No. 125621

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court Illinois, Fourth Judicial District, No. 4-19-0148
Respondent-Appellee,	)	
v.	)	There on Appeal from Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois, No. 99 CF 139
CHARLES B. PALMER,	)	The Honorable Jeffrey F. Geisler,
Petitioner-Appellant.	)	Judge Presiding

BRIEF AND ARGUMENT FOR RESPONDENT-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE CASE

Petitioner Charles Palmer appeals from the judgment of the Illinois Appellate Court, Fourth District, affirming the denial of his petition for a certificate of innocence (COI).

ISSUES PRESENTED

Petitioner is a free man. The State confessed error on his successive postconviction petition, and the court granted him a new trial. The circuit court subsequently granted the State's motion to dismiss the charges against petitioner because "the State ha[d] determined that there [was] insufficient evidence to prove this case beyond a reasonable doubt." A19.[1] Petitioner subsequently filed the amended petition for a COI at issue here. *See* 735 ILCS 5/2-702. The circuit court denied the petition, and the appellate court affirmed. The issues presented are:

(1) Did the circuit court abuse its discretion when it found that petitioner failed to prove his innocence by a preponderance of the evidence;

(2) Does § 2-702(g)(3) require petitioner to prove that he is innocent of the offenses with which he was charged, or of the facts alleged in the charging instrument; and

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[1] "A_" refers to petitioner-appellant's appendix; "R_" to the report of proceedings; "C_" to the common law record; and "Pet. Br. _" to petitioner's opening brief before this Court.

(3) Did it offend either due process or judicial estoppel principles to consider whether petitioner could prove his innocence under a different factual theory than the one alleged in the charging instrument.

JURISDICTION

This Court has jurisdiction pursuant to Supreme Court Rules 315 and 612(b). Petitioner timely filed a petition for leave to appeal that this Court allowed on March 25, 2020.

STATUTORY PROVISION INVOLVED

§ 2-702. Petition for a certificate of innocence that the petitioner was innocent of all offenses for which he or she was incarcerated.

(a) The General Assembly finds and declares that innocent persons who have been wrongly convicted of crimes in Illinois and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue to obtain a finding of innocence so that they may obtain relief through a petition in the Court of Claims. The General Assembly further finds misleading the current legal nomenclature which compels an innocent person to seek a pardon for being wrongfully incarcerated. It is the intent of the General Assembly that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this Section, shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.

(b) Any person convicted and subsequently imprisoned for one or more felonies by the State of Illinois which he or she did not commit may, under the conditions hereinafter provided, file a petition for certificate

of innocence in the circuit court of the county in which the person was convicted. The petition shall request a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated.

(c) In order to present the claim for certificate of innocence of an unjust conviction and imprisonment, the petitioner must attach to his or her petition documentation demonstrating that:

(1) he or she has been convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(2) his or her judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either he or she was found not guilty at the new trial or he or she was not retried and the indictment or information dismissed; or the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois; and

(3) his or her claim is not time barred by the provisions of subsection (i) of this Section.

(d) The petition shall state facts in sufficient detail to permit the court to find that the petitioner is likely to succeed at trial in proving that the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State of Illinois, and the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction. The petition shall be verified by the petitioner.

(e) A copy of the petition shall be served on the Attorney General and the State's Attorney of the county where the conviction was had. The Attorney General and the State's Attorney of the county where the conviction was had shall have the right to intervene as parties.

(f) In any hearing seeking a certificate of innocence, the court may take judicial notice of prior sworn testimony or evidence admitted in the criminal proceedings related to the convictions which resulted in the alleged wrongful incarceration, if the petitioner was either represented by counsel at such prior proceedings or the right to counsel was knowingly waived.

(g) In order to obtain a certificate of innocence the petitioner must prove by a preponderance of evidence that:

(1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(2) (A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; or (B) the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois;

(3) the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State; and

(4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction.

(h) If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated. Upon entry of the certificate of innocence or pardon from the Governor stating that such pardon was issued on the ground of innocence of the crime for which he or she was imprisoned, (1) the clerk of the court shall transmit a copy of the certificate of innocence to the clerk of the Court of Claims, together with the claimant's current address; and (2) the court shall enter an order expunging the record of arrest from the official records of the arresting authority and order that the records of the clerk of the

circuit court and Department of State Police be sealed until further order of the court upon good cause shown or as otherwise provided herein, and the name of the defendant obliterated from the official index requested to be kept by the circuit court clerk under Section 16 of the Clerks of Courts Act in connection with the arrest and conviction for the offense but the order shall not affect any index issued by the circuit court clerk before the entry of the order. The court shall enter the expungement order regardless of whether the petitioner has prior criminal convictions.

All records sealed by the Department of State Police may be disseminated by the Department only as required by law or to the arresting authority, the State's Attorney, the court upon a later arrest for the same or similar offense, or for the purpose of sentencing for any subsequent felony. Upon conviction for any subsequent offense, the Department of Corrections shall have access to all sealed records of the Department pertaining to that individual.

Upon entry of the order of expungement, the clerk of the circuit court shall promptly mail a copy of the order to the person whose records were expunged and sealed.

(i) Any person seeking a certificate of innocence under this Section based on the dismissal of an indictment or information or acquittal that occurred before the effective date of this amendatory Act of the 95th General Assembly shall file his or her petition within 2 years after the effective date of this amendatory Act of the 95th General Assembly. Any person seeking a certificate of innocence under this Section based on the dismissal of an indictment or information or acquittal that occurred on or after the effective date of this amendatory Act of the 95th General Assembly shall file his or her petition within 2 years after the dismissal.

