiety medication), and Desyrel (major depressive disorder medication). (C1099-1100)

According to Taliani, and as supported by his attached documents, the Food and Drug Administration has determined that Desyrel can cause side effects such as anxiety, agitation, panic attacks, insomnia, irritability, hostility, aggressiveness, impulsivity, and more. (C1099) Taliani also claims that the combination of these drugs can cause “serotonin syndrome” which results in mental status changes such as irritability, altered consciousness, confusion, and more. (C1099-10) He claims that he was suffering from symptoms of serotonin syndrome at the time of the offense, including “heightened irritability, confusion, and altered consciousness, as well as, increased suicidal ideation, also a side effect of serotonergic medications such as Buspar.” (C1100) According to Taliani, information concerning serotonin syndrome was not available at the time of trial and Dr. Brady did not warn him of “the potential risk of serotonin syndrome” when he prescribed these medications. (C1100, 1103, 1104) Dr. Chapman found that Taliani lacked the capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. (C1101) Taliani claims that a jury would have “undoubtedly” acquitted him had he been able to present evidence in support of the affirmative defense of involuntary intoxication at trial. (C1103)

Taliani correctly noted that when the instant offense occurred in 1994, involuntary intoxication based on the use of prescription drugs was not an available affirmative defense. (C1098) Rather, it was not until *People v. Hari*, 218 Ill.2d 275, 293 (2006), which was decided more than ten years after Taliani’s trial, that



this Court changed the defense of involuntary intoxication to include the unwarned and unexpected side effects of prescription medication. (C1098). Taliani cited *Hari* in his motion for leave to file, as well as *People v. Alberts*, 383 Ill. App.3d 374, 380-85 (4th Dist. 2008)(petition for leave to appeal denied, No. 106977, November 26, 2008), which held that *Hari* announced a new rule that applied retroactively to collateral proceedings. (C1098-1100) Accordingly, Taliani contended that he would be acquitted if he were allowed to present this affirmative defense of involuntary intoxication and, pursuant to *Hari* and *Alberts*, he should be allowed to file a successive postconviction petition in order to advance the claim. (C1103)

### **1. Newly discovered facts**

As an initial matter, the majority of the appellate court questioned whether the facts supporting a newly available affirmative defense could constitute newly discovered evidence required for an actual innocence claim. *Taliani*, 2020 IL App (3d) 170546 at ¶ 25 (“We question the propriety of treating defendant’s claim as an actual innocence claim because it appears that the claim is based on a newly available affirmative defense rather than newly discovered evidence”). Specifically, the majority took issue with the fact that it was known at the time of trial that Taliani was taking the prescribed medications Buspar and Desyrel. *Id.* Although the majority went on to find that Taliani’s actual innocence claim failed even if the facts could be considered “newly discovered,” this Court should clarify what amounts to a split in authority and find that such facts do indeed constitute new evidence for purposes of presenting an actual innocence claim.

## Mootness

Taliani anticipates an argument from the State that this question is moot because it does not ultimately determine the result of this appeal where the appellate court found that Taliani's actual innocence claim failed even if the facts could be considered newly discovered. *People v. McCaskill*, 298 Ill. App. 3d 260, 263 (4th Dist. 1998) (recognizing a case is moot if it "seeks to determine an abstract question that does not rest on existing facts or rights" or "seeks a judgment upon some matter that, when rendered, has no practical legal effect on an existing controversy"); *In re Alfred H.H.*, 233 Ill.2d 345, 351 (2009) ("As a general rule, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided").

Should this Court find that this question is moot, Taliani urges this Court to reach the issue through the public interest exception to the mootness doctrine. The public interest exception to mootness allows a court to consider an otherwise moot case when: (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question. *In re David M.*, 2013 IL App (4th) 121004, ¶ 21 (internal quotation omitted). Whether an exception to the mootness doctrine applies is reviewed *de novo*. *In re Vanessa K.*, 2011 IL App (3d) 100545, ¶ 13.

Here, the question of whether certain evidence constitutes newly discovered evidence for purposes of establishing a colorable claim of actual innocence is

undoubtedly of a public nature where it can ultimately determine whether an innocent person remains imprisoned. Indeed, this Court has found that “the due process clause of the Illinois Constitution affords postconviction petitioners the right to assert a freestanding claim of actual innocence based on newly discovered evidence.” *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009), citing *People v. Morgan*, 212 Ill.2d 148, 154 (2004); see also *Washington*, 171 Ill.2d at 489 (“We believe that no person convicted of a crime should be deprived of life or liberty given compelling evidence of actual innocence”).

There is also need for authoritative guidance on this issue where there is confusion in the appellate court and this Court has not considered the issue previously. *In re Shelby R.*, 2013 IL 114994, ¶¶ 19, 21 (“The Illinois Supreme Court generally applies the public-interest exception in cases involving a split in the case law or an issue of first impression”). Currently there is confusion in the appellate court on this issue.

There is case law that supports finding that evidence available at the time of trial that supports a newly discovered, retroactive affirmative defense that was not available at the time of trial can be considered new evidence for purposes of an actual innocence claim. *Alberts*, 383 Ill. App. 3d at 380-86 (actual innocence claim based on affirmative defense of involuntary intoxication due to unwarned, adverse side effects of prescription medications remanded for evidentiary hearing despite it being known during trial that defendant was taking prescription medication); see also *People v. Montes*, 2015 IL App (2d) 140485, ¶ 24 (acknowledging that actual innocence claims are appropriate “where the basis for the affirmative

defense remained undiscovered until after trial”), citing *Alberts*, 383 Ill. App. 3d 374. And, as evidenced by this case, the Third District questions the propriety of allowing this type of evidence to support actual innocence claims. *Taliani*, 2020 IL App (3d) 170546, ¶¶ 25, 35.

This issue is likely to recur for Taliani and other petitioners. If this Court ultimately decides to remand this case for second-stage proceedings, the State would likely raise this issue in its motion to dismiss Taliani’s amended postconviction petition requiring the circuit court to consider the issue without guidance from this Court. And, this issue will likely arise again for other petitioners eventually as actual innocence claims are frequently pursued by petitioners in postconviction petitions. Thus this Court should reach this question.

Actual innocence claims generally require newly discovered facts that were unavailable at the time of trial, but as the dissenting Justice noted, the purpose for that is to “avoid having defendants wait until after being convicted to reopen the case to raise a claim of innocence that could have been presented during the trial.” *Taliani*, 2020 IL App (3d) 170546, ¶ 35 (Justice McDade, dissenting). That purpose is not defeated by finding that facts that support a newly available, retroactive affirmative defense constitute new evidence for purposes of an actual innocence claim despite being known at the time of trial. As Justice McDade explained, the fact that Taliani was taking these prescription medications was not relevant evidence until the affirmative defense became available in 2006, twelve years after his trial in 1994. *Id.* This is not a matter of simple delay or a failure to exercise due diligence, but rather a situation where the affirmative defense

that made these facts relevant to Taliani's defense was not available during trial.

Indeed, to find that these facts cannot support an actual innocence claim would defeat the underlying purpose of allowing actual innocence claims, which is to prevent "fundamental miscarriages of justice." *Coleman*, 2013 IL 113307, ¶ 83. Taliani, and other petitioners in this type of situation, would be left in the unjust position of being able to establish facts that probably would result in their acquittal without an avenue to bring the facts before a court in order to get relief. For example, Taliani would not be able to successfully raise this claim as ineffective assistance of counsel because counsel would not be found to have acted unreasonably for failing to argue an affirmative defense not recognized by the Illinois courts at the time of trial. *Taliani*, 2020 IL App (3d) 170546, ¶ 35 (tendering these facts at trial as part of a defense "would have been properly rejected as irrelevant"); see also *Alberts*, 383 Ill. App. 3d at 385 ("it was not unreasonable for trial counsel to forego pursuing such a defense"). Additionally, this Court had recognized that, even though petitioners can apply for executive clemency, many actual innocence claims would still go ignored if not for the ability to file such claims in postconviction petitions. *Washington*, 171 Ill. 2d at 489 ("Given the limited avenues that our legislature has so far seen fit to provide for raising freestanding claims of innocence, that idea—but for the possibility of executive clemency—would go ignored in cases like this one").

Therefore, due to the confusion and apparent split in authority on this issue, this Court should make clear that facts that support a newly available, retroactive affirmative defense constitute new evidence for purposes of presenting an actual

innocence claim in a postconviction petition despite those facts being known at the time of trial.

## **2. Taliani presented a colorable claim of actual innocence**

The majority of the appellate court went on to find that even if the fact that Taliani had been taking the prescribed medications at the time of trial could be considered newly discovered evidence, Taliani still failed to present a colorable claim of actual innocence. *Taliani*, 2020 IL App (3d) 170546, ¶¶ 27-30. After acknowledging that Taliani’s motion may have established that he “suffered from unwarned side effects of prescription medication at the time of the offense” the majority found that: (1) it was “not apparent” that increased irritability, confusion, or increased suicidal ideation would deprive Taliani of the “substantial capacity to know that shooting the victims was a criminal act or to refrain from engaging in that conduct;” (2) the term “altered state of consciousness” was vague and that it was not clear how Taliani’s consciousness was altered at the time of the offense; (3) Taliani did not allege that Dr. Brady failed to warn him about the potential side effect of increased suicidal ideation; (4) Dr. Chapman testified that Taliani’s mental impairment was caused by his depression and Chapman did not opine about the effects of serotonin syndrome; and (5) the jury heard Chapman’s opinion and rejected Taliani’s insanity defense. *Id.* at ¶¶ 27-30.

This Court should reverse the appellate court and remand for further postconviction proceedings because Taliani’s motion for leave to file a successive postconviction petition, liberally construed and taken as true, presented a colorable claim of actual innocence.

### **Side effects and severity of intoxication**

The majority of the appellate court found that Taliani failed to show that the side effects he claimed to be experiencing at the time of the offense rendered him intoxicated to the degree that he lacked “substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.” *Taliani*, 2020 IL App (3d) 170546 at ¶¶ 27-29, quoting 720 ILCS 5/6-3(b) (West 1992). Taliani’s petition should be interpreted as having sufficiently established that the side effects he claimed to experience caused him to be involuntarily intoxicated to the degree required by the involuntary intoxication statute where he asserts that he would be acquitted by a jury if he was able to present this affirmative defense at trial and attached Dr. Chapman’s report that found that he lacked the capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. (C1101, 1103, 1163) It is not clear what other claim Taliani would be making if not that.

Ultimately, it will require expert testimony presented at an evidentiary hearing to definitively determine whether these side effects rendered Taliani involuntarily intoxicated as required by statute. *Alberts*, 383 Ill. App. 3d at 385 (postconviction petition should proceed to an evidentiary hearing where the trial court can determine whether a *Hari* defense can be substantiated).

