No. 130351

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, v. RALPH HARRIS, Petitioner-Appellee.	) Appeal from the Appellate Court of Illinois, First District, Nos. 1-22-1033, 1-22-1034 & 1-22-1035 (cons.))) There on Appeal from the Circuit Court of Cook County, Criminal Division, Nos. 95 CR 27596, 95 CR 27598 & 95 CR 27600)) The Honorable Michael R. Clancy, Judge Presiding

BRIEF AND APPENDIX OF RESPONDENT-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

MICHAEL L. CEBULA
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-6952
eserve.criminalappeals@ilag.gov

Counsel for Respondent-Appellant People of the State of Illinois

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NATURE OF THE CASE

Petitioner was convicted in three separate cases of murdering two men, attempting to murder a third man, and committing multiple aggravated criminal sexual assaults. The evidence against petitioner included DNA evidence, testimony from multiple eyewitnesses, and petitioner's confessions. Petitioner filed postconviction petitions in each case, alleging that his confessions were coerced. Following a consolidated third-stage evidentiary hearing, the circuit court held that his confessions were voluntary. Petitioner appealed, expressly stating that he was only asking the appellate court to remand for a new suppression hearing, not to order new trials. The appellate court expressly remanded for a new suppression hearing (*Harris I*).

Following that hearing on remand, the circuit court again held that petitioner's confessions were voluntary; nevertheless, the circuit court ordered new trials because it found that if evidence of a pattern of abuse by Area 2 detectives in other cases had been introduced at petitioner's trials, it might have affected the weight the juries gave to his confessions, even though the court itself expressly held that those confessions were voluntary.

The People appealed and, in a 2-1 decision, the appellate court held that it lacked jurisdiction because it construed *Harris I,* which remanded for a new suppression hearing, as implicitly vacating petitioner's convictions and granting new trials, thereby rendering the circuit court's grant of new trials superfluous and unappealable. No issue is raised on the pleadings.

ISSUES PRESENTED

1. Whether the appellate court erred by holding that *Harris I*, which expressly remanded for a new suppression hearing, implicitly vacated petitioner's convictions and ordered new trials where (a) *Harris I* found that petitioner had not yet established that his Fifth Amendment rights were violated because he had not yet proved that his confessions were coerced; (b) petitioner expressly stated in *Harris I* that he was not asking the appellate court to order new trials at that point in time; and (c) petitioner has consistently agreed with the People, including in this appeal, that *Harris I* did not vacate his convictions or order new trials.

2. Whether the appellate court is barred from amending *Harris I* to vacate petitioner's convictions and order new trials where *Harris I* did not grant that relief.

3. Whether, if this Court finds that the appellate court lacked jurisdiction due to an implicit grant of postconviction relief in *Harris I* that neither the parties nor the circuit court recognized, the Court should exercise its supervisory authority to direct the appellate court to consider the People's appeal.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315, 612, and 651(d). This Court granted the People's petition for leave to appeal on March 27, 2024.

STATEMENT OF FACTS

A. Petitioner is convicted of multiple murders, attempted murder, and multiple aggravated criminal sexual assaults.

In 1995, petitioner was charged in 20 separate cases with numerous violent felonies, including multiple counts of murder, attempted murder, and aggravated criminal sexual assault. C2995.[1] Petitioner thereafter filed an omnibus motion to suppress the confessions he had made to police and prosecutors, claiming that his statements were coerced. C936-39. Petitioner did not testify at the suppression hearing in support of his motion, and the People presented multiple witnesses attesting that petitioner's confessions were voluntary. R258-393, 407-46. After considering the evidence, Judge Dennis Porter held that petitioner's confessions were voluntary and denied his motion to suppress. R471-76.