(j) The decision to grant or deny a certificate of innocence shall be binding only with respect to claims filed in the Court of Claims and shall not have a res judicata effect on any other proceedings.

735 ILCS 5/2-702.

STATEMENT OF FACTS

At trial, the State sought to prove that petitioner killed William Helmbacher, who lived in the apartment downstairs from petitioner's cousin, Ray Taylor. The State presented evidence that, on August 26, 1998, Taylor and petitioner burgled Helmbacher's apartment, and the next night petitioner returned and killed Helmbacher with a hammer. A jury found petitioner guilty of first degree murder.

Petitioner later filed a successful postconviction petition when DNA evidence from under Helmbacher's fingernails did not match petitioner. Petitioner then sought a certificate of innocence. There, petitioner argued that the DNA evidence proved he did not kill Helmbacher, and that Douglas Lee, who owned the building where Taylor and Helmbacher lived, was the actual murderer. The State responded that petitioner had not proved by a preponderance of the evidence that he was innocent of first degree murder because the evidence still showed that petitioner more likely than not murdered Helmbacher, even if someone else may have been the primary assailant and petitioner an accomplice. The circuit court denied a COI.

Trial

The State charged petitioner with the first degree murder of Helmbacher. Counts I to V alleged that on August 27, 1998, petitioner (1)

"with the intent to kill or do great bodily harm to [Helmbacher], repeatedly struck [him] on the head, thereby causing [his] death"; (2) "repeatedly struck [Helmbacher] on the head, knowing said act would cause the death of [Helmbacher], thereby causing [his] death"; (3) "repeatedly struck [Helmbacher] [o]n the head, knowing such act created a strong probability of death or great bodily harm to [Helmbacher], thereby causing [his] death"; (4) "while committing or attempting to commit a forcible felony, [r]obbery, . . . repeatedly struck [Helmbacher] on the head and thereby caused [his] death"; and (5) "while committing or attempting to commit a forcible felony, [r]esidential [b]urglary, . . . repeatedly struck [Helmbacher] on the head and thereby caused [his] death." C34-38.; *see also* 720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (1998). Petitioner was also charged with the residential burglary of Helmbacher's apartment on the day before the murder, in violation of 720 ILCS 5/19-3 (1998). C39.

At trial, petitioner's cousin, Taylor, testified that he lived in the apartment above Helmbacher, who was Taylor's landlord, in Decatur, Illinois. R136-37. Shortly before dark, on August 26, 1998 (the day before the murder), petitioner came to Taylor's apartment and told him that he was going to break into Helmbacher's apartment. R140. Petitioner and Taylor went downstairs to Helmbacher's apartment, where petitioner snuck in

through a window, opened the front door, and asked Taylor to keep watch. *Id.* Taylor testified that he "stood there, and then . . . went upstairs" to his own apartment. *Id.* When petitioner returned to Taylor's apartment, he was carrying several items, including bottles of beer and a jar of change. R141. Taylor gave petitioner a plastic garbage bag, and petitioner put some of the items in the bag, as they drank some of the beers. R142-43. Later, they threw the garbage bag into a dumpster a couple of blocks from Taylor's (and Helmbacher's) apartment. R143.

The next evening, Taylor saw petitioner at John Bradford's apartment; Bradford was also Taylor's cousin. R148. Taylor noticed that the shoes petitioner wore were too small. R149. Petitioner told Taylor that he had to get rid of the sneakers he wore the day before because "blood was everywhere." R150-51. Petitioner told Taylor, "Man, you know I had to beat the dude to death." R150. Taylor asked, "What dude?" *Id.* Petitioner replied that he had killed Helmbacher, and that Helmbacher only had $11 on him. *Id.*

Taylor admitted on cross-examination, that both that night and a few days later, Taylor told police he knew nothing about Helmbacher's murder. R168-70. But a few weeks later, after police told Taylor that they found a garbage bag full of Helmbacher's stolen belongings with Taylor's fingerprints

on the bag, Taylor gave a statement to police consistent with his trial testimony. R163-64. Taylor also identified a pair of sneakers as the shoes petitioner was wearing on August 26, 1998, the day before the murder, when petitioner burglarized Helmbacher's apartment. R155.

Taylor had two prior felony convictions and faced a residential burglary charge because of his participation in the burglary of Helmbacher's apartment, but he denied that the State had made any specific promises to him in exchange for his testimony against petitioner in the present case. R137-38.

Petitioner's acquaintance, Mike Callaway, also testified. According to Callaway, petitioner spent that night at Callaway's apartment, as he had on other occasions. R200. When petitioner arrived around 10:00 p.m., Callaway did not notice any blood on him. R200-01. After Callaway went to a liquor store and returned 45 minutes later, he noticed that petitioner was wearing one of his shirts. R201. Callaway told petitioner to wash his own clothes and wear them instead, which he did. R202.

Joseph Moyer testified that on the night of the murder, he and Douglas Lee were collecting rent at apartment buildings owned by Lee, including the one where Taylor and Helmbacher lived. R110. Around 9:45 p.m., they arrived at Helmbacher's apartment and knocked on the door. R111, 116. No

one answered, so they returned about an hour later. R111. Lee looked through the front door window and saw a half-eaten cheeseburger on a table and Helmbacher's shoes on the floor. *Id.* Lee opened the door, and they found Helmbacher dead on the floor. R112. Moyer acknowledged that Lee was angry with Helmbacher at the time because Helmbacher had fallen behind in collecting rent. R124.