However, Taliani’s claim that he was involuntarily intoxicated at the time of the offense due to the adverse effects of prescribed drugs has factual support in the record and in the exhibits attached to his motion. The trial record established that Taliani took the medication prescribed for him by Dr. Brady. (R906-07) The

presentence report and Dr. Brady's testimony and attached psychiatric report show that Taliani was prescribed the medications Buspar and Desyrel after being diagnosed with major depression. (C1114; SCR8; R468) An exhibit from Drugs.com attached to Taliani's motion indicates that the combination of these drugs is classified as a "major drug interaction," a classification that is described as "Highly clinically significant. Avoid combinations; the risk outweighs the benefit." (C1117-18) The exhibit indicates that the interaction of these prescription drugs can result in a condition called "serotonin syndrome," which may cause "mental status changes" including irritability, altered consciousness, and confusion. (C1117) Another exhibit that appears to be an informational packet from Bristol-Myers Squibb Company indicates that the administration of Buspar with other psychotropic drugs "should be approached with caution" and that some subjects taking Buspar experienced "suicidal ideation." (C1130, 1136)

There is no indication that Dr. Brady warned Taliani of any of these potential side effects and Taliani claims in his petition that Brady failed to do so. (C1100, 1104) In fact, Brady's report seems to show that he believed there were no risks associated with the combination of these drugs where on his report Brady wrote "a small dose of Desyrel should be ok" and he noted that he discussed the use of Desyrel and Buspar with a pharmacist who "concurred" with him. (C1114) Taliani's motion should therefore be liberally construed as having sufficiently established that the side effects he suffered from were severe enough to cause involuntary intoxication as required by statute.



### **Altered State of Consciousness**

The appellate court found that the term “altered state of consciousness” was vague and it was not clear how Taliani’s consciousness was altered at the time of the offense. *Taliani*, 2020 IL App (3d) 170546, ¶ 29. Any confusion on this particular side effect should be clarified at an evidentiary hearing but a plain reading of the term would suggest that it means Taliani was in a different state of mind than usual at the time of the offense and, when considered in the context of the petition and the attachments, it is obvious that Taliani is claiming that this side effect rendered him “involuntarily intoxicated” as required by the involuntary intoxication statute.

Indeed, the record and the report attached to Taliani’s motion shows that Taliani told Chapman that he felt as if he was “losing his mind,” that he did not understand “things going on around him” and reported “bizarre and unusual sensory experiences and confused thinking.” (R365; C1162) Taliani had considered killing himself and Wolf prior to his June meeting with Dr. Brady but he was unable to do it despite having suffered from depression for up to a decade. (R12-13, 372, 766) Indeed, Chapman reported that Taliani had a dream in which he killed Wolf and himself. (C1161)

But on July 14, only two weeks after meeting with Dr. Brady on June 27 and taking the prescribed medications, Taliani was suddenly able to shoot Wolf *and* Frasco with a shotgun. (R448, 906-07) Taliani expressed odd thoughts when he told Chapman that he believed Wolf agreed with his decision to kill her and then commit suicide because they would both be together after death. (C1161-62)

Thus, the record and the attached documents contain significant factual support for Taliani's claim that he was involuntarily intoxicated in that he was experiencing severe, adverse, and unwarned-of side effects of prescription drugs at the time of the offense, including an altered state of consciousness.

### **Warning of suicidal ideation**

The appellate court found that Taliani failed to allege that Brady failed to warn him of the potential side effect of suicidal ideation but a liberal reading of Taliani's petition shows otherwise. Taliani claimed that Brady failed to advise him of "the potential risk of serotonin syndrome" when he prescribed the combination of Buspar and Desyrel medications. (C1100, 1104) Taliani included all of the side effects he claimed to suffer from at the time of the offense in one paragraph under the umbrella term of serotonin syndrome:

At the time of the offense, Petitioner was suffering from symptoms associated with serotonin syndrome, including; heightened irritability, confusion, and altered consciousness, as well as, increased suicidal ideations, also a side effect of serotonergic medications such as Buspar.

(C1100 at ¶ 29)

Taliani filed his petition *pro se* and he is not a legal scholar or a psychiatrist and his claim that Dr. Brady failed to advise him of the risk of serotonin syndrome should be liberally construed to include the risk of "increased suicidal ideation" where that side effect was included among all of the other side effects Taliani described as being associated with serotonin syndrome. *Warren*, 2016 IL App (1st) 090884-C, ¶ 72.

Moreover, Taliani's claim that he was experiencing symptoms of serotonin syndrome and increased suicide ideations is supported by Chapman's report in

which Chapman determined that Taliani was experiencing extreme anxiety and appeared to be “quite confused, disorganized, and prone to intense feelings of panic.” (C1162; R365-66, 402, 442-44) Notably, as the documents attached to his petition indicate, Taliani was placed on suicide watch after being arrested and he tried to commit suicide at least once while in jail for these charges. (C1100, 1148; R385)

In his report, Chapman noted that Taliani felt “increasingly helpless with recurrent suicide urges” after taking medications prescribed by Dr. Brady. (C1161) Chapman’s report indicated that Dr. Brady prescribed medication for Taliani that helped him sleep but did not help with his depression and that, after meeting with Brady, Taliani felt “*increasingly* helpless with *recurrent* suicidal urges.” (Emphasis added) (C1161) Any increased suicidal urges would likely have also increased Taliani’s homicidal urge to kill Wolf to the point he would be considered involuntarily intoxicated since his homicidal/suicidal urges appear to have been intertwined. (C1161-62) Thus, this Court should find that Taliani sufficiently established that he suffered from, and was not warned of, suicidal ideation as a side effect of the prescription medication he was taking at the time of the offense.

### **Insanity defense**

Taliani raised an insanity defense at trial, which required him to prove by a preponderance of the evidence that he was not guilty by reason of insanity. 720 ILCS 5/6-2(e) (West 1994); 720 ILCS 5/3-2(b) (West 1994). (C269)

The majority of the appellate court seemed to erroneously conflate an insanity defense with an involuntary intoxication defense when it justified its decision to affirm the denial of Taliani’s motion in part because the jury rejected his insanity

defense at trial. *Taliani*, 2020 IL App (3d) 170546 at ¶ 30 (“Chapman’s opinion was presented to the jury in support of defendant’s insanity defense and was ultimately rejected”).

The insanity statute at the time stated:

A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.

720 ILCS 5/6-2(a) (West 1994). (C261)

Taliani acknowledges that this appears to be the same standard required by the involuntary intoxication statute. However, when a defendant asserts the affirmative defense of involuntary intoxication, it is the State that must prove that the defendant was not involuntarily intoxicated beyond a reasonable doubt. 720 ILCS 5/3-2 (a) (West 1994). Moreover, the involuntary intoxication defense would require the jury to be instructed on that defense and the jury would undoubtedly be presented with new facts regarding the prescription medication, its side effects, and how those side effects impacted Taliani’s mental state and caused him to lack the substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law at the time of the offense.

The trial evidence related to Taliani’s mental condition was at least closely balanced where the jury appears to have sent a note to the court during deliberations asking to “see both Dr. reports.” (C293) See *People v. Lee*, 2019 IL App (1st) 162563, ¶ 67 (jury notes during deliberations demonstrate the closely balanced nature of the evidence in a case), citing *People v. Wilmington*, 2013 IL 112938, ¶ 35. Dr.

Chapman testified at trial that Taliani's mental disease caused him to lack the substantial capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of the law at the time of these offenses and new evidence regarding involuntary intoxication would likely tip the balance in favor of Taliani, especially if the burden is on the State. (R384, 407, 433) Therefore, the fact that Taliani's insanity defense failed at trial does not require a finding that his involuntary intoxication defense would similarly fail at a new trial.

### **Dr. Chapman's testimony**

The majority of the appellate court noted that although Dr. Chapman testified that Taliani was substantially impaired at the time of the offense, he did not testify that the impairment was due to the side effects of prescription medication. *Taliani*, 2020 IL App (3d) 170546 at ¶ 30. Rather, Chapman found that Taliani's impairment and "distorted beliefs" were due to his depression. *Id.* But, as the dissent correctly noted, there would have been no reason for Chapman to testify that the source of those "distorted beliefs" was the prescription medication used to treat his depression where that would not have been necessary to explain that Taliani had such beliefs and would have been irrelevant where involuntary intoxication based on unwarned-of side effects of prescription medication was not a valid affirmative defense at the time. *Taliani*, 2020 IL App (3d) 170546 at ¶ 35; see also *Alberts*, 383 Ill. App. 3d at 384 ("If defendant had raised [the involuntary intoxication defense] at his April 2002 trial, it would have been rejected because, at the time, Illinois law disallowed such a defense absent evidence that his intoxication was the result of "trick, artifice[,] or force"), quoting *People v. Rogers*, 123 Ill. 2d 487, 508 (1988),

overruled by *Hari*, 218 Ill. 2d 275.

Indeed, although involuntary intoxication was not presented as a defense, Chapman's report described Taliani as experiencing what amounts to the claimed side effects of his prescription medications. Chapman described Taliani as experiencing "confused thinking," feeling as if he was "losing his mind," and that he had "recurrent suicide urges" after taking the medicine prescribed by Brady. (C1161-62) Chapman went on to find that Taliani was substantially impaired in his capacity to appreciate the criminality of his behavior or to conform his conduct to the requirements of the law. (C1163)

The dissent correctly found that Taliani's petition and supporting documentation "presented a colorable claim of actual innocence such that he should have been granted leave to file a successive postconviction petition that could have been tested at the second stage." *Taliani*, 2020 IL App (3d) 170546 at ¶ 36. This is made clear when compared to *Alberts*, where the petitioner's actual innocence claim based on the same affirmative defense of involuntary intoxication advanced to a third-stage evidentiary hearing after being dismissed at the second-stage. 383 Ill. App. 3d at 385 ("We find a retroactive application of *Hari* is sufficient to sustain defendant's burden of alleging a substantial deprivation of his constitutional rights; and therefore, his petition should proceed to an evidentiary hearing on the issue"). Taliani should at least be granted leave to file his successive postconviction petition and have appointed counsel refine his claims and present them during second-stage proceedings.

In sum, although the fact that Taliani was taking prescription medications

was known at the time of trial, given the change in law that occurred after Taliani's convictions, the evidence that supports his claim of involuntary intoxication should be considered as "newly discovered" because it could not have been presented earlier and the relevance and legal effect of such evidence is new in light of *Hari* and could now provide Taliani with a potential defense to the charges. This evidence is "material" because it goes to an affirmative defense. Indeed, involuntary intoxication is an affirmative defense which exculpates a defendant if the trier of fact believes that the elements of involuntary intoxication have been proven. *Hari*, 218 Ill.2d at 295.

The evidence supporting Taliani's claim of actual innocence is not cumulative where the involuntary intoxication defense was not raised at trial and evidence related to the side effects from these prescription medications was not discussed at trial. And this new evidence would probably change the result on retrial where the record shows that Taliani's mental state was an important part of the jury's deliberations and substantiates Taliani's use of prescription medication and his experiencing detrimental and unwarned-of side effects of the medications at the time of the offense.

Therefore, Taliani has raised a colorable claim of actual innocence that is fully supported by the facts in the record and the applicable law, and this Court should reverse the appellate court and vacate the trial court's order denying Taliani leave to file a successive postconviction petition and remand this matter for further postconviction proceedings.

**CONCLUSION**

For the foregoing reasons, Steven A. Taliani, respectfully requests that this Court reverse the appellate court and remand the cause for further postconviction proceedings.

