No. 124818

IN THE
SUPREME COURT OF ILLINOIS

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

REPLY BRIEF OF DEFENDANT-APPELLANT KEVIN JACKSON

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A. Introduction

By any measure, Mr. Jackson has suffered grave injustice. Arrested at 19, convicted at 21, he has already spent nearly half his life in prison—with decades left on his 45-year sentence. Such apathetic treatment belies that at trial no forensic evidence connected him with the crime, that every eyewitness—including a surviving victim—testified he was not the shooter, and that witness after witness raised serious questions about the methods employed by police to secure *uniformly recanted* statements. Yet nearly 20 years later, Mr. Jackson remains in prison and continues to seek justice.

At present, the fundamental issue before the Court is simply whether to grant Mr. Jackson's motion for leave to file a successive postconviction petition (the "Motion"). Mr. Jackson has asserted both actual innocence and, alternatively, cause and prejudice grounds, each of which independently justifies the relief he seeks. At this early stage of the proceedings, Mr. Jackson must only demonstrate that the new evidence he has marshalled "*raises the probability* that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence." *People v. Edwards*, 2012 IL 111711, ¶ 24 (emphasis added, internal quotation marks omitted).

In support of his Motion, Mr. Jackson relies primarily on two categories of evidence. *First*, an affidavit from an eyewitness who did not testify at trial or before the grand jury, and who did not agree to sign a sworn statement for the police. This witness avers that Mr. Jackson had nothing to do with the shooting for which he is now serving a 45-year sentence and corroborates the testimony of other eyewitnesses who testified that their statements to police implicating Mr. Jackson were both false and coerced. *Second*, Mr. Jackson relies on voluminous evidence of misconduct by the officers who coerced

these false statements—including allegations of misconduct similar to the tactics described by witnesses at Mr. Jackson's trial. This evidence includes citizen complaints, news accounts, and civil lawsuits involving these same officers.

In its comprehensive review of the trial record, the First District noted that the only evidence supporting the State's theory were recanted statements allegedly taken by police, which each witness testified were actually false and the product of threats and coercion by police. *People v. Jackson*, 2018 IL App (1st) 171773, ¶¶ 9-10 [hereinafter, "Op."]. The court also noted the lack of any forensic evidence connecting Mr. Jackson to the shooting and remarked on the testimony of surviving victim Michael Watson, who "stated unequivocally that Mr. Jackson looked nothing like the man who shot him." (*Id.* ¶ 9.) In light of this, and of the evidence Mr. Jackson submitted with his Motion, the dissent below pointedly concluded that:

> [It is] difficult, if not impossible, to believe that the outcome would be the same, *i.e.*, that a reasonable jury considering the unequivocally exonerating testimony of the surviving victim, the detailed and consistent accounts of coercion given by the recanting witnesses at trial, the evidence of witness coercion by some of the same detectives in the *Patterson* and *Bridewell* cases, *and* the testimony of Ms. Davis would still find Mr. Jackson guilty.

(*Id.* ¶ 121 (Mikva, J., dissenting) (emphasis in original).) Thus, Mr. Jackson's Motion and supporting documentation certainly "raises the probability" of a different result, as required by *Edwards*, 2012 IL 111711, ¶ 24.

In reaching its contrary decision, the majority below made three errors of law, now before the Court.

First, by applying the "strikingly similar" test, which has no basis in this Court's jurisprudence, and in the alternative, applied the improper test incorrectly;

Second, by ruling the affidavit of Ms. Quina Davis[1] is not "new" evidence capable of supporting an actual innocence claim, despite this Court's precedential guidance to the contrary; and,

Third, by evaluating Mr. Jackson's evidence of misconduct independently from Ms. Davis' affidavit on the basis that *People v. Hobley*, 182 Ill. 2d 404 (1998), requires such a distinction, even though this Court's more recent jurisprudence indicates that this holding is no longer good law.