Detective Roger Ryan testified that he investigated the scene of the murder, and saw that the inside of Helmbacher's apartment door was splattered with blood. R214. A hammer and pool of blood lay next to the body. R217-18, 229. Travis Hindman performed an autopsy on Helmbacher and concluded that he died from head wounds compatible with blows from a hammer. R311. During the autopsy, Hindman removed bags that had been placed over Helmbacher's hands by police to preserve any trace evidence on them and collected fingernail scrapings and fingerprints. R230-32. Hindman also collected a blood standard from Helmbacher, R227, which was thereafter kept at the Illinois State Police Crime Lab, R330.

Detective Tim Carlton testified that on September 22, 1998, he interviewed petitioner. R236-37. He noticed red specks on the white tennis shoes that petitioner was wearing. R240-41. He took the shoes from petitioner — the same sneakers that Taylor identified during his police

interview as the ones petitioner wore when the two burgled Helmbacher's apartment — and put them in evidence storage. R155, 239-40. The shoes were sent to the Illinois State Police Crime Lab. R242. Initially, the Illinois State Police crime laboratory found no human blood on the shoes. R437-28. The shoes were returned to the Decatur Police Department. R242. Carlton returned them to the crime laboratory with instructions for them to be "taken totally apart" and analyze them again. R243. Detective Carlton neither saw nor touched the shoes in the interim. R243-44. Roger Morville, the evidence officer for the Decatur Police Department, testified that when he transported the shoes to the crime lab the second time, he retrieved them from the locked evidence facility to which only he had access, the shoes were still in a sealed evidence storage bag, and they had not been tampered with or altered. R257-58.

Jennifer Lu conducted the analyses of the shoes at the crime lab. R327. The first time she analyzed them, she tested only the red specks on the laces and outside of the shoes, which, testing showed, was not human blood. R328. After, Lu repackaged the shoes to be returned to the Decatur Police. *Id.* When she received the shoes a second time, they were in a sealed package and were still whole and "non-cutup." R331-32. At the request of the Decatur Police Department, she took the shoes apart, reexamined them,

and found three human bloodstains. R332-34. Requests to tear shoes apart were not "normal procedure." R341. She also found a blood-like substance in Helmbacher's fingernail scrapings, but did not test them. *Id.* A DNA analysis of the bloodstains that Lu found on petitioner's shoe showed that the stains were from Helmbacher's blood. R357.

Petitioner testified in his own defense. He denied committing the crimes and testified that he spent August 26, 1998, in Taylor's apartment, much of it asleep, because he felt sick. R389-94. The next day, he woke up around noon, still felt sick, and went to Callaway's apartment in the afternoon. R392. There, he put on some pants, which he first had to wash, and a shirt that belonged to Callaway; he testified that they often wore one another's clothes. R395, 409. According to petitioner, the only other time he left Taylor's apartment was around 2:30 or 3 p.m. to have a beer with Taylor and their friend Robert Martin. R391-92. Martin, who testified for the State, had no recollection of petitioner either saying he was sick or acting sick. R289.

The jury found petitioner not guilty of residential burglary and guilty of first degree murder. R498. The court sentenced petitioner to life in prison. R609.

Appellate and Postconviction Review

Petitioner unsuccessfully pursued both a direct appeal and postconviction relief. A15-17. In 2010, petitioner petitioned for forensic testing of any DNA found on previously untested items of evidence, including fingernail scrapings, the handle of the hammer, doorframe swabs, and pulled head hairs. C380-84, 460-61; *see* 725 ILCS 5/116-3 (West 2010). The circuit court noted that Helmbacher had defensive wounds, so a DNA analysis of the fingernail scrapings would be materially relevant and granted the motion. R693-98.

On January 22, 2014, Cellmark Forensics reported that the fingernail scrapings from Helmbacher's right hand revealed two profiles: Helmbacher's and that of another person who was not petitioner or Taylor. C467.

On June 3, 2014, petitioner filed a second petition for DNA testing, this time on "the hairs and blood-like substance found in the bags that were placed around the hands of the victim." C452-58. The circuit court similarly granted this petition, C475, and on April 7, 2016, Cellmark reported that one of the hairs came from someone other than petitioner or Helmbacher. C502.

On July 27, 2016, petitioner moved for leave to file a successive postconviction petition, C488-97, which the circuit court allowed. R783. After the State confessed error, R794-95, the circuit court granted petitioner

a new trial. R795-96. After additional investigation, the State moved to dismiss the charges, without prejudice, because "the State ha[d] determined that there [was] insufficient evidence to prove this case beyond a reasonable doubt." C545-46. The circuit court subsequently dismissed all charges against petitioner. C547.