Respectfully submitted,

THOMAS A. LILIEN  
Deputy Defender

LUCAS WALKER  
Assistant Appellate Defender  
Office of the State Appellate Defender  
Second Judicial District  
One Douglas Avenue, Second Floor  
Elgin, IL 60120  
(847) 695-8822  
2nndistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT



**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 37 pages.

/s/Lucas Walker  
**LUCAS WALKER**  
Assistant Appellate Defender

**APPENDIX TO THE BRIEF**

**Steven A. Taliani No. 125891**

Index to the Record . . . . .	1
Circuit Court's Order Denying <i>Pro Se</i> Petition for Postconviction Relief . . . . .	23
Notice of Appeal . . . . .	26
Appellate Court Decision . . . . .	27

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	
Plaintiff/Petitioner	)	Appellate Court No: 3-17-0546
	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
	Record sheet	C 14 - C 39
07/13/1994	CRIMINAL INFORMATION FOR COUNT I --7_13_1994	C 40 - C 40
07/13/1994	CRIMINAL INFORMATION FOR COUNT II-7_13_1994	C 41 - C 41
07/15/1994	ENTRY OF APPEARANCE-7_15_1994	C 42 - C 42
07/15/1994	MOTION FOR GAG ORDER-7_15_1994	C 43 - C 46
07/15/1994	PETITION FOR THE EXAMINATION OF THE DEFENDANT-7_15_1994	C 47 - C 48
07/15/1994	AMENDED COUNT I - FIRST DEGREE MURDER	C 49 - C 49
07/18/1994	ORDER ENTERED-7_18_1994	C 50 - C 50
07/19/1994	ORDER FOR FITNESS EXAMINATION-7_19_1994	C 51 - C 52
07/19/1994	CLERK'S CERTIFICATE OF MAILING-7_19_1994	C 53 - C 53
07/21/1994	ENTRY OF APPEARANCE-7_21_1994	C 54 - C 54
07/22/1994	MOTION FOR DISCOVERY-7_22_1994	C 55 - C 58
07/22/1994	INFORMATION FURNISHED-7_22_1994	C 59 - C 63
07/25/1994	INFORMATION FURNISHED-7_25_1994	C 64 - C 65
07/26/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 66 - C 66
07/26/1994	PEOPLE'S MOTION FOR NOTIFICATION OF AFFIRMATIVE DEFENSE	C 67 - C 68
07/26/1994	PEOPLE'S MOTION FOR MEDICAL AND SCIENTIFIC REPORTS-7_26	C 69 - C 70
07/27/1994	SUPPLEMENTAL INFORMATION FURNISHED-7_27_1994	C 71 - C 71
08/02/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 72 - C 73
08/04/1994	SUBPOENA DUES TECUM-8_4_1994	C 74 - C 74
08/05/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 75 - C 76
08/09/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 77 - C 77
08/09/1994	INDICTMENT FOR COUNT I --8_9_1994	C 78 - C 78
08/09/1994	INDICTMENT FOR COUNT II-8_9_1994	C 79 - C 79
08/09/1994	ORDER ENTERED-8_9_1994	C 80 - C 80

C 2

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	
Plaintiff/Petitioner	)	Appellate Court No: 3-17-0546
	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 2 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
08/12/1994	SUPPLEMENTAL INFORMATION FURNISHED-8_12_1994	C 81 - C 81
08/15/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 82 - C 82
08/16/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 83 - C 83
08/16/1994	SUBPOENA-8_16_1994	C 84 - C 84
08/16/1994	SUBPOENA-8_16_1994	C 85 - C 85
08/16/1994	SUBPOENA-8_16_1994	C 86 - C 86
08/16/1994	SUBPOENA-8_16_1994	C 87 - C 87
08/16/1994	SUBPOENA-8_16_1994	C 88 - C 88
08/16/1994	SUBPOENA-8_16_1994	C 89 - C 89
08/16/1994	SUBPOENA-8_16_1994	C 90 - C 90
08/16/1994	SUBPOENA-8_16_1994	C 91 - C 91
08/16/1994	SUBPOENA-8_16_1994	C 92 - C 92
08/16/1994	SUBPOENA-8_16_1994	C 93 - C 93
08/16/1994	SUBPOENA-8_16_1994	C 94 - C 94
08/16/1994	SUBPOENA-8_16_1994	C 95 - C 95
08/17/1994	SUBPOENA-8_17_1994	C 96 - C 96
08/17/1994	SUBPOENA-8_17_1994	C 97 - C 97
08/17/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 98 - C 98
08/17/1994	SUBPOENA-8_17_1994	C 99 - C 99
08/17/1994	SUBPOENA-8_17_1994	C 100 - C 100
08/17/1994	SUBPOENA-8_17_1994	C 101 - C 101
08/17/1994	SUBPOENA-8_17_1994	C 102 - C 102
08/18/1994	PETITION FOR CHANGE OF PLACE OF TRIAL-8_18_1994	C 103 - C 136
08/18/1994	MOTION TO DENY AND DISMISS-8_18_1994	C 137 - C 138
08/18/1994	SUBPOENA-8_18_1994	C 139 - C 139

C 3

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	
Plaintiff/Petitioner	)	Appellate Court No: 3-17-0546
	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 3 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
08/18/1994	AFFIDAVIT OF CHARLES AND JOANNE TALIANI-8_18_1994	C 140 - C 141
08/18/1994	SUBPOENA-8_18_1994	C 142 - C 142
08/18/1994	SUBPOENA-8_18_1994	C 143 - C 143
08/19/1994	CLERK'S NOTICE OF HEARING ON DEFENDANT'S PETITION-8_19_1994	C 144 - C 144
08/19/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 145 - C 146
08/22/1994	SUBPOENA-8_22_1994	C 147 - C 147
08/22/1994	SUBPOENA-8_22_1994	C 148 - C 148
08/22/1994	SUBPOENA-8_22_1994	C 149 - C 149
08/22/1994	CLERK'S NOTICE OF RESETTING HEARING ON DEFENDANT'S-8_22_1994	C 150 - C 150
08/22/1994	COPY OF CLERK'S NOTICE OF RESETTING HEARING ON DEFENDANT'S-8_22_1994	C 151 - C 151
08/22/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 152 - C 152
08/24/1994	ORDER ENTERED DENYING PETITION-8_24_1994	C 153 - C 153
08/25/1994	SUBPOENA-8_25_1994	C 154 - C 154
08/26/1994	DEFENDANT'S ANSWER TO THE STATE'S MOTION-8_26_1994	C 155 - C 156
08/29/1994	SUPPLEMENTAL INFORMATION FURNISHED-8_29_1994	C 157 - C 157
08/30/1994	LIST OF DEFENDANT'S WITNESSES	C 158 - C 159
08/31/1994	MOTION IN LIMINE-8_31_1994	C 160 - C 161
08/31/1994	MOTION IN LIMINE-8_31_1994	C 162 - C 163
08/31/1994	MOTION IN LIMINE-8_31_1994	C 164 - C 165
08/31/1994	MOTION IN LIMINE-8_31_1994	C 166 - C 168
08/31/1994	SUBPOENA-8_31_1994	C 169 - C 169
09/14/1994	SUBPOENA-9_14_1994	C 170 - C 170
09/15/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 171 - C 171
09/19/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 172 - C 172
09/20/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 173 - C 173

C 4

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	Appellate Court No: 3-17-0546
Plaintiff/Petitioner	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 4 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
09/20/1994	COPY OF CORRESPONDENCE TO THE DEFENDANT'S COUNSEL-9_20_	C 174 - C 175
09/22/1994	SUPPLEMENTAL INFORMAITON FURNISHED	C 176 - C 176
09/26/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 177 - C 177
09/28/1994	SUBPOENA-9_28_1994	C 178 - C 178
10/05/1994	SUBPOENA-10_5_1994	C 179 - C 179
10/05/1994	SUBPOENA-10_5_1994	C 180 - C 180
10/06/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 181 - C 181
10/07/1994	SUBPOENA-10_7_1994	C 182 - C 182
10/07/1994	SUBPOENA-10_7_1994	C 183 - C 183
10/11/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 184 - C 184
10/11/1994	SUBPOENA-10_11_1994	C 185 - C 185
10/11/1994	SUBPOENA-10_11_1994	C 186 - C 186
10/14/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 187 - C 187
10/24/1994	SUPPLEMENTAL INFORMATION FURNISHED-10_24_1994	C 188 - C 188
10/25/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 189 - C 189
10/27/1994	SUPPLEMENTAL INFORMATION FURNISHED-10_27_1994	C 190 - C 190
10/31/1994	SUPPLEMENTAL INFORMATION FURNISHED	C 191 - C 191
11/15/1994	SUBPOENA-11_15_1994	C 192 - C 192
11/16/1994	INSTRUCTS THE JURY IN WRITING	C 193 - C 292
11/16/1994	NOTE FROM THE JURY	C 293 - C 293
11/16/1994	WE_ THE JURY_ FIND THE DEFENDANT	C 294 - C 294
11/16/1994	WE_ THE JURY_ FIND THE DEFENDANT	C 295 - C 295
11/16/1994	ORDER FOR PRESENTENCE REPORT-11_16_1994	C 296 - C 296
11/17/1994	CLERK'S NOTICE ON SENTENCING OF THE DEFENDANT-11_17_199	C 297 - C 297
11/28/1994	MOTION FOR NEW TRIAL-11_28_1994	C 298 - C 298

C 5

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	
Plaintiff/Petitioner	)	Appellate Court No: 3-17-0546
	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 5 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
12/20/1994	ORDER ENTERED-12_20_1994	C 299 - C 299
12/20/1994	SENTENCING ORDER-12_20_1994	C 300 - C 301
12/20/1994	NOTICE OF APPEAL-12_20_1994	C 302 - C 302
12/20/1994	CORRESPONDENCE-12_20_1994	C 303 - C 303
12/22/1994	NOTICE SHOWING DEFENDANT TRANSPORTED TO DOC-12_22_1994	C 304 - C 304
12/23/1994	CLERK'S CERTIFICATE OF MAILING-12_23_1994	C 305 - C 305
12/23/1994	ORDER ENTERED-12_23_1994	C 306 - C 306
12/23/1994	CLERK'S CERTIFICATE OF MAILING-12_23_1994	C 307 - C 307
12/27/1994	NOTICE TO THE CLERK-12_27_1994	C 308 - C 308
12/27/1994	PROOF OF SERVICE-12_27_1994	C 309 - C 309
01/03/1995	CORRESPONDENCE-1_3_1995	C 310 - C 310
01/05/1995	CURRENT DOCKETING ORDER - DUE DATES-1_5_1995	C 311 - C 311
01/26/1995	CORRESPONDENCE-1_26_1995	C 312 - C 312
02/16/1995	COPY OF CLERK'S CERTIFICATE-2_16_1995	C 313 - C 314
02/21/1995	COPY OF CERTIFICATE	C 315 - C 315
01/05/1996	NOTICE OF ISSUANCE-1_5_1996	C 316 - C 316
01/05/1996	MANDATE FROM THIRD DISTRICT APPELLATE COURT-1_5_1996	C 317 - C 330
05/29/1996	PRO SE PETITION-5_29_1996	C 331 - C 341
06/04/1996	ORDER ENTERED-6_4_1996	C 342 - C 344
06/05/1996	CLERK'S CERTIFICATE OF MAILING-6_5_1996	C 345 - C 345
06/05/1996	COPY OF NOTICE-6_5_1996	C 346 - C 346
07/02/1996	NOTICE OF FILING WITH CERTIFICATE OF SERVICE-7_2_1996	C 347 - C 347
07/02/1996	SUPPLEMENTAL APPEARANCE FOR THE DEFENDANT	C 348 - C 348
07/02/1996	MOTION TO RECONSIDER THE DENIAL OF DEFENDANT'S-7_2_1996	C 349 - C 366
07/05/1996	ORDER ENTERED-7_5_1996	C 367 - C 368