Rather than squarely address these legal arguments within the framework of Mr. Jackson's well-pled facts, the State roots its response in irrelevant (at best) and discredited (at worst) factual assertions by which it seeks to assure the Court of Mr. Jackson's guilt. In short, the State refuses to acknowledge the very real likelihood of Mr. Jackson's innocence, despite the fact that, as the dissent below opined, Mr. Jackson's "case has all the hallmarks of one in which the wrong person was convicted." (Op. ¶ 101 (Mikva, J., dissenting).)

Blinded by this bias, the State draws heavily from the 2007 factual statement of the First District Appellate Court's Rule 23 Order ("Rule 23 Order"). (*Compare* State's Br. at 3-14, *and* R. C116-124.)[2] However, the court below recognized the Rule 23 Order omitted certain facts relevant to the issues now before the Court—specifically, points demonstrating that the evidence at trial was more closely balanced than the Rule 23 Order

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[1] Throughout this litigation there has seemingly been confusion regarding the names of certain witnesses. The State refers to Ms. Quina Davis as "Quiana" Davis, and to Ms. Brandi Grant as Brandi "Butler." Since their names are Quina Davis and Brandi Grant, (*see* Suppl. R. C220-28; Suppl. R. C238-243), they will be referred to as such herein.

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

portrayed. (Op. ¶ 5; *see generally* Op. ¶¶ 3-59.) Among the salient facts the State either excluded or underestimated are the following:

> *First*, no trial witness identified Mr. Jackson as the shooter;
>
> *Second*, the only evidence supporting the State's theory of the crime were prior statements by four eyewitnesses called at trial who each "testified that they had been threatened and coerced by detectives into signing statements and giving grand jury testimony implicating Mr. Jackson";
>
> *Third*, "[n]o forensic evidence connected Mr. Jackson to the crime"; and,
>
> *Fourth*, the "surviving victim and the only other eyewitness to the shooting who testified at trial, stated unequivocally that Mr. Jackson looked nothing like the man who shot him."

(Op. ¶¶ 8-10.)

In addition to failing to credit these relevant facts identified by the court below, the State's analysis relies on other disputed information as though it were established fact and groundlessly objects to statements of fact made by Mr. Jackson. For example, at several points the State assumes the truth of the recanted statements, including by asserting unequivocally that Ms. Davis and Mr. Jackson were in a romantic relationship and by claiming, again without reservation, that Mr. Jackson supposedly threatened witnesses in order to keep them from speaking honestly with police. (*See, e.g.*, State's Br. at 6, 12, 16.) The State also pointedly accuses Mr. Jackson of mischaracterizing the testimony of surviving victim Michael Watson as "unequivocal," when that is precisely how it was characterized below. (Op. ¶ 31.)

Similarly, the State fails to directly respond to Mr. Jackson's legal arguments. Rather, it misconstrues his arguments, such as by incorrectly asserting that Mr. Jackson argues this Court has overturned *People v. Washington*, 171 Ill. 2d 475 (1996), and by claiming he argues mere "generalized allegations" of prior police misconduct should be sufficient to support his Motion. (State's Br. at 42, 48.) At other times, the State attempts to sidestep Mr. Jackson's arguments, as when it prematurely urges the Court to make credibility determinations regarding Ms. Davis' affidavit. (State's Br. at 33-35.)

Altogether, the State fails to refute Mr. Jackson's central thesis—that his Motion and supporting evidence "raises the probability" of a different result on retrial, and that he is therefore entitled to leave to file a successive postconviction petition under this Court's precedent, and that the court below erred by ruling otherwise.

B. The State's Flawed Arguments of Fact

The State's brief suffers from two significant flaws rooted in its view of the facts of Mr. Jackson's case. These relate to the State's deficient statement of facts and to its argument that the Court should disregard Mr. Jackson's statement of facts. These unavailing points are discussed, in turn, below.