Petition for a Certificate of Innocence

On August 30, 2018, petitioner filed an amended petition for a COI (petitioner timely filed an initial petition on June 16, 2017). C594-614. The petition argued that (1) there was conflicting evidence about whether the shoes on which police found Helmbacher's blood were the same shoes that Carlton took from him; (2) police planted the blood found on the shoes; (3) evidence suggested that Lee was the killer; and (4) Taylor was not credible. *Id.*

In response, the State argued that (1) the evidence demonstrated that the shoes that the State presented as trial evidence were the same shoes that Carlton had taken from petitioner; (2) the evidence now demonstrated that petitioner was not the primary attacker, and the small amount of blood found in the seams and mesh of the shoes was consistent with a scenario in which petitioner had been an accessory who stood off to one side, Carlton never intended to restrict the examination to the red spots on the outside of the

shoes, and the evidence bag that contained the shoes was not opened at any point; (3) nothing in the DNA report supported petitioner's theory that Lee was involved in the murder — specifically, "no conclusions [could] be made" regarding the mixture of multiple people's DNA in the fingernail scrapings, and Lee was excluded as a contributor to the hairs found in Helmbacher's hand; and (4) Taylor was credible, his account was bolstered by Callaway's testimony, and petitioner provided unreliable testimony at trial. C872-93.

On February 14, 2019, the circuit court denied petitioner's amended petition. A2-5. The court explained:

> In reviewing all of the evidence presented at trial, the DNA analyzed after the trial[,] and the arguments made, the court understands why the State has decided not to retry the case at this time with the evidence that is available and the burden [of proof] beyond a reasonable doubt. Having said that, the court cannot find that [petitioner] has proven by the preponderance of the evidence that [petitioner] has established he is innocent of the charge of murder.

A4-5.

Petitioner appealed, arguing that (1) he was required to prove only that he was not the principal assailant because that was the State's theory and petitioner had not been charged as an accomplice; (2) allowing the State to advance a new theory in opposition to his petition violated due process; (3) judicial estoppel prohibited the State from changing its theory of the case in response to his petition; (4) the jury acquitted him of burglary, and the State

never charged him with robbery; (5) the trial court failed to consider certain evidence; and (6) the State offered no proof that petitioner participated in a felony that resulted in Helmbacher's death, or aided or abetted in Helmbacher's murder, to support the accomplice theory it advanced in response to the petition. A29-41.

The appellate court affirmed. A41. It held that (1) petitioner had to prove by a preponderance of the evidence that he was neither the principal nor an accomplice in the charged offenses, A33; (2) there is no constitutionally protected liberty interest at stake in a petition for a COI, and in any event, petitioner received due process, A35-36; (3) judicial estoppel did not apply because the State changed its theory in response to new evidence, A37; (4) the State did charge petitioner with robbery in Count IV, which alleged that petitioner "while committing or attempting to commit a forcible felony, [r]obbery, . . . repeatedly struck [Helmbacher] on the head and thereby caused [his] death," A37; (5) the record did not rebut the presumption, but in fact confirmed, that the trial court considered all of the evidence, A38; and (6) the trial court did not abuse its discretion when it found that petitioner failed to meet his burden of proving that he did not commit murder, A40.

ARGUMENT

I. Standard of Review

Issues of statutory construction are reviewed de novo. *People v. Clark*, 2018 IL 122495, ¶ 8. So, too, are procedural due process claims. *People v. Cardona*, 2013 IL 114076, ¶ 15. Application of the principle of judicial estoppel is reviewed for abuse of discretion, *People v. Runge*, 234 Ill. 2d 68, 132 (2009), as is the ultimate question of whether petitioner is entitled to a COI, *see, e.g.*, *People v. Dumas*, 2013 IL App (2d) 120561, ¶ 17; *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11; *People v. McClinton*, 2018 IL App (3d) 160648, ¶ 22.

II. Petitioner Did Not Prove His Innocence by a Preponderance of the Evidence.

To obtain a certificate of innocence under § 2–702, a petitioner must prove by a preponderance of the evidence that:

> (1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
>
> (2) (A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; or (B) the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois;

(3) the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State; and

(4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction.

735 ILCS 5/2-702(g). The only element at issue here is that stated in subsection (g)(3): whether petitioner has proven by a preponderance of the evidence that he is innocent of the offenses charged. The trial court did not abuse its discretion in holding that he had not. Accordingly, the appellate court's judgment, affirming the trial court's ruling, should be affirmed.

The burden of proof rests upon petitioner in COI proceedings. At trial, the accused's liberty is at stake, and the State's burden is beyond a reasonable doubt. But petitioner is now a free man. His conviction was overturned, and the State elected not to retry him after it determined that it could not prove his guilt beyond a reasonable doubt. At stake in this proceeding is not petitioner's freedom, but his ability to sue the government for monetary damages, because if he receives a COI, he may then file a petition in the Court of Claims seeking compensation. *See Rudy*, 2013 IL App (1st) 113449,¶ 10; *see also Rodriguez v. Cook County, Illinois,* 664 F.3d 627, 630 (7th Cir.2011) (citing 735 ILCS 5/2–702(a)); *Betts v. United States,*

10 F.3d 1278, 1283 (7th Cir.1993) ("[a] COI serves no purpose other than to permit its bearer to sue the government for damages").

Here, the trial court did not abuse its discretion when it held that petitioner had failed to prove his innocence of Helmbacher's murder by a preponderance of the evidence. To establish an abuse of discretion, petitioner must show that it was unreasonable for the circuit court to find that petitioner failed to meet his burden of proof. *See People v. Wheeler*, 226 Ill. 2d 92, 133 (2007) (trial court abuses its discretion only if no reasonable person could take its view). Petitioner's new DNA evidence arguably demonstrated that he was not Helmbacher's primary attacker. But there was still ample evidence that petitioner murdered Helmbacher. First, Taylor testified that petitioner confessed to the murder. R150. Although petitioner repeatedly refers to Taylor's testimony as "Taylor's fabricated story," *e.g.*, Pet. Br. 13, petitioner's attacks on Taylor's credibility do not rebut his testimony. True, Taylor initially told police that he did not know anything about Helmbacher's murder, but his reluctance to tell police about petitioner's role in Helmbacher's murder can be explained by their close relationship: not only were they first cousins, but petitioner often lived with Taylor. To be sure, when Taylor finally implicated petitioner, he knew that police had discovered his fingerprints on the garbage bag full of Helmbacher's belongings and that

he was a suspect in the residential burglary. But it did not follow that he was necessarily a suspect in the murder that occurred the following day. Nor did the State promise leniency on the residential burglary charge in exchange for Taylor's testimony against petitioner.