C 6

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	Appellate Court No: 3-17-0546
Plaintiff/Petitioner	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 6 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
07/08/1996	CLERK'S CERTIFICATE OF MAILING-7_8_1996	C 369 - C 369
07/08/1996	COPY OF NOTICE-7_8_1996	C 370 - C 370
08/01/1996	NOTICE OF APPEAL-8_1_1996	C 371 - C 371
08/01/1996	DOCKETING STATEMENT	C 372 - C 373
08/01/1996	NOTICE OF FILING AND PROOF OF SERVICE	C 374 - C 374
08/01/1996	CLERK'S CERTIFICATE OF MAILING-8_1_1996	C 375 - C 375
08/13/1996	CURRENT DOCKETING ORDER - DUE DATES-8_13_1996	C 376 - C 377
10/02/1996	COPY OF CLERK'S CERTIFICATE IN LIEU OF RECORD-10_2_1996	C 378 - C 378
10/15/1996	COPY OF CERTIFICATE IN LIEU OF RECORD	C 379 - C 379
07/17/1997	NOTICE OF ISSUANCE-7_17_1997	C 380 - C 380
07/17/1997	MANADATE FROM THE THIRD DISTRICT APPELLATE COURT	C 381 - C 392
08/29/1997	RECORDS RECEIPT FROM THE APPELLATE COURT THIRD DISTRICT	C 393 - C 393
04/22/1998	DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENT'S	C 394 - C 396
04/22/1998	NOTICE OF FILING-4_22_1998	C 397 - C 397
05/06/1998	MOTION TO AMEND-5_6_1998	C 398 - C 400
05/06/1998	NOTICE OF FILING-5_6_1998	C 401 - C 401
06/18/1998	MOTION TO COMPEL-6_18_1998	C 402 - C 404
06/18/1998	NOTICE OF FILING MOTION	C 405 - C 405
06/18/1998	DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENT'S	C 406 - C 408
06/18/1998	NOTICE OF FILING-6_18_1998	C 409 - C 409
06/18/1998	MOTION TO AMEND-6_18_1998	C 410 - C 412
06/18/1998	NOTICE OF FILING MOTION	C 413 - C 413
06/18/1998	ORDER ENTERED-6_18_1998	C 414 - C 414
06/18/1998	CLERK'S CERTIFICATE OF MAILING-6_18_1998	C 415 - C 415
06/01/2000	PETITION FOR RELIEF FROM JUDGEMENT-6_1_2000	C 416 - C 466

C 7



APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	Appellate Court No: 3-17-0546
Plaintiff/Petitioner	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 7 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
06/01/2000	NOTICE OF FILING-6_1_2000	C 467 - C 467
09/21/2000	REQUEST FROM DEFENDANT-9_21_2000	C 468 - C 469
10/25/2000	REQUEST FROM DEFENDANT FOR STATUS REPORT-10_25_2000	C 470 - C 471
10/26/2000	REQUEST TO AMEND PETITION FOR RELIEF-10_26_2000	C 472 - C 477
10/26/2000	NOTICE OF FILING-10_26_2000	C 478 - C 478
10/31/2000	ORDER ENTERED-10_31_2000	C 479 - C 481
11/01/2000	COPY CORRESPONDENCE TO THE DEFENDANT-11_1_2000	C 482 - C 482
11/01/2000	CLERK'S CERTIFICATE OF MAILING-11_1_2000	C 483 - C 483
11/27/2000	CORRESPONDENCE RECEIVED FROM DEFENDANT-11_27_2000	C 484 - C 484
11/27/2000	NOTICE OF FILING-11_27_2000	C 485 - C 485
11/27/2000	NOTICE OF APPEAL-11_27_2000	C 486 - C 486
11/27/2000	MOTION FOR APPOINTMENT OF COUNSEL-11_27_2000	C 487 - C 490
11/27/2000	ORDER FOR FREE TRANSCRIPT-11_27_2000	C 491 - C 491
11/27/2000	CLERK'S CERTIFICATE OF MAILING-11_27_2000	C 492 - C 492
11/27/2000	CLERK'S CERTIFICATE OF MAILING-11_27_2000	C 493 - C 493
11/27/2000	CLERK'S CERTIFICATE OF MAILING-11_27_2000	C 494 - C 494
11/27/2000	CLERK'S CERTIFICATE OF MAILING-11_27_2000	C 495 - C 495
12/05/2000	CORRESPONDENCE WITH CURRENT DOCKETING ORDER-12_5_2000	C 496 - C 497
12/26/2000	CLERK'S CERTIFICATE OF MAILING-12_26_2000	C 498 - C 498
01/02/2001	CERTIFICATION OF RECORD-1_2_2001	C 499 - C 499
01/02/2001	CLERK'S CERTIFICATION-1_2_2001	C 500 - C 500
01/02/2001	CERTIFICATION OF RECORD-1_2_2001	C 501 - C 501
10/01/2001	CLERK'S CERTIFICATE OF MAILING-10_1_2001	C 502 - C 502
10/01/2001	SUPPLEMENTAL CERTIFICATION OF RECORD	C 503 - C 503
10/01/2001	CLERK'S CERTIFICATION-10_1_2001	C 504 - C 504

C 8

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	Appellate Court No: 3-17-0546
Plaintiff/Petitioner	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 8 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
10/01/2001	SUPPLEMENTAL CERTIFICATION OF RECORD	C 505 - C 505
01/17/2002	PETITION FOR RELIEF FROM JUDGEMENT WITH CASE HISTORY-1_	C 506 - C 672
02/01/2002	MOTION TO DISMISS PETITION-2_1_2002	C 673 - C 674
02/01/2002	NOTICE OF FILING-2_1_2002	C 675 - C 675
02/19/2002	CORRESPONDENCE-2_19_2002	C 676 - C 676
02/26/2002	MOTION TO DISMISS RESPONDENTS' MOTION-2_26_2002	C 677 - C 680
02/26/2002	NOTICE OF FILING MOTION TO DISMISS PETITION	C 681 - C 681
09/11/2002	CORRESPONDENCE-9_11_2002	C 682 - C 682
09/12/2002	COPY CORRESPONDENCE IN REPLY-9_12_2002	C 683 - C 683
09/18/2002	CORRESPONDENCE FROM DEFENDANT-9_18_2002	C 684 - C 684
09/23/2002	COPY OF CORRESPONDENCE-9_23_2002	C 685 - C 685
10/16/2002	AMENDED PRO-SE PETITION-10_16_2002	C 686 - C 687
10/16/2002	NOTICE OF FILING-10_16_2002	C 688 - C 688
10/16/2002	FREEDOM OF INFORMATION REQUEST-10_16_2002	C 689 - C 689
10/18/2002	COPY OF CORRESPONDENCE-10_18_2002	C 690 - C 690
01/16/2003	MOTION FOR APPOINTMENT OF COUNSEL-1_16_2003	C 691 - C 692
01/16/2003	NOTICE OF FILING MOTION	C 693 - C 693
02/25/2003	CORRESPONDENCE TO CLERK-2_25_2003	C 694 - C 694
03/18/2003	SECOND REQUEST FOR APPOINTMENT	C 695 - C 696
03/18/2003	NOTICE OF FILING-3_18_2003	C 697 - C 697
04/23/2003	REQUEST FOR APPOINTMENT	C 698 - C 699
04/23/2003	NOTICE OF FILING-4_23_2003	C 700 - C 700
04/23/2003	CORRESPONDENCE-4_23_2003	C 701 - C 701
04/28/2003	ORDER ENTERED-4_28_2003	C 702 - C 702
04/30/2003	MOTION OF DEFENDANT FOR ORDER-4_30_2003	C 703 - C 720

C 9

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	
Plaintiff/Petitioner	)	Appellate Court No: 3-17-0546
	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 9 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
04/30/2003	NOTICE OF FILING MOTION	C 721 - C 721
05/07/2003	CORRESPONDENCE-5_7_2003	C 722 - C 722
05/21/2003	CORRESPONDENCE-5_21_2003	C 723 - C 723
05/29/2003	CORRESPONDENCE-5_29_2003	C 724 - C 724
08/22/2003	REQUEST TO AMEND RELIEF-8_22_2003	C 725 - C 750
08/22/2003	NOTICE OF FILING-8_22_2003	C 751 - C 751
10/21/2003	MOTION FOR SUBSTITUTION OF ATTORNEY-10_21_2003	C 752 - C 767
10/21/2003	NOTICE OF FILING-10_21_2003	C 768 - C 768
11/26/2003	NOTICE OF FILING-11_26_2003	C 769 - C 773
12/15/2003	ORDER FOR WRIT OF HABEAS CORPUS-12_15_2003	C 774 - C 774
12/15/2003	WRIT OF HABEAS CORPUS	C 775 - C 775
01/22/2004	REQUEST TO AMEND RELIEF-1_22_2004	C 776 - C 793
01/22/2004	NOTICE OF FILING-1_22_2004	C 794 - C 794
01/27/2004	ORDER ENTERED-1_27_2004	C 795 - C 795
02/05/2004	CORRESPONDENCE-2_5_2004	C 796 - C 796
02/06/2004	COPY CORRESPONDENCE-2_6_2004	C 797 - C 797
02/18/2004	CORRESPONDENCE-2_18_2004	C 798 - C 798
03/08/2004	A NOTICE OF ISSUANCE-3_8_2004	C 799 - C 799
03/08/2004	MANDATE	C 800 - C 813
04/02/2004	RECORD RECEIPT-4_2_2004	C 814 - C 814
04/07/2004	ORDER FOR WRIT OF HABEAS CORPUS-4_7_2004	C 815 - C 815
04/07/2004	WRIT OF HABEAS CORPUS	C 816 - C 816
04/22/2004	ORDER ENTERED-4_22_2004	C 817 - C 817
05/27/2004	APPEARANCE-5_27_2004	C 818 - C 818
04/11/2006	WAVIER OF RIGHT TO RECLAIM EXHIBITS	C 819 - C 826