1. The State Omits Facts Identified Below as Relevant and Critical to the Court's Ruling

The State's factual recitation closely tracks that of the Rule 23 Order, (*compare* State's Br. at 3-14, *and* R. C115-24), which omitted significant relevant details—in particular, facts demonstrating the evidence at trial was quite close, (Op. ¶ 5; *see generally* Op. ¶¶ 3-59). The State's reliance on a statement of facts largely borrowed from the Rule 23 Order already judicially determined to be incomplete by the court below also demonstrates the State's failure to consider Mr. Jackson's well-pled facts and to

assess whether they raise the probability of a different result on retrial, as required by this Court's precedent. *See People v. Sanders*, 2016 IL 118123, ¶ 31 ("The question raised in an appeal from an order dismissing a [successive] postconviction petition at the second stage is whether the allegations in the petition, liberally construed in favor of the petitioner and taken as true, are sufficient to invoke relief under the Act.") This deliberate decision provides substantial reason to doubt the State's subsequent analysis.

Furthermore, the State's brief contains several inaccurate factual statements—all of which support the State's flawed theme that Mr. Jackson was found guilty, therefore, he should not be granted leave to file a successive petition. *Cf. People v. Brown*, 2017 IL App (1st) 150132, ¶ 112 (Ellis, J., dissenting), *vacated*, 2019 IL 123252, (recognizing that evidence of "some guilt" is insufficient to derail postconviction proceedings or else they would be rendered a "Kafka"-esque "dead letter"). Among these inaccuracies are that witnesses' statements to police and the grand jury are "unrecanted," that Mr. Jackson threatened witnesses to keep them from talking to the police, and that Ms. Davis and Mr. Jackson were romantically involved. Mr. Jackson vigorously contests each of these unsupported and self-serving conclusions.

Most striking of all, the State makes the unsupportable claim that Brandi Grant's and Manuel Stewart's testimony is "unrecanted." (State's Br. at 29, 34, 37.) The record clearly demonstrates, however, that each person entirely disavowed the statement they signed after being interrogated by the police, entirely disavowed their grand jury testimony, and did so in each instance under oath and when subjected to cross-examination at trial. (*See, e.g.*, RP. 419-20; RP. 609.) Moreover, each also submitted an affidavit confirming the recantation with Mr. Jackson's Motion. (Suppl. R. C229-33;

Suppl. R. C238-243.) Quite simply, there is no basis for the State's claim that any portion of either of their statements to police or their grand jury testimony is "unrecanted."

Next, the State's insistence that Mr. Jackson threatened witnesses Vernon Clay, Shemika Mason, Brandi Grant, and Quina Davis in order to keep them from talking to police is based solely on the witnesses' recanted statements. (State's Br. at 6, 12.) Mr. Jackson's Motion, however, presents strong evidence corroborating witnesses' claims that their statements were coerced and, therefore, *entirely* false. As such, there is no reason to believe that Mr. Jackson made any threats whatsoever, a point entirely unacknowledged in the State's retelling.

Similarly, the sole support for the State's repeated claim that Mr. Jackson and Ms. Davis were romantically involved exists only in the coerced and recanted witness statements. Again, given their universal repudiation, and Mr. Jackson's corroborating evidence, the State's assumption regarding their supposed romantic relationship is unsubstantiated and asserted only as a basis to prematurely attack her credibility.

2. The State's Argument that Mr. Jackson's Brief Violates Supreme Court Rule 341(h)(6) Fails Under Scrutiny

The State urges the Court to disregard Mr. Jackson's statement of facts on the grounds it (a) relies on evidence not in the record, (b) misstates evidence in the record, and (c) is impermissibly argumentative. Each of these arguments fails.

a. Mr. Jackson Relies on Appropriate Evidence to Support his Motion

The State argues Mr. Jackson impermissibly refers to two sources of information not found in the record. The first are the General Progress Reports ("GPRs") prepared by police during their investigation, and the second is the physical description of the actual

shooter, Rick Party. (State's Br. at 2-3, 23.) As described below, the State overreaches in both respects.