Contrary to petitioner's assertion, Pet. Br. 9, the People have never "disclaimed" Taylor's testimony. Rather, in their response to petitioner's COI petition, the People argued:

> Taylor had no reason to fabricate a statement to law enforcement, falsely implicating Petitioner. If he had, *arguendo*, it is unlikely that he would have persisted with the same version of events, years later, knowing that the State was seeking the death penalty against Petitioner. It is more plausible that Petitioner actually did confess his involvement in the homicide to Taylor and Taylor initially attempted to avoid confessing the truth in an effort to protect Petitioner and remain uninvolved from the case.

C887-88.

Moreover, forensic evidence supported petitioner's involvement in the murder. Lu found three drops of Helmbacher's blood inside of petitioner's shoe. R357. Both Taylor and Carlton testified that the shoes Carlton took from petitioner during his interview, when he noticed red specks on them, and that were subsequently introduced as evidence at trial were the shoes petitioner was wearing on the day of the burglary. R155, 239-40. Nor is it reasonable to believe that police planted the blood on petitioner's shoe after

the first negative test. If petitioner was not the primary attacker, but rather an accessory, his shoes would not necessarily have become drenched in Helmbacher's blood, but tiny droplets might well have seeped into the seams and the mesh of petitioner's sneakers. The initial laboratory request called only for testing of the red specks on the outside of the shoes; Carlton then sent the shoes sent back to the crime laboratory for thorough examination and testing. R243. At all times, except during testing, the forensic examiners kept the shoes sealed in an evidence bag. R257-58. Moreover, examiners kept Helmbacher's blood standard at the crime laboratory, not the Decatur Police Department. R330. To conclude that the police planted Helmbacher's blood on the shoe, one would have to believe that the police maintained a separate stash of Helmbacher's blood and planted droplets of it on remote areas of the shoe that Lu could access only by tearing the shoe apart.

Petitioner's own testimony was inconsistent and incredible. For example, petitioner testified that on August 26th, the day of the burglary, he was so sick that he could not keep anything down, and he spent that day and the next on Taylor's couch drifting in and out of sleep and consuming nothing but broth. R388-89. But around 2:30 or 3 p.m. on August 27th, petitioner left the apartment and joined Taylor and Martin to drink beer. R289, 391-92.

Martin had no recollection of petitioner either saying he was sick or acting sick. R289. Furthermore, petitioner testified that he arrived at Callaway's apartment between 3:30 and 4:00 p.m., but Callaway testified that it was around 10:00 p.m. and definitely dark outside when petitioner arrived. R200. Given that Helmbacher was murdered sometime between 7:00 p.m. and 11:00 p.m. on August 27, it is at least plausible that petitioner lied about when he arrived at Callaway's apartment because, being an accessory to Helmbacher's murder, he needed an alibi for that part of the evening.

Callaway's testimony about petitioner's behavior at Callaway's apartment also raised an inference of petitioner's guilt. After petitioner arrived at Callaway's apartment, and while Callaway was away, petitioner removed his own clothes and put on some of Callaway's clothes. Petitioner's testimony that it was not unusual for he and Callaway to wear each other's clothing is inconsistent with Callaway's testimony that, when he returned from the liquor store and saw petitioner wearing his clothes, he told petitioner to wash his own clothes and wear them instead. R202. Indeed, petitioner had to wash Callaway's shirt and pants before wearing them. R395. If both petitioner's and Callaway's clothes required laundering before wearing, it is reasonable to presume that petitioner would have washed and worn his own clothes unless he had some reason not to want to wear them.

Petitioner argues that "the State has failed to establish any element of its assertions that [petitioner] committed felony murder or is accountable as an accomplice to a still-unnamed killer." Pet. Br. 49. Even, the appellate court, petitioner argues, recognized that "'the State offered no proof that a robbery or burglary was committed on August 27, 1998, or that [petitioner] elicited Helmbacher's murder or aided or abetted its commission[.]'" *Id.* (quoting *Palmer*, 2019 IL App (4th) 190148, ¶ 170). But petitioner ignores the dispositive point that the court made immediately thereafter: "We must not forget, however, that the ultimate burden of proof, this time, was on [petitioner] instead of on the State. [Petitioner] had the burden of proving, by a preponderance of the evidence, that he was innocent of Helmbacher's murder." A39. Given Taylor's testimony, the presence of Helmbacher's blood on petitioner's shoe, the inconsistencies in petitioner's own trial testimony, and petitioner's behavior after arriving at Callaway's apartment, it was not unreasonable for the circuit court to find that petitioner had failed to meet that burden. Even if the new DNA evidence tended to prove that petitioner was not the principal attacker, it did not disprove that he was an accomplice to Helmbacher's murder.