C 10

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	Appellate Court No: 3-17-0546
Plaintiff/Petitioner	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 10 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
05/16/2006	ADMINISTRATIVE ORDER-5_16_2006	C 827 - C 836
11/17/2006	CORRESPONDENCE-11_17_2006	C 837 - C 837
05/23/2007	CORRESPONDENCE-5_23_2007	C 838 - C 839
12/23/2008	CORRESPONDENCE-12_23_2008	C 840 - C 840
04/09/2009	FREEDOM OF INFORMATION-4_9_2009	C 841 - C 841
04/09/2009	FREEDOM OF INFORMATION-4_9_2009	C 842 - C 842
04/13/2009	COPY OF CORRESPONDENCE-4_13_2009	C 843 - C 843
04/22/2009	FREEDOM OF INFORMATION-4_22_2009	C 844 - C 844
04/24/2009	COPY OF CORRESPONDENCE-4_24_2009	C 845 - C 846
05/05/2009	FREEDOM OF INFORMATION REQUEST-5_5_2009	C 847 - C 847
05/05/2009	FREEDOM OF INFORMATION REQUEST-5_5_2009	C 848 - C 848
05/06/2009	COPY OF CORRESPONDENCE-5_6_2009	C 849 - C 849
05/13/2009	FREEDOM OF INFORMATION REQUEST-5_13_2009	C 850 - C 850
05/13/2009	FREEDOM OF INFORMATION-5_13_2009	C 851 - C 851
05/22/2009	FREEDOM OF INFORMATION-5_22_2009	C 852 - C 862
06/03/2009	FREEDOM OF INFORMATION REQUEST-6_3_2009	C 863 - C 895
06/24/2009	FREEDOM OF INFORMATION REQUEST-6_24_2009	C 896 - C 945
05/05/2010	CORRESPONDENCE-5_5_2010	C 946 - C 946
05/05/2010	COPY CORRESPONDENCE-5_5_2010	C 947 - C 947
05/07/2010	COPY CORRESPONDENCE-5_7_2010	C 948 - C 948
10/06/2014	AMENDED PETITION-10_6_2014	C 949 - C 1025
10/06/2014	NOTICE OF FILING-10_6_2014	C 1026 - C 1026
10/16/2014	MOTION FOR SUBSTITUTION OF JUDGE-10_16_2014	C 1027 - C 1027
10/16/2014	ORDER TRANSFERRING CAUSE TO CHIEF JUDGE-10_16_2014	C 1028 - C 1028
10/21/2014	CORRESPONDENCE-10_21_2014	C 1029 - C 1029

C 11

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	
Plaintiff/Petitioner	)	Appellate Court No: 3-17-0546
	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 11 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
10/29/2014	COPY OF CORRESPONDENCE-10_29_2014	C 1030 - C 1031
11/03/2014	ORDER_ ASSIGNMENT OF JUDGE-11_3_2014	C 1032 - C 1032
03/27/2015	ORDER-3_27_2015	C 1033 - C 1033
04/20/2015	PEOPLE'S RESPONSE AND REQUEST FOR DISMISSAL	C 1034 - C 1037
04/30/2015	FAXED ORDER OF HABEAS CORPUS-4_30_2015	C 1038 - C 1038
05/06/2015	ORDER OF HABEAS CORPUS-5_6_2015	C 1039 - C 1039
05/06/2015	CERTIFIED MAIL RECEIPT	C 1040 - C 1040
05/07/2015	DEFENDANT'S RESPONSE	C 1041 - C 1050
06/08/2015	OPINION AND ORDER-6_8_2015	C 1051 - C 1063
07/06/2015	NOTICE OF APPEAL-7_6_2015	C 1064 - C 1064
07/06/2015	NOTICE OF FILING AND PROOF OF SERVICE	C 1065 - C 1065
07/07/2015	NOTICE OF APPEAL-7_7_2015	C 1066 - C 1066
07/07/2015	NOTICE OF FILING-7_7_2015	C 1067 - C 1067
07/07/2015	PROOF OF SERVICE-7_7_2015	C 1068 - C 1068
07/07/2015	CLERK'S CERTIFICATE OF MAILING-7_7_2015	C 1069 - C 1069
07/07/2015	CLERK'S CERTIFICATE OF MAILING-7_7_2015	C 1070 - C 1070
07/07/2015	CLERK'S CERTIFICATE OF MAILING-7_7_2015	C 1071 - C 1071
07/20/2015	DOCKETING STATEMENT	C 1072 - C 1074
07/20/2015	CORRESPONDENCE-7_20_2015	C 1075 - C 1075
07/24/2015	CORRESPONDENCE-7_24_2015	C 1076 - C 1077
09/02/2015	CLERK'S CERTIFICATION-9_2_2015	C 1078 - C 1078
09/02/2015	CERTIFICATION OF RECORD-9_2_2015	C 1079 - C 1079
09/03/2015	APPELLATE COURT'S ACKNOWLEDGEMENT OF RECEIPT OF-9_3_2015	C 1080 - C 1080
01/09/2017	NOTICE ISSUANCE OF MANDATE-1_9_2017	C 1081 - C 1081
01/09/2017	MANDATE FROM APPELLATE COURT PETITION-1_9_2017	C 1082 - C 1093

C 12

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	
Plaintiff/Petitioner	)	Appellate Court No: 3-17-0546
	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 12 of 12

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
02/10/2017	RECORD RECEIPT-2_10_2017	C 1094 - C 1094
05/17/2017	NOTICE OF FILING AND PROOF OF SERVICE	C 1095 - C 1095
05/17/2017	APPLICATION FOR LEAVE-5_17_2017	C 1096 - C 1167
05/26/2017	ORDER ASSIGNMENT OF JUDGE-5_26_2017	C 1168 - C 1168
06/15/2017	PROOF_CERTIFICATE OF SERVICE-6_15_2017	C 1169 - C 1169
06/15/2017	MOTION FOR APPOINTMENT OF COUNSEL-6_15_2017	C 1170 - C 1171
07/28/2017	ORDER ENTERED-7_28_2017	C 1172 - C 1174
08/18/2017	NOTICE OF FILING AND PROOF OF SERVICE	C 1175 - C 1175
08/18/2017	NOTICE OF APPEAL-8_18_2017	C 1176 - C 1176
08/21/2017	ORDER FOR APPOINTMENT-8_21_2017	C 1177 - C 1177
08/21/2017	CLERK'S CERTIFICATE OF MAILING-8_21_2017	C 1178 - C 1178
08/21/2017	CLERK'S CERTIFICATE OF MAILING-8_21_2017	C 1179 - C 1179
08/21/2017	CLERK'S CERTIFICATE OF MAILING-8_21_2017	C 1180 - C 1180
08/21/2017	CLERK'S CERTIFICATE OF MAILING-8_21_2017	C 1181 - C 1181
09/05/2017	CORRESPONDENCE-9_5_2017	C 1182 - C 1183

C 13

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
 THIRD JUDICIAL DISTRICT  
 FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
 BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	Appellate Court No: 3-17-0546
Plaintiff/Petitioner	)	Circuit Court No: 1994CF37
	)	Trial Judge: T Madsen
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**SUPPLEMENT TO THE COMMON LAW RECORD - TABLE OF CONTENTS**

Page 1 of 1

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No</u>
12/13/1994	PRESENTENCE INVESTIGATION REPORT-12_13_1994	SUP 2 SEC C 4 - C181

SUP 2 SEC C 3

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	Appellate Court No: 3-17-0546
Plaintiff/Petitioner	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	E-FILED
	)	Transaction ID: 3-17-0546
TALIANI, STEVEN A	)	File Date: 10/16/2017 9:59 AM
Defendant/Respondent	)	Barbara Trumbo, Clerk of the Court
		APPELLATE COURT 3RD DISTRICT

**REPORT OF PROCEEDINGS - TABLE OF CONTENTS**

Page 1 of 1

<u>Date of</u> <u>Proceeding</u>	<u>Title/Description</u>	<u>Page No</u>
01/03/1995	TRIAL	R 2 - R 89
01/03/1995	TRIAL-1_3_1995	R 90 - R 234
01/10/1995	TRIAL-1_10_1995	R 235 - R 350
01/30/1995	TRIAL-1_30_1995	R 351 - R 351
01/31/1995	TRIAL-1_31_1995	R 352 - R 496
02/01/1995	TRIAL-2_1_1995	R 497 - R 546
02/07/1995	TRIAL-2_7_1995	R 547 - R 745
02/07/1995	TRIAL-2_7_1995	R 746 - R 1022
09/25/2001	SENTENCING-9_25_2001	R 1023 - R 1045
09/28/2001	HEARING-9_28_2001	R 1046 - R 1053

R 1



APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	
Plaintiff/Petitioner	)	Appellate Court No: 3-17-0546
	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**SUPPLEMENT TO THE REPORT OF PROCEEDINGS - TABLE OF CONTENTS**

Page 1 of 1

**Date of**

**Proceeding   Title/Description**

**Page No**

08/20/2015   PETITION FOR POST CONVICTION RELIEF-8\_20\_2015

SUP R 4 - R31

SUP R 3

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
	)	Reviewing Court No: 3-17-0546
Plaintiff/Petitioner	)	Circuit Court No: 1994CF37
	)	Trial Judge: Michael Jansz
v	)	
	)	
	)	
TALIANI, STEVEN A	)	
Defendant/Respondent	)	

**SUPPLEMENT TO THE REPORT OF PROCEEDINGS - TABLE OF CONTENTS**

Page 1 of 1

**Date of**

**Proceeding**

**Title/Description**

**Page No**

11/09/1994 SUPPLEMENT TO THE REPORT OF PROCEEDINGS

SUP 2 R 4 - R12

**SUP 2 R 3**

STATE OF ILLINOIS     )  
                                       ) ss  
 COUNTY OF BUREAU    )

IN THE CIRCUIT COURT - THIRTEENTH JUDICIAL CIRCUIT, BUREAU COUNTY, ILLINOIS

**PEOPLE OF THE STATE OF ILLINOIS,**  
 Plaintiff - Appellee,

vs.