First, on a motion for leave to file a successive postconviction petition, it is sufficient for Mr. Jackson to plead evidence which, construed in his favor, supports his Motion. *Sanders*, 2016 IL 118123, ¶ 31 ("The question raised in an appeal from an order dismissing a [successive] postconviction petition at the second stage is whether the allegations in the petition, liberally construed in favor of the petitioner and taken as true, are sufficient to invoke relief under the Act."). On its face, Mr. Jackson's Motion references and relies on information contained in police records (Sup C 12, 19-22, 26, 31), and GPRs (Sup C 21-22), and on the description of Rick Party (Sup C 27); therefore, the disputed information is contained in the record.

Second, with respect to the description of Rick Party, it was read into the record during a hearing in connection with Mr. Jackson's efforts to obtain a new trial in 2004. (R. 1147-48.)[3] Unfortunately, the copy of the exhibit referenced in that hearing, and entered into evidence by stipulation of the parties, apparently has not survived in the record—for which Mr. Jackson bears no responsibility. Fortunately, however, the transcript is clear that Rick Party was described on the record as being 5'-9", weighing 130 pounds, having braided hair, and a dark complexion. (R. 1147-48.) Consistent with the surviving victim's testimony, this description did not match Mr. Jackson's relative size, hair, or complexion then or now. (Op. ¶¶ 8-10.)

Finally, as demonstrated by the heavily redacted Case Supplemental Report attached to Mr. Jackson's motion, (Suppl. R. C161-74), and the collateral lawsuit he filed

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[3] Counsel apologizes for not providing this citation to the Court previously.

in order to obtain civilian complaints involving the investigating officers, (*see* Suppl. R. C192-215), Mr. Jackson has gone to great lengths to obtain records and to compile relevant information supporting his case. Given such difficulties, he should not—at this early stage—be prejudiced when he has clearly made a concerted effort to collect and identify relevant information for the court prior to being afforded any formal discovery. *See People v. Hall*, 217 Ill. 2d 324, 333 (2005) (noting that strict compliance with requirement to attach supporting documentation may be excused when absence of additional documentation can easily be inferred from the allegations of the petition); *see also People v. Fair*, 193 Ill. 2d 256, 264-65 (2000) (circuit court has inherent authority to grant discovery in postconviction proceedings for good cause).

b. The State Fails to Grasp the Relevance of the Factual Underpinnings of *Bridewell*, *Bell*, and *Patterson*

The State claims that Mr. Jackson misstates the facts of *Bridewell v. City of Chicago*, No. 08-C-4947, 2012 WL 2458548 (N.D. Ill. June 27, 2012), *aff'd sub nom.*, *Bridewell v. Eberle*, 730 F. 3d 672 (7th Cir. 2013), *Patterson v. City of Chicago*, No. 1:11-CV-7052 (N.D. Ill.), and the case of Corethian Bell. (State's Br. at 2-3, 18, 52-52, 55-58.) Rather, it is the State that misstates the facts underlying these cases and misjudges their critical importance to Mr. Jackson's Motion.

In *Bridewell*, the parties stipulated that Detective Forberg, one of two lead detectives in Mr. Jackson's case, obtained false statements from witnesses in that investigation through "coercion by withholding food, water, and bathroom breaks." (Op. ¶ 90.) Far from the "standard police interrogation" that "did not violate [the plaintiffs']

constitutional rights," which the State claims was at issue in *Bridewell*,[4] the stipulated facts were described as "deeply disturbing" by Judge Diane Wood of the Seventh Circuit. *Bridewell v. Eberle*, 730 F. 3d 672, 679 (7th Cir. 2013) (Wood, J., concurring). The fact that the ultimate decision in *Bridewell* favored the detectives for legal reasons not applicable here—namely, that probable cause existed for plaintiffs' arrest and that their other claims were either time barred or precluded by *res judicata*—is irrelevant in this case. *See Bridewell*, 2012 WL 2458548, at *2-6.