The People then tried petitioner in three of his cases. In the first case, petitioner was convicted of the murder and attempted armed robbery of William Patterson and the attempted murder of James Patterson. CI193-94. In the second case, petitioner was convicted of the murder and attempted armed robbery of David Ford. C194-95. And in the third case, petitioner was convicted of committing armed robbery and multiple counts of aggravated criminal sexual assault against R.T. CI4541. The evidence against

[1] The common law record and report of proceedings are cited as "C_" and "R_," respectively; the impounded common law record as "CI_"; and the People's Appendix as "A_."

petitioner in these cases included, among other things, DNA evidence, testimony from multiple eyewitnesses who identified petitioner as the perpetrator, petitioner's confessions, and ballistics evidence. CI184-88, 4542-47; C194-95; *see also* CI199 (appellate court stating that the evidence petitioner committed murder was "overwhelming"); CI4554-55 (appellate court stating that the evidence petitioner committed aggravated criminal sexual assault was "overwhelming").

Petitioner's convictions in all three cases were affirmed on direct appeal. CI183-84, 4555; C194. Petitioner is serving a natural life sentence, plus consecutive terms totaling more than 100 years in prison. C195; *People v. Harris*, 2021 IL App (1st) 182172, ¶ 26 (*Harris I*). Following petitioner's convictions in these three cases, the 17 remaining cases were dismissed nolle prosequi. C1055.

B. Petitioner files postconviction petitions raising a Fifth Amendment claim and asks the circuit court to hold a suppression hearing to determine whether he is entitled to new trials.

In the years following his convictions, petitioner filed postconviction petitions in his three cases. *Harris I*, 2021 IL App (1st) 182172, ¶ 26. As relevant here, petitioner raised a Fifth Amendment claim that his confessions were involuntary based on newly discovered evidence that an Area 2 detective involved in his case, Michael McDermott, had a history of coercing confessions in other cases. *Id.* at ¶ 1. The circuit court (Judge Porter, who had presided over petitioner's suppression hearing and trials) advanced the

petitions to a consolidated third-stage evidentiary hearing on that claim. *Id.* at ¶ 26.

Before that third-stage hearing, petitioner moved for summary judgment based on the new evidence of Area 2 detectives' history of coercion in other cases. C2776. Petitioner argued that, based on that evidence, the circuit court should skip the third-stage evidentiary hearing on his Fifth Amendment claims and order a new suppression hearing on an amended motion to suppress. *Id.* Petitioner argued that "if that motion to suppress is granted" after the new suppression hearing, then the circuit court should order "that his convictions in [his three cases] be vacated." *Id.* At the hearing on that motion, petitioner's counsel explained that petitioner's entitlement to new trials depended on the results of a new suppression hearing — *i.e.*, petitioner would be entitled to new trials if the court found the statements had been coerced following the proposed suppression hearing, but if the court denied the motion to suppress, "his convictions would then stand." R10085. The court denied the motion for summary judgment because, among other reasons, there were contested issues of material fact. R10108.

At the third-stage evidentiary hearing, petitioner's counsel emphasized that petitioner was "not asking [the court] to grant a new trial" and was "not even asking at this point that [the court] suppress the confessions," but was "only asking for a new suppression hearing" at which the court could consider all of petitioner's evidence that his confessions were coerced. R9954. Neither

party offered any witnesses and petitioner himself did not testify in support of his claim that his confessions were coerced; instead, the parties presented evidence such as transcripts of witnesses' testimony from earlier proceedings, petitioner's prior pleadings, and documentary evidence evincing a pattern of physical coercion committed by Area 2 detectives under Jon Burge. R10024-62; *Harris I*, 2021 IL App (1st) 182172, ¶¶ 27-40.

Following the evidentiary hearing, the circuit court held that, although petitioner had established a pattern of coercion by some Area 2 detectives in other cases, petitioner's claim that *his* confessions were coerced was meritless. R4962. Among other things, the court noted that the record showed that petitioner confessed to certain offenses before he ever encountered McDermott (the detective with the history of coercion) and that numerous other witnesses confirmed that petitioner was not coerced at any time, even after McDermott arrived. R4956-62. The court therefore denied petitioner's postconviction petitions. R4962.