**STEVEN A. TALIANI,**  
 Defendant - Appellant.

**REPORT OF PROCEEDINGS INDEX**

<b><u>REPORT OF PROCEEDINGS</u></b>	<b><u>PAGE NO</u></b>
REPORT OF PROCEEDINGS COMMENCING ON NOVEMBER 8, 1994 REPORTED BY COURT REPORTER BEVERLY K. JONES, filed January 3, 1995.....	R-2
<b><u>MISS MICHELLE CASTELLI</u></b> Direct Examination by State's Attorney.....	R-4
Cross Examination by Mr. Serritella.....	R-14
<b><u>MR. KEVIN ELLERBROCK</u></b> Direct Examination by State's Attorney.....	R-22
<b><u>MR. ARTHUR VERUCCHI</u></b> Direct Examination by State's Attorney.....	R-27
Cross Examination by Mr. Serritella.....	R-31
<b><u>MR. RICHARD DENIS</u></b> Direct Examination by State's Attorney.....	R-32
Cross Examination by Mr. Serritella.....	R-35
<b><u>MR. WALTER BALTICAUSKI</u></b> Direct Examination by State's Attorney.....	R-36
Cross Examination by Mr. Serritella.....	R-39
<b><u>MISS MARIA DeANGELOU</u></b> Direct Examination by State's Attorney.....	R-40

**REPORT OF PROCEEDINGS****PAGE NO****MISS KIM OSZEWSKI**

Direct Examination by State's Attorney .....	R-46
Cross Examination by Mr. Serritella. ....	R-50

**MISS KIM MILLER**

Direct Examination by State's Attorney .....	R-51
Cross Examination by Mr. Serritella. ....	R-56
Redirect Examination by State's Attorney .....	R-58

**MR. KEVIN TROVERO**

Direct Examination by State's Attorney .....	R-59
Cross Examination by Mr. Serritella. ....	R-68

**MISS LEE ANN TABER**

Direct Examination by State's Attorney .....	R-73
Cross Examination by Mr. Serritella. ....	R-80
Redirect Examination by State's Attorney .....	R-85
Recross Examination by Mr. Serritella. ....	R-86

REPORT OF PROCEEDINGS COMMENCING ON NOVEMBER 9, 1994, REPORTED BY COURT REPORTER BEVERLY K. JONES, filed January 3, 1995. ....	R-90
--	------

**MISS ANGELINA TONIELLIU**

Direct Examination by State's Attorney .....	R-92
Cross Examination by Mr. Serritella. ....	R-115

**CHIEF DOUGLAS BERNABEI**

Direct Examination by State's Attorney .....	R-129
Cross Examination by Mr. Serritella. ....	R-131
Redirect Examination by State's Attorney .....	R-137
Recross Examination by Mr. Serritella. ....	R-137

**MS. CLEMENTINA FRASCO**

Direct Examination by State's Attorney .....	R-139
Cross Examination by Mr. Serritella. ....	SR-168
Redirect Examination by State's Attorney .....	SR-171

**MRS. KAREN GILLAN**

Direct Examination by State's Attorney .....	R-165
Direct Examination by State's Attorney .....	SR-171

**REPORT OF PROCEEDINGS****PAGE NO****MRS. CHARLENE BLOMLIE**

Direct Examination by State's Attorney ..... R-170

**MISS MARLO CAPPONI**

Direct Examination by State's Attorney ..... R-174

Cross Examination by Mr. Serritella. .... R-181

Redirect Examination by State's Attorney ..... R-184

**OFFICER RICHARD TAYLOR**

Direct Examination by State's Attorney ..... R-184

**SERGEANT KEVIN SANGSTON**

Direct Examination by State's Attorney ..... R-204

Cross Examination by Mr. Serritella. .... R-226

Redirect Examination by State's Attorney ..... R-232

REPORT OF PROCEEDINGS COMMENCING ON NOVEMBER 10, 1994

REPORTED BY COURT REPORTER MARGARET M. BALESTRI,

filed February 7, 1995 ..... R-547

**MICHAEL LOUIS MIROUX**

Direct Examination by State's Attorney ..... R-550

**PAUL VELAMPARAMIIL**

Direct Examination by State's Attorney ..... R-566

**JACK NARCEZWESKI**

Direct Examination by State's Attorney ..... R-574

Cross Examination by Mr. Serritella. .... R-582

**PHIL CRAIG**

Direct Examination by State's Attorney ..... R-585

Cross Examination by Mr. Serritella. .... R-631

**MARLO CAPPONI**

Direct Examination by State's Attorney ..... R-638

**JANICE WAMHOFF**

Direct Examination by State's Attorney ..... R-639

**TINA FRASCO**

Direct Examination by State's Attorney ..... R-641

**REPORT OF PROCEEDINGS****PAGE NO****LARRY WILLIAM BLUM**

Direct Examination by State's Attorney . . . . . R-643

Cross Examination by Mr. Serritella. . . . . R-669

Redirect Examination by State's Attorney . . . . . R-690

**ANGELA BALDINE**

Direct Examination by State's Attorney . . . . . R-692

Cross Examination by Mr. Serritella. . . . . R-699

**ANDREW SKOOG**

Direct Examination by State's Attorney . . . . . R-700

Cross Examination by Mr. Serritella. . . . . R-708

**NICHOLE MEDIWAR**

Direct Examination by State's Attorney . . . . . R-711

Cross Examination by Mr. Serritella. . . . . R-716

Redirect Examination by State's Attorney . . . . . R-719

Recross Examination by Mr. Serritella. . . . . R-721

Rerect Examination by State's Attorney. . . . . R-735

**TERRI SIBERT**

Direct Examination by State's Attorney . . . . . R-736

Cross Examination by Mr. Serritella. . . . . R-739

Redirect Examination by State's Attorney . . . . . R-743

Recross Examination by Mr. Serritella. . . . . R-743

REPORT OF PROCEEDINGS COMMENCING ON NOVEMBER 14, 1994,  
 REPORTED BY COURT REPORTER MARGARET M. BALESTRI,  
 filed February 7, 1995. . . . .

R-746

**JULIE TALIANI**

Direct Examination by State's Attorney . . . . . R-749

Cross Examination by Mr. Serritella. . . . . R-764

Redirect Examination by State's Attorney . . . . . R-772

**CARI CARLSON**

Direct Examination by State's Attorney . . . . . R-773

Cross Examination by Mr. Serritella. . . . . R-783

Redirect Examination by State's Attorney . . . . . R-805

**CHARLES D. TALIANI**

Direct Examination by State's Attorney . . . . . R-807

Cross Examination by Mr. Serritella. . . . . R-814

Redirect Examination by State's Attorney . . . . . R-819

**REPORT OF PROCEEDINGS****PAGE NO****REBECCA REED**

Direct Examination by State's Attorney .....	R-821
Cross Examination by Mr. Serritella. ....	R-826
Redirect Examination by State's Attorney .....	R-829
Recross Examination by Mr. Serritella. ....	R-830

**JoANN TABER**

Direct Examination by State's Attorney .....	R-831
--	-------

**DOUGLAS BERNABEI**

Direct Examination by State's Attorney .....	R-836
Cross Examination by Mr. Serritella. ....	R-922
Redirect Examination by State's Attorney .....	R-961
Recross Examination by Mr. Serritella. ....	R-964

**MICHAEL LOUIS MIROUX**

Direct Examination by State's Attorney .....	R-967
Cross Examination by Mr. Serritella. ....	R-1016

REPORT OF PROCEEDINGS COMMENCING ON NOVEMBER 15, 1994,  
 REPORTED BY COURT REPORTER MICHELLE R. JANSZ,  
 filed January 31, 1995. ....

R-352

**DR. ROBERT CHAPMAN**

Direct Examination by State's Attorney .....	R-355
Cross Examination by Mr. Serritella. ....	R-386
Redirect Examination by State's Attorney .....	R-436

**DR. RICHARD BRADY**

Direct Examination by State's Attorney .....	R-447
Cross Examination by Mr. Serritella. ....	R-462
Redirect Examination by State's Attorney .....	R-470
Recross Examination by Mr. Serritella. ....	R-477

**DOUG BERNABEI**

Direct Examination by State's Attorney .....	R-478
--	-------

**MIKE MIROUX**

Direct Examination by State's Attorney .....	R-479
--	-------

REPORT OF PROCEEDINGS COMMENCING ON NOVEMBER 16, 1994  
 REPORTED BY COURT REPORTER KALA KIESIG,  
 filed January 10, 1995. ....

R-235

**REPORT OF PROCEEDINGS****PAGE NO**

Closing Argument by Mr. Serritella ..... R-236

Closing Argument by State's Attorney ..... R-272

Rebuttal by Mr. Serritella ..... R-288

REPORT OF PROCEEDINGS COMMENCING ON DECEMBER 20, 1994

REPORTED BY COURT REPORTER ROBERT L. JONES,

filed February 1, 1995 ..... R-497

Sentencing ..... R-544

REPORT OF PROCEEDINGS COMMENCING ON JULY 15, 1994

REPORTED BY COURT REPORTER BEVERLY K. JONES,

filed October 2, 2001 ..... R-1023

REPORT OF PROCEEDINGS COMMENCING ON AUGUST 9, 1994

REPORTED BY COURT REPORTER ROBERT L. JONES,

filed October 2, 2001 ..... R-1046

SUPPLEMENTAL REPORT OF PROCEEDINGS COMMENCING ON AUGUST 9, 1994

REPORTED BY COURT REPORTER DENISE L. JOHNSON,

filed September 8, 2015 ..... R-1069



IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, )  
Plaintiff, )  
VS. )  
STEVEN A. TALIANI, )  
Defendant. )

CIRCUIT COURT  
BUREAU COUNTY  
FILED

JUL 28 2017

*Dawn M. Reglin*  
CLERK OF THE CIRCUIT COURT

No. 1994-CF-37

ORDER

This matter coming before the Court upon Defendant's Application for Leave to File Successive Post Conviction Relief pursuant to 725 ILCS 5/122-1(f) of the Illinois Post Conviction Hearing Act, and the Court having considered the application and the case law, issues this Order.

On November 16, 1994, the Defendant was convicted at a jury trial of the offenses of First Degree Murder and Aggravated Battery with a Firearm. He was sentenced to 70 years' imprisonment for first degree murder and 30 years' imprisonment for aggravated battery with a firearm. The Appellate Court affirmed his convictions and sentence on January 4, 1996.

The Defendant filed a Pro-se Petition for Post-Conviction Relief on May 29, 1996. The trial court dismissed the Petition as frivolous and patently without merit on June 4, 1996. The defendant filed a motion to reconsider on July 2, 1996, and that motion was denied by the trial court on July 5, 1996. The decisions by the trial court were affirmed on appeal.

On June 1, 2000 the Defendant filed a Pro-se Petition for Relief from Judgment, which was dismissed by the trial court because it was untimely. The Appellate Court affirmed the trial court's dismissal of the petition.

The Defendant filed another Petition for Relief from Judgment on January 17, 2002. On October 16, 2002, he filed a pleading asking the court to incorporate the Post-Conviction Relief Act with the other matters that were pending. Privately retained counsel filed an appearance for the Defendant on May 27, 2004, and on October 6, 2014 counsel filed an Amended Petition for Post-Conviction Relief. Following a second stage hearing, the trial court dismissed the Amended Petition for Post-Conviction Relief finding the Defendant had not established cause and prejudice. That decision by the trial court was affirmed on August 17, 2016, and Defendant's Petition for Leave to Appeal to the Illinois Supreme Court was denied on November 23, 2016.

On May 18, 2017 the Defendant filed an Application for Leave to File Successive Petition for Post-Conviction Relief. In accordance with 725 ILCS 5/122-1(f) "[o]nly one petition may be filed by a petitioner under this Article without leave of court." It is a "well-settled rule that successive postconviction actions are disfavored by Illinois courts." *People v. Edwards*, 2012 IL 111711, ¶ 29.

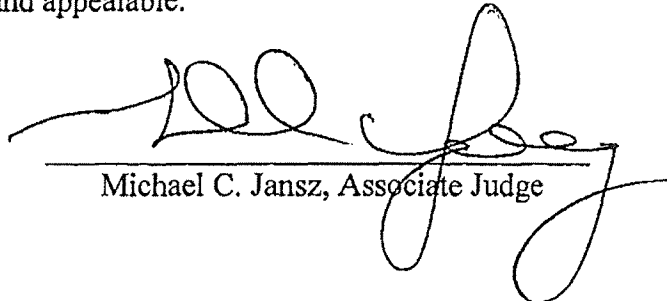
"[T]he Post-Conviction Hearing Act generally contemplates the filing of only one postconviction petition." *People v. Ortiz*, (2009) 235 Ill.2d 319, 328. "Consequently, a defendant faces immense procedural default hurdles when bringing a successive postconviction petition. Because successive petitions impede the finality of criminal litigation, these hurdles are lowered only in very limited circumstances." *People v. Davis*, 2014 IL 115595, ¶ 14.