Mr. Jackson relies on *Bridewell* for the facts it established relative to Detective Forberg, not for its case-specific rulings. And lest there be any doubt, the salient facts are that Detective Forberg—one of the lead detectives responsible for obtaining allegedly coerced witness statements leading to Mr. Jackson's conviction—stipulated in federal court to obtaining witness statements, later determined by prosecutors to be false, through coercive methods that are eerily similar to those that witnesses testified he employed in Mr. Jackson's case. *Bridewell*, 2012 WL 2458548, at *1; *People v. Woods*, 214 Ill. 2d 455, 469 (2005) ("A stipulation is conclusive as to all matters necessarily included in it"); *Nat'l Union Fire Ins. Co. of Pittsburgh v. DiMucci*, 2015 IL App (1st) 122725, ¶ 2 ("Stipulations are judicial admissions … [and] are admissible in other cases as evidentiary admissions."); *Myoda Computer Ctr., Inc. v. Am. Fam. Mut. Ins. Co.*, 389 Ill. App. 3d 419, 423 (1st Dist. 2009) ("[S]tipulations by parties or their attorneys will be

[4] Although the State's quotation is taken from the U.S. District Court's 2009 ruling on a motion to dismiss, by the time sufficient discovery had occurred to position the matter for summary judgment in 2012, and to be affirmed on appeal in 2013, the facts acknowledged to underly the case had clearly changed dramatically.

enforced unless it is established that the stipulation is unreasonable, the result of fraud, or contrary to public policy.").

Similarly, in *Patterson*, the fact that the case was ultimately settled without any admission of wrongdoing (a standard settlement term), does not negate that both Detectives Brian Forberg and John Foster were named as parties in yet another case in which the plaintiff asserted he had been wrongly convicted based on false statements procured from witnesses through high-pressure interrogations—again, using very similar tactics to those alleged by witnesses at Mr. Jackson's trial. *See generally* Complaint, No. 1:11-CV-7052 (N.D. Ill. Oct. 6, 2011).

And, finally, the State's objection to the Corethian Bell case is facially meritless. The State claims that Detective Howley "was not named in [the *Bell*] lawsuit" and that the news account Mr. Jackson relies upon "states only that someone retained by the plaintiff in the *Bell* lawsuit disagreed with Howley's methodology for scoring polygraphs." (State's Br. at 53.) In actuality, the news account that Mr. Jackson relies upon reads as follows:

> The third examiner in the unit, Kevin Howley, determined that Corethian Bell failed a polygraph asking if he killed his mother. Bell then falsely confessed and spent 17 months in jail until DNA evidence led to his release. He sued and received a $1 million settlement from the city, which did not admit wrongdoing. Howley did not respond to requests for comment.
>
> Bell and at least one other suspect said being told by Chicago police that they had failed what they believed was a scientific exam weakened them into falsely confessing.
>
> Bell, then 24, was already vulnerable to pressure. He is mildly mentally disabled, and his interrogation in 2000 stretched over 50 hours and, Bell alleged, included threats, accusations and physical abuse by the officers, according to court records.

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

Notwithstanding the State's attempt to obfuscate facts and their relevance, these three cases as accurately described by Mr. Jackson, each shed probative light on the tactics Forberg (who testified at trial), Foster and Howley (who testified at trial) used to obtain false statements to support the conviction of suspects they deemed convictable—irrespective of actual guilt or innocence.[5] These well-pled facts, supported in one instance by a judicial admission, clearly shift the balance of the evidence the State relied upon to convict Mr. Jackson and raise the probability of a different result on retrial. *People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 62 (evidence of prior similar misconduct "significantly shifts the balance of credibility" against a testifying police officer); *see also People v. Tyler*, 2015 IL App (1st) 123470, ¶ 186 ("Even one incident of similar misconduct by the same detectives can be sufficient to show intent, plan, motive, and could impeach the officers' credibility."); *People v. Reyes*, 369 Ill. App. 3d 1, 21 (1st Dist. 2006) ("any allegation that [the detective] coerced a person to provide evidence is relevant to whether defendants in the case at bar were similarly coerced").