III. Petitioner Must Prove His Innocence of the Charges, and Not Merely the Facts, Alleged in the Indictment.

Petitioner seeks to lessen his burden by limiting the question to whether he can prove that he is innocent of the crime as described factually in the charging instrument. Pet. Br. 20. But both the plain language of the COI statute and the legislative history demonstrate that he must prove that he is innocent of the charges against him, and not merely innocent of the specific factual allegations.

"'The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent.'" *People v. McChriston*, 2014 IL 115310, ¶ 15 (quoting *People v. Davison,* 233 Ill. 2d 30, 40 (2009)). "The best indication of legislative intent is the statutory language, given its plain and ordinary meaning." *Id.* "When the statute contains undefined terms, it is entirely appropriate to employ a dictionary to ascertain the plain and ordinary meaning of those terms." *Id.* "Where the language is clear and unambiguous, we will apply the statute without resort to further aids of statutory construction." *Id.*

The plain language of the COI statute provides that petitioner must prove that he is "innocent of the *offenses charged* in the indictment or information," 735 ILCS 5/2-702(g)(3) (emphasis added), and not the facts alleged in the indictment or information. The offense charged here is first

degree murder, not the alleged act of hitting Helmbacher with a hammer. This understanding of the term "offense" is well established in this Court's jurisprudence. For example, this Court has held, "It is proper to charge a defendant as a principal even though the proof is that the defendant was only an accomplice. Courts permit this pleading practice because accountability is not a separate offense, but merely an alternative manner of proving a defendant guilty of the substantive offense." *People v. Ceja*, 204 Ill. 2d 332, 361 (2003) (citations omitted). Moreover, this Court has long distinguished between the offense, or crime, *see Black's Law Dictionary* (11th ed. 2019), offense (defining offense as "a crime"); *see also* 22 C.J.S. *Criminal Law* § 3, at 4 (1989) ("The terms 'crime,' 'offense,' and 'criminal offense' are all said to be synonymous, and ordinarily used interchangeably."), and facts in a charging instrument. *See, e.g.*, *People v. Hale*, 77 Ill. 2d 114, 120 (1979) (holding that complaint "did not allege all the material facts constituting the offense"); *People v. Strong*, 363 Ill. 602, 605 (1936) ("an indictment shall allege every material fact constituting the offense charged"). In other words, the offense charged was first degree murder, and beating Helmbacher with a hammer was merely a means of committing the charged offense. And because accountability is not a separate offense, but rather an alternative manner of

proving a defendant guilty of the substantive offense, petitioner had to prove his innocence of first degree murder as both principal and accomplice.

Petitioner contends that the phrase "charged in the indictment or information" must be given a meaning, and that "the legislature plainly contemplated that courts would reference the specific factual content of charging documents in analyzing subsection (g)(3)." Pet. Br. 21. To be sure, this clause should not be rendered meaningless. *See McChriston*, 2014 IL 115310, at ¶ 22 ("'If possible, the court must give effect to every word, clause, and sentence; it must not read a statute so as to render any part inoperative, superfluous, or insignificant'") (quoting *People v. Ellis,* 199 Ill. 2d 28, 39 (2002)). But in the context of the statute, the most logical and natural reading of that phrase is that a petitioner must prove he is innocent of the offense charged in the indictment or information — in this case, first degree murder — as opposed to other offenses that might also have been charged based on the conduct alleged, which in here might include home invasion, battery, and armed violence. This is in contrast to federal law, which requires that "'the claimant must be innocent of the particular charge *and of any other crime or offense that any of his acts might constitute*.'" *Betts*, 10 F.3d at 1284 (quoting *Osborn v. United States,* 322 F.2d 835, 840 (5th Cir. 1963) (emphasis added)). Rather than merely giving effect to the phrase

"charged in the indictment," petitioner's interpretation instead inserts the words "and facts" into the statute, such that it would require that petitioner must prove that he is "innocent of the offenses *and facts* charged in the indictment." Accordingly, petitioner's interpretation should be rejected. *See Ellis,* 199 Ill. 2d at 39 (the court "must not depart from the statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not express").

Not only is this interpretation compelled by the statute's plain language, but it also finds support in the Act's legislative history. It was never the General Assembly's intent that everyone who had his conviction overturned be entitled to a COI. To be sure, there are people who are entitled to a COI under the law and to financial damages for wrongful convictions or malicious prosecutions. But the bill's sponsor was clear that not every person whose conviction cannot stand is entitled to such relief:

> [T]hat's not the nature of this legislation. This legislation is about men and women who have been wrongfully convicted of a crime; they never should have been in jail in the first place. And in the absence of the Governor pardoning them, they cannot get what's rightfully theirs. So technically they're still incarcerated because their name is not cleared. They cannot get a job and they cannot get the rightful compensation that they truly deserve because the pardon is not there.

See Ill. Gen. Assem., House Proceedings, May 18, 2007 (statement of Representative Flowers).

The General Assembly recognized that the COI statute carried significant financial consequences for Illinois counties. And, much of the debate about the statute centered around limiting COIs, and the financial damages that often follow, to the proper group of recipients. When § 2-702 was enacted in 2008, Representative Reboletti expressed concern "that you have a situation where the inmate will get a COI and then use that as additional evidence at a 1983 hearing in federal court. Most of the counties are self-insured and basically it's going to cost them millions and millions of dollars." Ill. Gen. Assemb., House Proceedings, May 18, 2007 (statements of Representative Reboletti). To assuage this concern, Representative Reboletti asked Representative Flowers, the sponsor of the bill, about the standard of proof a petitioner would have to satisfy:

> Reboletti: "What is the standard of proof gonna be at the Circuit Court level for these hearings?"
>
> Flowers: "A . . . the standard of proof is clear and convincing evidence."
>
> Reboletti: "And . . . that is a higher standard than before preponderance of the evidence?"
>
> Flowers: "Yes. Yes, it is."