The Defendant's Application for Leave to File a Successive Post-Conviction Petition is based on a claim of actual innocence. To support a claim of actual innocence "the evidence in support of the claim must be newly discovered; material and not merely cumulative; and 'of such conclusive character that it would probably change the result on retrial.' [cite omitted]" *Ortiz* at

page 333. “ ‘[C]onclusive means the evidence, when considered along with the trial evidence, would probably lead to a different result.’ [cite omitted].” *People v. Bailey*, 2016 IL App (3d) 140207, ¶ 32. “In other words, did petitioner’s request for leave of court and his supporting documentation raise the probability that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.” *Edwards* at ¶ 31

The court finds, after reviewing the documentation submitted by the Defendant, that it does not support a claim of actual innocence because it does not raise the probability that it is more likely true than not that no reasonable juror would have convicted him. Therefore, the Application for Leave to File a Successive Post-Conviction Petition is denied. In addition, the Defendant’s subsequently filed Motion for Appointment of Counsel in the matter pending before this court is denied. This Order is final and appealable.

DATED: July 28, 2017



Michael C. Jansz, Associate Judge

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
BUREAU COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, ]  
Plaintiff-Appellee, ]  
v. ]  
STEVEN A. TALIANI, ]  
Defendant-Appellant. ]

Case No. 94 CF 37

CIRCUIT COURT  
BUREAU COUNTY  
FILED  
AUG 18 2017  
Dawn M. Regier  
CLERK OF THE CIRCUIT COURT

NOTICE OF APPEAL

An appeal is taken from the Order or Judgment, described below.

1. Court to which appeal is taken: Third District Illinois Appellate Court
2. Name of the Defendant-Appellant and address to which notices shall be sent:

Name: Steven A. Taliani, Register No. B62266

Address: Hill Correctional Center  
P.O. Box 1700  
Galesburg, Illinois 61402

3. Name and address of Defendant-Appellant's Attorney on appeal: None.

If the Appellant is indigent and has no attorney, does he want one appointed? YES.

4. Date of Judgement Order: July 28, 2017

5. Sentencing Order: December 20, 1994

6. Offense of which convicted of: Count 1: First Degree Murder

Count 2: Aggravated Battery with a Firearm

7. Sentence: Seventy (70) years on Count 1, Thirty (30) years on Count 2

8. If appeal is not from a conviction, nature of order appealed from:

Court Order denying Defendant's Application for Leave To File a Successive  
Post-Conviction Petition.

Defendant-Appellant

By: *Dawn M. Regier*

Dated:

Bureau County Circuit Clerk

C 1176

2020 IL App (3d) 170546

Opinion filed March 18, 2020

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2020

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 13th Judicial Circuit, Bureau County, Illinois,
Plaintiff-Appellee,	)	Appeal No. 3-17-0546
v.	)	Circuit No. 94-CF-37
STEVEN A. TALIANI	)	Honorable
Defendant-Appellant.	)	Michael C. Jansz, Judge, Presiding.

---

JUSTICE CARTER delivered the judgment of the court, with opinion.  
Presiding Justice Lytton concurred in the judgment and opinion.  
Justice McDade dissented, with opinion.

---

OPINION

¶ 1 Defendant, Steven A. Taliani, appeals the denial of his motion for leave to file a second successive postconviction petition. Defendant argues that he set forth a colorable claim of actual innocence based on the affirmative defense of involuntary intoxication. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Defendant was charged with first degree murder (720 ILCS 5/9-1(a)(2) (West 1992)) for causing the death of Francee Wolf and aggravated battery with a firearm (id. § 12-4.2(a)(1)) for shooting Clementina Frasco, Wolf's mother, with a shotgun.

¶ 4

The matter proceeded to a jury trial. In defendant's direct appeal, we summarized the State's evidence, in part, as follows:

"The record discloses that the 32-year-old defendant had been dating 22-year-old Francee Wolf for about a year before their relationship began to break up in the summer of 1994. Around the beginning of that year, defendant began dating another woman, and he accused Wolf of seeing a married man. They decided to seek counseling. On June 27, defendant met with Dr. Richard Brady, a psychiatrist, who prescribed medication for clinical depression and told him to return in 30 days. On July 8 and 9, defendant and Wolf argued. On the evening of July 12, Wolf drove to defendant's home in Spring Valley, Illinois. According to defendant, they discussed their relationship and then had sex. Afterward, defendant produced a sawed-off shotgun and fired it, hitting the wall and window and possibly the back of Wolf's head.

Meanwhile, Frasco became concerned when she came home and found that Wolf had left. She drove to defendant's, arriving just before Wolf, clad only in a pair of silk sleep shorts, ran out of the house screaming, 'Psycho.' Defendant, wielding the gun and wearing only boxer shorts, pursued. Wolf climbed into Frasco's car and doubled over with her head toward the floor as Frasco attempted to drive away. Defendant ran up to the car and fired once through the driver's side window, hitting Frasco in the face. He then circled back to the passenger side and fired his last shot into Wolf's back, killing her." *People v. Taliani*, No. 3-94-0921 (1995) (unpublished order under Illinois Supreme Court Rule 23).

¶ 5 Defendant set forth an insanity defense. Dr. Robert Chapman, a forensic psychiatrist, testified that he administered a personality test to defendant and interviewed defendant approximately two months after the incident. Chapman diagnosed defendant with major affective disorder, or depression with suicide ideation, and obsessive compulsive disorder. Chapman opined that defendant's depression severely impaired his ability to appreciate the criminality of his conduct. Chapman stated that defendant believed that he and Wolf would be together after death. Chapman explained: "[T]hat is a common distorted belief that severely depressed people have and that is why we sometimes see people in severe depression who will, prior to killing themselves, will kill their children and their spouse and their families." Chapman stated that such individuals believed that they were taking their family and loved ones out of a painful world to a place where they would be together and happy. Chapman testified that defendant believed this. Defendant also believed that Wolf agreed with his homicide/suicide ideas. Defendant said that he shared his homicide/suicide thoughts with Wolf. Wolf said, " 'No matter what, I'll always be with you.' " Defendant interpreted this to mean that Wolf would always be with him after death.

¶ 6 Dr. Richard Brady testified that defendant visited him on June 27, 1994. Brady diagnosed defendant with major depression. Defendant did not tell Brady that he had dreams and feelings of the desire to kill himself and Wolf. Defendant reported having suicidal thoughts two weekends before his appointment, but he was not experiencing those thoughts at the time of the appointment. Defendant denied having the intent to harm himself or others and said he did not think he could harm himself or others. Brady found that defendant had no disorder as to his form of thought.

¶ 7 The jury found defendant guilty of both charges. The court sentenced defendant to consecutive terms of 70 years' imprisonment for first degree murder and 30 years' imprisonment for aggravated battery with a firearm.

¶ 8 On direct appeal, we affirmed defendant's conviction and sentence. *Taliani*, No. 3-94-0921.

¶ 9 In 1996, defendant filed a *pro se* postconviction petition raising several claims of ineffective assistance of counsel. The circuit court summarily dismissed the petition, and we affirmed. *People v. Taliani*, No. 3-96-0672 (1997) (unpublished order under Illinois Supreme Court Rule 23).

¶ 10 In 2000, defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2000)). The circuit court denied the petition, and we affirmed the judgment of the circuit court. *People v. Taliani*, No. 3-00-0913 (2003) (unpublished order under Illinois Supreme Court Rule 23).

¶ 11 In 2002, defendant filed another *pro se* petition for relief from judgment pursuant to section 2-1401, which was later recharacterized as a successive postconviction petition. Counsel was appointed to assist defendant with his petition. In 2014, defendant filed an amended successive postconviction petition through counsel, which raised several claims. The State filed a motion to dismiss the amended successive postconviction petition. The circuit court granted the motion to dismiss, finding that defendant had not shown cause and prejudice. We affirmed the judgment of the circuit court. *People v. Taliani*, 2016 IL App (3d) 150478-U.

¶ 12 On May 18, 2017, defendant filed a motion for leave to file a second successive postconviction petition, which is the subject of the instant appeal. Defendant sought to raise a claim of actual innocence based on the affirmative defense of involuntary intoxication from the



unwarned side effects of prescription medications that he was taking at the time of the offense. Defendant alleged that such a defense was not available until the supreme court issued its decision in *People v. Harrison*, 218 Ill. 2d 275 (2006), which was decided more than 10 years after defendant's trial.

¶ 13 Specifically, the motion alleged that, at the time of the offense, defendant was taking two prescription medications, Buspar and Desyrel. The motion stated that Brady, the prescribing doctor, failed to tell defendant that these medications could cause serotonin syndrome if taken together. The motion further alleged:

“At the time of the offense, [defendant] was suffering from symptoms associated with serotonin syndrome, including[:] heightened irritability, confusion, and altered consciousness, as well as, increased suicidal ideations, also a side effect of serotonergic medications such as Buspar.”

The motion alleged that defendant continued to take Buspar and Desyrel while he was in jail awaiting trial. Chapman examined defendant while defendant was preparing his insanity defense. Chapman stated in his report that defendant appeared to be quite confused and had difficulty concentrating and making decisions. Chapman concluded that defendant was not able to appreciate the criminality of his conduct or conform his conduct to the requirements of the law.

¶ 14 Defendant attached a medical report prepared by Brady to his motion for leave. The report indicated that Brady had diagnosed defendant with major depression and prescribed Buspar and Desyrel.

¶ 15 Defendant also attached a report from a counseling center recommending that defendant be considered a suicide risk while he was incarcerated in the county jail after the incident.

¶ 16 Defendant attached an article stating that Buspar and Desyrel could cause serotonin syndrome if taken at the same time. The article stated: “Symptoms of the serotonin syndrome may include mental status changes such as irritability, altered consciousness, confusion, hallucination, and coma \*\*\*.”

¶ 17 Defendant also attached an article about Buspar and its side effects from the Bristol-Myers Squibb Company. The article said that Buspar was used for the management of anxiety disorders and that some individuals taking Buspar had experienced suicidal ideation. Suicidal ideation was classified as an infrequent adverse event, meaning that it occurred in between 1/100 to 1/1000 patients. Defendant attached several photocopied pages of the 1993 edition of the Physicians’ Desk Reference. The copied pages discussed Desyrel and Buspar.

¶ 18 Defendant also attached Chapman’s report. The report stated that the results of the Minnesota Multiphasic Personality Inventory-2 showed that defendant appeared to be confused and disorganized and that he had difficulty concentrating and making decisions. The results also showed that defendant reported bizarre and unusual sensory experiences and confused thinking. Chapman diagnosed defendant with major affective disorder, or depression with suicide ideation, and obsessive compulsive disorder. It was Chapman’s opinion that, at the time of the offense, defendant was suffering from a severe homicidal and suicidal depression that substantially impaired his ability to appreciate the criminality of his conduct or conform his conduct to the requirements of the law.