c. Mr. Jackson's Statement of Facts is Appropriate in Substance and Tone

Finally, the State argues that Mr. Jackson's statement of facts is impermissibly argumentative, in part because of its use of such terms as "false", "coerced", and

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[5] Additionally, while these cases draw the brunt of the State's ire, Mr. Jackson also identifies other cases involving alleged misconduct by the core detectives responsible for the investigation leading to Mr. Jackson's arrest and conviction, including *McGee v. City of Chicago*, 2012 IL App (1st) 111084, and *People v. Harris*, 389 Ill. App. 3d 107 (1st Dist. 2009). (*See generally* Suppl. R. C13-19.)

"compelling." Given that a core claim of this litigation is that *false* statements were *coerced* from witnesses in order to wrongly convict Mr. Jackson, and that under the law of postconviction proceedings Mr. Jackson must present *compelling* evidence with his Motion, it is difficult to conceive how these words could be construed as overly argumentative.

C. The State's Flawed Arguments of Law

As described below, the State's legal analysis should be rejected by the Court as it suffers greatly from its biased misapprehension of the underlying facts, apparent misunderstanding of Mr. Jackson's arguments, and its misreading of the law.

1. The State's Argument Advocating the Continued Efficacy of *Hobley* Underscores the Very Reason Why the Opinion Should be Expressly Overturned

As the State correctly points out, under *Hobley*, 182 Ill. 2d 404 (1998), successful motions for leave to file successive postconviction petitions must fit into one of two rigid classifications; either they must allege (1) there were prejudicial errors committed at trial that warrant postconviction relief even though the petitioner is guilty (these must satisfy the cause and prejudice test), or (2) even though no prejudicial errors were committed at trial the petitioner is innocent (these must satisfy the actual innocence test). (State's Br. at 40.) In this dichotomy, the petitioner whose trial was infected with prejudicial errors *and* who is innocent, is left in a difficult position. This is precisely Mr. Jackson's situation.

As the court below clearly stated, its belief that it "must reject" Mr. Jackson's actual innocence claim, (Op. ¶ 70), was based on the majority's belief that under *Hobley* it must "silo" the evidence of trial error from the evidence of Mr. Jackson's innocence,

(Op. ¶¶ 118, 120). In effect, the court diluted Mr. Jackson's evidence such that he could not satisfy either test, even though, as the dissent recognized, if considered together:

> [It would be] difficult if not impossible to believe that the outcome would be the same, *i.e.*, that a reasonable jury considering the unequivocally exonerating testimony of the surviving victim, the detailed and consistent account of coercion given by the recanting witnesses at trial, the evidence of witness coercion by some of the same detectives in the *Patterson* and *Bridewell* cases, *and* the testimony of Ms. Davis could still find Mr. Jackson guilty.

(Op. ¶ 121 (Mikva, J., dissenting).) In short, the First District's reading of *Hobley* doomed Mr. Jackson's Motion.

In its defense of *Hobley*, the State wrongly accuses Mr. Jackson of arguing that this Court's recent decisions overturned *People v. Washington*, 171 Ill. 2d 475 (1996). (State's Br. at 42.) He does not. Rather, Mr. Jackson argues that *Hobley*, which as applied below imposed an insurmountable hurdle to his claim of actual innocence, has always been in tension with *Washington*'s unequivocal holding that "no person convicted of a crime should be deprived of life or liberty given compelling evidence of actual innocence." 171 Ill. 2d at 489. The Court's discussion of "freestanding" versus "gateway" claims in *People v. Coleman*, 2013 IL 173307, reaffirms *Washington* and further demonstrates its conflict with *Hobley* by confirming that what is termed a "gateway" claim under federal law—*i.e.*, a claim of actual innocence that "is ancillary to any claims of constitutional trial error," *Coleman*, 2013 IL 113307, ¶ 83—is treated no differently than any other claim of actual innocence, *id.* at ¶ 84.