Id. at 3. Representative Flowers was incorrect; both the bill and the eventual statute imposed a preponderance of the evidence standard. *See* 2007 IL H.B. 230 (May 16, 2007). Even while under the misapprehension that the Act

would impose a higher burden of proof that it actually does, Representatives Reboletti predicted that:

> We're gonna have prosecutors and police officers that are going to be named in subsequent lawsuits, and a certificate of innocence is going to do nothing but add additional burden to the county, because we're not going to go to court to debate the issue of the Section 1983 action. We're going to go there and debate is how much money that . . . that is going to have to be paid out in these lawsuits."

Ill. Gen. Assemb., House Proceedings, May 18, 2007. Representative Reboletti's prediction was correct, insofar as a civil lawsuit often follows the issuance of a COI, and the COI is powerful evidence in those cases. *See, e.g.*, *Patrick v. City of Chicago*, ___ F. 3d ___, 2020 WL 5362160, at * 6 (7th Cir. Sept. 8, 2020) (holding that COI was directly relevant to element in § 1983 malicious prosecution lawsuit).

In applying our COI statute, Illinois courts have looked to how federal courts construe the analogous federal COI statute. *See, e.g.*, *McClinton*, 2018 IL App (3d) 160648, ¶ 14 (citing favorably *Betts*, 10 F. 3d at 1283); *People v. Allman*, 2013 IL App (1st) 120300-U, ¶¶ 13, 15 (same); *Rudy*, 2013 IL App (1st) 113149, ¶¶ 10, 11 (same). In *Betts*, the Seventh Circuit recognized that "Congress did not intend to indemnify every imprisoned person whose conviction had been set aside." 10 F. 3d at 1284 (citations omitted). In a letter from then-United States Attorney General Homer Stille Cummings to

the Senate Judiciary Committee, which was embodied in that committee's report on the Unjust Conviction Act, Cummings explained:

> "Ideal justice would seem to require that in the rare and unusual instances in which a person has served the whole or part of a term of imprisonment, is later found to be entirely innocent of the crime of which he was convicted, should receive some redress. On the other hand, reversals in criminal cases are more frequently had on the ground of insufficiency of proof or on the question as to whether the facts charged and proven constituted an offense under some statute. Consequently, it would be necessary to separate from the group of persons whose convictions have been reversed, those few who are in fact innocent of any offense whatever."

Id. (quoting Report No. 202, 75th Congress, 1st Session). Because petitioner's proposed reading of the statute would undermine this distinction between those whose convictions must be reversed and those who are in fact innocent, it should be rejected.

IV. The Court's Denial of a Certificate of Innocence Did Not Violate Petitioner's Due Process Rights.

Nor is there any merit to petitioner's argument that because the circuit court required petitioner to prove his innocence of the charged offense (murder), and not merely the factual allegations in the indictment, it violated petitioner's right to due process. Pet. Br. 34; *see* U.S. Const., amend. XIV, § 1; Ill. Const. 1970, art. I, § 2 (providing that no one shall be deprived of life, liberty, or property without due process of law). "This court uses a three-part test to review procedural due process claims:

> 'the first asks the threshold question whether there exists a liberty or property interest which has been interfered with by the State; the second examines the risk of an erroneous deprivation of such an interest through the procedures already in place, while considering the value of additional safeguards; and the third addresses the effect the administrative and monetary burdens would have on the state's interest.'"

Segers v. Indus. Comm'n, 191 Ill. 2d 421, 434 (2000) (quoting *East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis Sch. Dist. No. 189 Fin. Oversight Panel*, 178 Ill. 2d 399, 415-16 (1997)).

Petitioner's claim fails at the first step because "procedural due process protections are triggered only when a constitutionally protected liberty or property interest is at stake." *Tiller v. Klincar*, 138 Ill. 2d 1, 14 (1990). No constitutionally protected liberty or property interest is at stake in a proceeding for a COI. Petitioner suffered no deprivation of liberty when the circuit court denied his COI. He was, and remains, a free man. And, by denying him a COI, the circuit court took no property from him. "The due process clause protects interests that a person *has already acquired* in specific benefits, not merely an expectation or abstract need for such benefits." *Segers*, 191 Ill. 2d at 435. So, petitioner cannot clear the first step in his procedural due process challenge.

Petitioner claims that *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), held that "a state may not presume that a person who has been acquitted or

exonerated is not entitled to statutory relief provided by the state for innocent persons." Pet. Br. 36. But *Nelson* held no such thing. Colorado refused to return to the petitioners in that case funds that the State had taken from them pursuant to their convictions; this taking violated due process after the court reversed petitioners' convictions. *See Nelson*, 137 S. Ct. at 1255. *Nelson* is inapposite. Petitioner's freedom has been restored. He does not allege that, as in *Nelson*, the State refused to return money taken from him pursuant to his conviction. Rather, he points to benefits expected in the future, such as "job and educational assistance and grants." Pet. Br. 37. However, he has no constitutionally protected interest in the possibility that he will receive such benefits. Nor is it sufficient that he articulates an abstract need to have his record expunged. *See* Pet. Br. 37-38 ("Moreover, without the expungement just discussed, the lingering record of an arrest and charges of murder seriously infringes upon interests in pursuing educational opportunities, employment, and an occupation."). Because petitioner cannot identify a single liberty or property interest "that [he] *has already acquired*" which is at stake in the COI proceedings, his due process claim must fail. *Segers*, 191 Ill. 2d at 435.