¶ 19 The circuit court denied defendant’s motion for leave to file a second successive postconviction petition.

¶ 20

## II. ANALYSIS

¶ 21

Defendant argues that the circuit court erred in denying him leave to file his second successive postconviction petition because he presented a colorable claim of actual innocence based on the affirmative defense of involuntary intoxication. Specifically, defendant argues that, at the time of the offense, he was experiencing symptoms of serotonin syndrome, including increased irritability, confusion, and altered consciousness. Defendant claims that these were side effects from the combination of Buspar and Desyrel, two medications prescribed to him by Brady. Defendant claims that Brady failed to warn him that serotonin syndrome was a possible side effect of the combination of these medications. Defendant also claims that he was experiencing increased suicidal ideations at the time of the offense, which was a side effect of Buspar.

¶ 22

At the time of the offense, section 6-3(b) of the Criminal Code of 1961 (720 ILCS 5/6-3(b) (West 1992)) provided: “A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition \*\*\* [i]s involuntarily produced and deprives him of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.” Defendant argues that he could not have raised the defense of involuntary intoxication at his trial because the defense of involuntary intoxication based on the unwarned side effects of prescription medication was not available until over 10 years after the trial when the supreme court decided *Harì*, 218 Ill. 2d 275.

¶ 23

In *Harì*, 218 Ill. 2d at 292-93, our supreme court held that the involuntary intoxication defense was available to a defendant claiming that he was involuntarily intoxicated due to an unwarned side effect of a prescription medication. The court reasoned: “We find that the drugged condition alleged here—an unexpected adverse side effect of a prescription drug that was

unwarned by the prescribing doctor, the [Physicians' Desk Reference] or the package insert—is 'involuntarily produced' within the plain meaning of the involuntary intoxication affirmative defense statute." *Id.* at 292. The *Harì* court rejected the State's argument that, based on prior case law, the plain meaning of "involuntarily produced" was limited to instances of trick, artifice, or force. *Id.* at 293. The *Harì* court overruled several prior decisions to the extent that they could "be read as excluding the unexpected and unwarned adverse side effects from medication taken on doctor's orders from the plain meaning of 'involuntarily produced.'" *Id.* at 294.

¶ 24 In *People v. Alberts*, 383 Ill. App. 3d 374, 382 (2008), the Fourth District held that "*Harì* announced a new rule because it broaden[ed] the scope of the defense of involuntary intoxication beyond the plain language of the statute and [did] not constitute a mere application of existing precedent." The *Alberts* court further held that the new rule announced in *Harì* should be given full retroactive effect because it was tantamount to a rule that limits the conduct proscribed by a criminal statute. *Id.* at 383. Based on the retroactive application of *Harì*, the *Alberts* court held that the defendant made a substantial showing of a claim of actual innocence based on his claim that he was involuntarily intoxicated at the time of the offense due to the quantity of psychotropic medication that he was taking. *Id.* at 380.

¶ 25 Defendant contends that the evidence in support of his involuntary intoxication defense should be considered "newly discovered" due to the change in the law after his trial pursuant to the holdings in *Harì* and *Alberts*, though he acknowledges that the fact that he was taking Desyrel and Buspar was known at the time of his trial. We question the propriety of treating defendant's claim as an actual innocence claim because it appears that the claim is based on a newly available affirmative defense rather than newly discovered evidence. Our supreme court has held that "[t]he elements of a claim of actual innocence are that the evidence in support of

the claim must be ‘newly discovered’; material and not merely cumulative; and of such conclusive character that it would probably change the result on retrial.” *People v. Edwards*, 2012 IL 111711, ¶ 32 (citing *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009)). However, even assuming that the evidence in support of defendant’s claim may properly be considered “newly discovered,” we find that the circuit court did not err in denying defendant’s motion for leave to file a second successive postconviction petition.

¶ 26 A defendant must obtain leave of court before filing a successive postconviction petition. *Id.* ¶ 24. Where a defendant seeks to file a successive postconviction petition raising a claim of actual innocence, “leave of court should be denied only where it is clear, from a review of the successive petition and the documentation provided by the petitioner that, as a matter of law, the petitioner cannot set forth a colorable claim of actual innocence.” *Id.* “Stated differently, leave of court should be granted when the petitioner’s supporting documentation raises the probability that ‘it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.’ ” *Id.* (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)).

¶ 27 Here, the allegations in the petition and the supporting documentation may have shown that defendant suffered from unwarned side effects of prescription medication at the time of the offense such that the “involuntarily produced” component of the involuntary intoxication defense was satisfied. However, the allegations and supporting documentation did not show that these alleged side effects rendered defendant intoxicated to the degree that he lacked “substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.” 720 ILCS 5/6-3(b) (West 1992). Accordingly, the motion for leave and the supporting documentation defendant has submitted fail to “raise[ ] the probability that ‘it is more

likely than not that no reasonable juror would have convicted him in the light of the new evidence.’ ” Edwards, 2012 IL 111711, ¶ 24 (quoting Schlup, 513 U.S. at 327).

¶ 28 In his motion, defendant alleged that Brady failed to warn him that serotonin syndrome was a potential side effect of taking Buspar and Desyrel simultaneously. Defendant attached documentation supporting his allegations that he was taking Buspar and Desyrel and that serotonin syndrome was a potential side effect. Defendant also alleged that he was suffering from symptoms associated with serotonin syndrome at the time of the offense—specifically, heightened irritability, confusion and “altered consciousness.” However, it is not apparent that experiencing heightened irritability or confusion would deprive defendant of the substantial capacity to know that shooting the victims was a criminal act or to refrain from engaging in that conduct. Also, the term “altered consciousness” is vague, and neither the allegations in the petition nor the supporting documentation indicate how defendant’s consciousness was altered at the time of the offense.

¶ 29 Defendant also alleged that he was experiencing increased suicidal ideation at the time of the offense, which was a side effect of Buspar. Defendant attached documentation showing that suicidal ideation was an adverse event experienced by some people who took Buspar and that he was found to be at risk for suicide after the offense. However, defendant did not allege that Brady failed to warn him that suicidal ideation was a potential side effect. Moreover, it is not apparent that increased thoughts of suicide would deprive defendant of the capacity to appreciate the criminality of shooting the victims or to conform his conduct to the requirements of the law.

¶ 30 Defendant relies on Chapman’s opinion that defendant’s capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of the law was substantially impaired in support of his claim that he was involuntarily intoxicated. However,

Chapman did not opine that defendant was impaired in this regard due to the symptoms of serotonin syndrome that defendant was allegedly experiencing. Rather, Chapman believed that defendant's ability to appreciate the criminality of his conduct was substantially impaired by his distorted belief that killing Wolf and himself would free them from a painful world and allow them to be together after death. Chapman testified that this belief was due to defendant's depression. Chapman's opinion was presented to the jury in support of defendant's insanity defense and was ultimately rejected.

¶ 31

### III. CONCLUSION

¶ 32

The judgment of the circuit court of Bureau County is affirmed.

¶ 33

Affirmed.

¶ 34

JUSTICE McDADE, dissenting:

¶ 35

Initially, I do not share the majority's concerns about the propriety of framing defendant's claim as an actual innocence claim on the basis that the claim is based on a newly available affirmative defense rather than newly discovered evidence. See *supra* ¶ 25. Typically, an actual innocence claim must be supported by newly discovered evidence "that was not available at [the] defendant's trial and that the defendant could not have discovered sooner through diligence." *People v. Barrow*, 195 Ill. 2d 506, 541 (2001). The purpose of this requirement is to avoid having defendants wait until after being convicted to reopen the case to raise a claim of innocence that could have been presented during the trial. This rationale applies with equal force to defendant's involuntary intoxication claim. Prior to the supreme court's recognition of involuntary intoxication from the unwarned side effects of prescription medication as a viable defense, the fact that defendant had recently been prescribed Buspar and Desyrel and had experienced unwarned side effects from them had neither relevance nor meaning in his case.

The decision in *Wax* was the first time the fact that he was experiencing unwarned side effects from the medication acquired significance as evidence. Thus, defendant could not, through the exercise of due diligence, have presented the involuntary intoxication during his trial because the defense itself was not available until the supreme court decided *Wax* several years later and the tender would have been properly rejected as irrelevant. Accordingly, I believe that the facts supporting the newly available involuntary intoxication defense may be considered new for the purposes of defendant's actual innocence claim, even though they were known to defendant at the time of the trial.

¶ 36 Moreover, I would find that defendant has presented a colorable claim of actual innocence such that he should have been granted leave to file a successive postconviction petition that could have been tested at the second stage. That is, I do not believe that "it is clear, from a review of the successive petition and the documentation provided by the petitioner that, as a matter of law, the petitioner cannot set forth a colorable claim of actual innocence." *Edwards*, 2012 IL 111711, ¶ 24. The allegations in the motion for leave to file a successive petition and the supporting documentation indicate that defendant was suffering from unwarned side effects of prescription medications at the time of the offense. These side effects included heightened irritability, confusion, altered consciousness, and increased suicidal ideation. If severe, these symptoms could have deprived defendant of the substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law such that the involuntary intoxication defense would apply. A viable involuntary intoxication defense "raise[s] the probability that it is more likely than not that no reasonable juror would have convicted [defendant] in the light of the new evidence." *Id.* ¶ 31.



¶ 37 For the foregoing reasons, I would reverse the judgment of the circuit court and remand the matter for further postconviction proceedings. Therefore, I respectfully dissent.

No. 125891

IN THE

## SUPREME COURT OF ILLINOIS

---

PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, No. 3-17-0546.
	)	
Respondent-Appellee,	)	There on appeal from the Circuit
	)	Court of the Thirteenth Judicial
-vs-	)	Circuit, Bureau County, Illinois,
	)	No. 94 CF 37.
	)	
STEVEN A. TALIANI	)	Honorable
	)	Michael C. Jansz,
Petitioner-Appellant	)	Judge Presiding.

---

**NOTICE AND PROOF OF SERVICE**

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, [eserve.criminalappeals@atg.state.il.us](mailto:eserve.criminalappeals@atg.state.il.us);

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350, [3rddistrict@ilsaap.org](mailto:3rddistrict@ilsaap.org);

Mr. Geno Caffarini, Bureau County State's Attorney, 700 South Main Street, Princeton, IL 61356;

Mr. Steven A. Taliani, Register No. B62266, Hill Correctional Center, P. O. Box 1700, Galesburg, IL 61402

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 June 17, 2020, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy each is being mailed to the petitioner and the State's Attorney in envelopes deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court when conditions permit.

/s/Vinette Mistretta  
**LEGAL SECRETARY**  
 Office of the State Appellate Defender  
 One Douglas Avenue, Second Floor  
 Elgin, IL 60120  
 (847) 695-8822  
 Service via email will be accepted at  
[2nndistrict.eserve@osad.state.il.us](mailto:2nndistrict.eserve@osad.state.il.us)