In other words, *Coleman* explicitly sanctions postconviction petitions relying on both trial error *and* actual innocence, the third category of claims excluded under *Hobley*. As such, *Hobley* must give way to *Coleman*. *Chicago Union Traction Co. v. Kallberg*, 107 Ill. App. 90, 91 (1st Dist. 1903) ("Any apparent conflict between these decisions and

decisions of this court or previous decisions of the Supreme Court, must be resolved in favor of the later expressions of the Supreme Court."); *see also Cates v. Cates,* 156 Ill. 2d 76, 80 (1993) ("[E]ffect must be given to the implications contained in the decision of a higher court and … the premises implicit in a holding are as authoritative as the holding itself."). Mr. Jackson asks that the Court resolve this untenable and unfair conflict definitively by explicitly overruling *Hobley*.

2. Ms. Davis' Affidavit Contains Compelling Evidence of Mr. Jackson's Innocence Never Previously Considered by the Jury or the Court

The State mounts several challenges to Ms. Davis' affidavit revolving around whether it is "new" evidence that may support Mr. Jackson's claim of actual innocence, each of which fails to fully account for the Court's holdings in *Coleman* and *People v. Allen,* 2015 IL 113135. The State further urges that even if it is "new," the Court should consider it to be untrustworthy. Both arguments must be rejected.

a. The State's Fixation on Whether the Information in Ms. Davis' Affidavit Could Have Been Discovered Previously Overlooks this Court's in *Coleman* and *Allen*

While the facts are not well-settled and there remains substantial disagreement concerning Ms. Davis' availability to testify at trial and her other involvement in Mr. Jackson's case, the parties appear to agree—and the record certainly reflects—that Ms. Davis did not testify at trial or before the grand jury, nor did she give a sworn statement to police. (*Compare* Appellant's Br. at 18, *and* State's Br. at 24-25.) She also has never before submitted a signed sworn statement to any court concerning Mr. Jackson's innocence, although an unsigned document generally consistent with her affidavit was attached to Mr. Jackson's first postconviction petition in 2007. (R. C177-78.) Mr. Jackson submitted this unsigned document before this Court ruled in *Allen,* 2015 IL

113135, ¶ 34, that such documents are appropriate support for a postconviction petition, (R. C222 (Mr. Jackson "failed to submit any affidavit from any of these potential witnesses," including Ms. Davis)). As such, Ms. Davis' testimony has never before been considered by any court in relation to Mr. Jackson's case.

The State nevertheless insists that her affidavit is not "new" evidence. (State's Br. at 24-33.) While Ms. Davis was known to Mr. Jackson previously, under this Court's decisions in *Sanders*, 2016 IL 118123, ¶ 47, *Coleman*, 2013 IL 113307, ¶ 84, and others, that single factor is not dispositive; rather, the most important question when determining whether evidence may support an actual innocence claim is whether it is conclusive of innocence. Ms. Davis' affidavit surely is this, as it is the sworn statement of an eyewitness who did not testify at trial, who has no prior contradictory sworn statement, who states that Mr. Jackson is innocent, and who corroborates other witnesses' claims of police coercion. (Op. ¶ 110 (Mikva, J., dissenting).)

Separately, to the extent this Court determines Ms. Davis' affidavit is not "new" under *Sanders*, *Coleman*, and other supreme court decisions, this requirement should be excused because, as described above, Ms. Davis' testimony has never before been considered by any court through no fault of Mr. Jackson's. (Op. ¶ 110 (Mikva, J., dissenting).)

b. The State's Efforts to Undermine Ms. Davis' Credibility are Both Premature and Baseless

As discussed above, there are critical flaws in the State's attempts to discredit Ms. Davis by claiming with only recanted support that she and Mr. Jackson were romantically involved and that her testimony conflicts with "unrecanted" testimony. Moreover, these arguments—even if they were supportable on the record—are undeniably premature at

this stage. *People v. Domagala*, 2013 IL 113688, ¶¶ 34, 45 (stating that credibility determinations are reserved for third-stage proceedings).