Even if there were a constitutionally protected interest at stake here, (and there is not), the COI proceeding creates no substantial risk of the

erroneous deprivation of that interest. Petitioner had the burden of proving, by a preponderance of the evidence, that he was innocent of the offenses charged in the indictment. *See* 735 ILCS 5/2-702(g). The State had the right to respond to petitioner's case. *See* 735 ILCS 5/2-702(e). It did so by arguing that the preponderance of the evidence (the victim's blood on petitioner's shoe, Taylor's testimony, inconsistencies in petitioner's trial testimony, and petitioner's odd behavior at Callaway's apartment) showed that petitioner was, at the very least, an accomplice to Helmbacher's murder. And petitioner had a full and fair opportunity to prove that he was innocent of being an accessory. *See, e.g.*, *Vill. of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 31 (the essence of due process is an opportunity to be heard at a meaningful time and in a meaningful manner). He presented evidence of his alleged innocence: (1) DNA evidence showing that the material under the victim's fingernails did not match petitioner; (2) Taylor's inconsistent stories to police; (3) petitioner's theory that the police must have planted the blood on the sneaker after initial tests did not find any; and (4) his theory that Douglas Lee was the actual killer. The court considered that evidence, as well as the State's evidence from trial (the State presented no additional evidence beyond what petitioner had already seen at his criminal trial), and concluded that

petitioner had not met his evidentiary burden. In short, petitioner had an opportunity to be heard; he is merely dissatisfied with the outcome.

Finally, contrary to petitioner's claim, Pet. Br. 38, the State has a significant interest in limiting certificates of innocence to that class of people who are actually innocent of the crimes of which they were convicted. As noted above, *see* p. 27 *supra*, not every defendant whose conviction is subsequently overturned is properly considered a member of this group. At the time the law was passed, the bill's sponsor explained that certificates of innocence were intended for only a subset of individuals who had their convictions reversed. Ill. Gen. Assemb., House Proceedings, May 18, 2007 (statements of Representative Flowers). As Attorney General Cummings said, to achieve "'ideal justice . . . it would be necessary to separate from the group of persons whose convictions have been reversed, those few who are in fact innocent of any offense whatever.'" *Betts*, 10 F. 3d at 1284 (citing Report No. 202, 75th Congress, 1st Session). The State's interest in achieving this "ideal justice" — the allocation of limited resources to the appropriate recipients — is not, contrary to petitioner's view, "extraordinarily limited." Pet. Br. 38.

V. The State's Argument Was Not Foreclosed by Judicial Estoppel.

Petitioner argues that the doctrine of judicial estoppel "bars the State . . . from advancing a factual theory of [petitioner's] guilt in these [COI] proceedings that is inconsistent with the sole factual theory of guilt included in the charges against [petitioner]." Pet. Br. 44. Petitioner is incorrect.

"Five elements are generally required for the doctrine of judicial estoppel to apply: the party to be estopped must have (1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) have succeeded in the first proceeding and received some benefit from it." *People v. Caballero*, 206 Ill. 2d 65, 80 (2002). To be sure, at the criminal trial, the State alleged that petitioner was the principal assailant who beat Helmbacher to death, but in its "Response to Amended Petition for Certificate of Innocence Under 735 ILCS 5/2-702," the State argued that petitioner "more likely than not . . . participated in the homicide of William Helmbacher, either as an accessory or as a willing participant to an underlying felony that escalated into a violent attack and ultimately a homicide." C893. One cannot be both an accessory and a principal in the commission of murder, so the State's respective positions in

the criminal trial and in the proceeding for a COI are factually inconsistent. And the State did prevail at the criminal trial on the first position.

But "where as here the discovery of new facts justifies a change in position, and there is no indication of bad faith, judicial estoppel does not apply." *Runge*, 234 Ill. 2d at 133. Judicial estoppel is an "extraordinary" measure, which must be "applied with caution to avoid impinging on the truth-seeking function of the court." *Ceres Terminals, Inc. v. Chi. City Bank & Trust Co.*, 259 Ill. App. 3d 836, 857 (1st Dist.1994) (internal quotation marks omitted).

Here, the inconsistent positions represented an honest change of position based on new DNA evidence, which was unavailable in the earlier, criminal proceeding. It was not an abuse of discretion by the circuit court to refuse to apply the doctrine of judicial estoppel. *See Seymour v. Collins*, 2015 IL 118432, ¶ 48. Indeed, "[t]o hold otherwise would tend to stymie the truthseeking function of legal proceedings." *Runge*, 234 Ill. 2d at 133.

CONCLUSION

In sum, petitioner failed to prove his innocence of the offense charged — as opposed to the factual allegations made — in the indictment, as the COI statute requires. And neither due process nor judicial estoppel barred the State from advancing a new factual theory in the COI proceedings. Therefore, this Court should affirm the appellate court's judgment.

October 27, 2020

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CERTIFICATE OF COMPLIANCE

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

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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 27, 2020, the foregoing **Appellee's Brief**, was electronically filed with the Clerk, Illinois Supreme Court, and served upon the following:

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