C. The appellate court remands for a suppression hearing (*Harris I*).

On appeal, petitioner argued that he was entitled to "a new suppression hearing" because he had met his burden under *People v. Whirl*, 2015 IL App (1st) 111483, which holds that, "at this stage of postconviction proceedings," *id.* at ¶ 80, a petitioner who raises a Fifth Amendment claim that his statement was involuntary is entitled to a new suppression hearing if his newly discovered evidence of coercion likely would have changed the

outcome of the original suppression hearing had it been presented, A51 (Petitioner's Opening Brief in *Harris I*). Petitioner argued that the circuit court erred by determining the ultimate question of whether his confessions were actually coerced and his Fifth Amendment right therefore violated because it should only have determined whether his newly discovered evidence warranted a new suppression hearing. *Id*. If the court found that his new evidence warranted a new suppression hearing, only then could the court conduct that hearing, examine all the evidence, and determine whether his confessions were actually coerced. A56-60. Petitioner emphasized that he was not asking the appellate court to order new trials. *See, e.g.,* A59-60, 79. For example, petitioner stated in his opening brief: "At this procedural juncture, Petitioner is not asking this Court for a new trial, or even for this Court to suppress his purported confessions." A59-60. Instead, petitioner asked only that the case be remanded for a new suppression hearing in front of a new judge who would determine whether petitioner's coerced confession claim had merit and, thus, whether petitioner was entitled to new trials. A59-60, 79.

The appellate court began its opinion by observing that petitioner had only requested a "new suppression hearing." *Harris I*, 2021 IL App (1st) 182172, ¶ 1. The appellate court next agreed with petitioner that "[a]t the evidentiary hearing conducted below, the circuit court's purpose was not to determine the ultimate issue of whether [petitioner's] confession was

coerced," but only whether petitioner was entitled to a new suppression hearing. *Id.* at ¶ 50. Citing *People v. Patterson*, 192 Ill. 2d 93, 139-45 (2000), a case concerning whether the new evidence of coercion presented by a petitioner was sufficiently material to overcome the bar of res judicata and allow a postconviction hearing on the Fifth Amendment claim, the appellate court concluded that petitioner was entitled to a new suppression hearing because he had shown a sufficient probability that the outcome of the original suppression hearing "would have been different if McDermott had been subject to impeachment based on the new evidence" of his history of coercion in other cases. *Harris I*, 2021 IL App (1st) 182172, ¶ 60. Accordingly, the appellate court "reverse[d] the circuit court's dismissal of [petitioner's] petition after an evidentiary hearing and remand[ed] for a new suppression hearing." *Id.* at ¶ 64. The court further ordered that the case be assigned to another judge on remand based on its belief that Judge Porter "has expressed a tendency to affirm the officers' credibility," inasmuch as he had credited the officers over petitioner's evidence. *Id.* at ¶ 62.

D. On remand, petitioner raises new claims and asks the circuit court to grant him new trials.

On remand, the case was assigned to a new judge. C73. Petitioner retained new counsel, C2943, and filed a motion "For New Trials Resulting from *Brady* and *Giglio* Violations" in his "Post-Conviction Cases," C3319. In that motion, petitioner raised a new claim for postconviction relief: that the prosecutors violated *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v.*

United States, 405 U.S. 150 (1972), by withholding evidence of complaints made against the investigating detectives. C3330-32. Based on that alleged violation, petitioner argued that his convictions "must be vacated and new trials ordered." C3320; *see also, e.g.*, C3331 (arguing that "the only remedy is that [petitioner's] convictions be vacated and that he receive new trials"); C3692 (arguing that the circuit court should "grant a new trial as a result of the State's 1998 *Brady* and *Giglio* violations").