3. The State Misconstrues Mr. Jackson's Argument Regarding the Strikingly Similar Standard and then Fails to Address it

Mr. Jackson argues that the First District Appellate Court—alone among appellate districts in Illinois—has created a "strikingly similar" standard for allegations of police misconduct that has no support in the law. (Appellant's Br. at 24.) Mr. Jackson further argues that the court below committed reversible error when it applied this standard to his allegations and ruled against him on that basis. (Appellant's Br. at 24-27.) In the alternative, Mr. Jackson argues that even if the standard is appropriate, the evidence he submitted easily satisfies it and the court below erred in ruling otherwise. (Appellant's Br. at 27-29.)

The State, however, seemingly misunderstands this argument to be that mere "generalized allegations of misconduct" are sufficient. (State's Br. at 48.) This not only mischaracterizes Mr. Jackson's analysis, it also fails to accurately account for the similarity between the police conduct in *Bridewell*, *Patterson*, the case of Corethian Bell, and the conduct at issue here.

Moreover, with respect to the appropriateness of the "strikingly similar" standard, the State illogically relies on several First District decisions applying the standard and no such decisions from any other district. (State's Br. at 49-50.) This clearly supports Mr. Jackson's contention that the First District is alone in its creation and application of this inappropriate and unfair standard.

III. CONCLUSION

As this Court has consistently held, the question on appeal from denial of a motion for leave to file a successive postconviction petition is a legal question. *Edwards*, 2012 IL 111711, ¶ 24 ("[L]eave 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."); *see also People v. Smith*, 2014 IL 115946, ¶ 35 (same with respect to cause and prejudice test).

Before the Court now is whether the court below, as a matter of law, erred in ruling that Mr. Jackson's evidence fails to "raise[] the probability" of a different result on retrial. *Edwards*, 2012 IL 111711, ¶ 24. As Justice Mikva's remarkable dissent—from a majority opinion of which she is also the author—implores, Mr. Jackson's evidence most surely did raise such a probability. (Op. ¶ 121 (Mikva, J., dissenting) (opining it is "impossible" to believe Mr. Jackson would be convicted in light of the new evidence).

For all the foregoing reasons, Petitioner asks the Court to reverse the First District and grant Mr. Jackson leave to file a successive post-conviction petition. Furthermore, in recognition of the substantial evidence he has marshaled already, the significant delay the lower courts' decisions have caused, and this Court's clear determination that no stage of postconviction proceedings should be superfluous,[6] Mr. Jackson asks this Court to immediately vacate his conviction, remand with instructions that he be granted a new trial,

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[6] *See Edwards*, 2012 IL 111711, ¶ 26 (holding that no stage of postconviction proceedings should be rendered superfluous); *cf. People v. Bailey*, 2017 IL 121450, ¶ 42 (for sake of judicial economy, the Court declined to remand for further postconviction proceedings despite ruling the court below erred, after engaging in its own merits review)

and that he be released from the custody of the Illinois Department of Corrections pending the outcome of that trial. In the alternative, he asks this Court to remand his cause with instructions that his petition be advanced immediately to third-stage proceedings for the same reasons. Finally, Mr. Jackson asks the Court to grant such further relief as the ends of justice require.

Date: April 15, 2020

Respectfully submitted,

/s/ *Brandon R. Clark*

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RULE 341 CERTIFICATION

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 19 pages.

/s/ *Brandon R. Clark*
BRANDON R. CLARK

NOTICE OF FILING AND CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on this 15th day of April, 2020, I (1) caused to be electronically filed with the Clerk of the Supreme Court of the State of Illinois, the attached ***Reply Brief of Defendant-Appellant Kevin Jackson***, and (2) sent true and correct copies of the same to the following counsel of record by electronic mail:

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

Date: April 15, 2020

/s/ *Brandon R. Clark*
BRANDON R. CLARK

E-FILED
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Carolyn Taft Grosboll
SUPREME COURT CLERK