The circuit court held that petitioner had forfeited the *Brady*/*Giglio* claim by not raising it earlier in the proceedings when he first obtained the documents at issue. R13568-69. In denying petitioner's motion for a new trial based on his new claim, the circuit court addressed the posture of the case following the remand from the appellate court, stating:

> [T]he Appellate Court told this court [to] conduct a suppression hearing. That's what it told me to do. It didn't say, motion for a new trial granted. . . . I'm not instructed to do a new trial.

Id. Petitioner did not disagree with the court's observation that the appellate court had not ordered new trials, *id*., and the case proceeded to the suppression hearing ordered by the appellate court.

Once again, petitioner did not testify in support of his claims; instead, he submitted the transcript of his testimony from one of his murder trials. R13769. Over the course of several months, the parties presented live testimony from numerous other witnesses, including some of the detectives and assistant state's attorneys involved in petitioner's cases. R12215-13490, 13696-885.

After the close of evidence, petitioner filed a post-hearing brief in support of his "Motions to Suppress and For New Trials" that he again captioned as involving his "Post-Conviction Cases." C3697. Petitioner argued that he was entitled to "new trials" on both his Fifth Amendment claim and his forfeited *Brady*/*Giglio* claim. C3697-776. He argued that he was entitled to new trials based on his Fifth Amendment claim because the evidence presented at the new suppression hearing showed that his confessions were involuntary. C3750-71. And he argued that he was entitled to new trials on his *Brady/Giglio* claim due to the importance of the undisclosed evidence. C3771-76. Petitioner argued that the court should grant this relief notwithstanding its prior ruling that the *Brady/Giglio* claim was forfeited because (1) the attorneys who initially represented petitioner in his postconviction proceedings should have raised the claim and a "post-conviction claim may survive the bar of waiver when the alleged waiver stems from ineffective assistance of counsel"; and (2) the failure to raise a postconviction claim in an earlier petition does not waive the claim if "*the case is remanded for a new motion to suppress hearing due to fundamental errors in that same post-conviction proceeding*." C3772 (emphasis in original). Therefore, he requested that the circuit court "order new trials on each of the charges against him." C3776.

E. The circuit court denies relief on petitioner's Fifth Amendment claim but orders new trials based on a new theory.

The circuit court denied relief on petitioner's Fifth Amendment claim that his confessions was coerced because the claim was not "worthy of belief" and was, in some ways, "ludicrous." R13900, 13939. The court found that petitioner's claim was disproven by, among other things, numerous witnesses who credibly denied that any coercion occurred; medical evaluations, videos, and photographs of petitioner taken at the time of his confessions that showed he was "relaxed" and uninjured; and petitioner's history of making inconsistent statements about the alleged coercion. R13896-947. The court thus concluded that petitioner "was not physically, psychologically or mentally coerced into making statements" and denied relief on his Fifth Amendment claim. R13941, 13947.

Notwithstanding its conclusion that petitioner's Fifth Amendment claim was meritless, the circuit court vacated petitioner's convictions and ordered new trials on the ground that, although petitioner's confessions were voluntary and therefore properly admitted at trial, a jury at a new trial might give the confessions different weight if provided the new evidence of the history of abuse by Area 2 detectives in other cases. R13947-53. That is, the court stated that the fact that petitioner's coercion claim was meritless "does not undermine the possibility that the additional information now known of alleged misconduct during custodial interrogation regarding various detectives involved in the interrogation of [petitioner] and disclosed posttrial

to the parties may result in a different outcome if a new trial is granted." R13952. The court therefore ruled that petitioner's "motion to suppress the statements is denied" but his "motion for a new trial is granted." R13953.

Petitioner then moved for "Pretrial Release." C3899-902. His counsel noted that the circuit court's ruling "resulted in [his] convictions being vacated," and argued that he thus was "no longer convicted of any offense and rather is being held pretrial, making him eligible for pretrial release." C3899. The court denied petitioner's bail request. C4012.

F. The appellate court dismisses the People's appeal for lack of jurisdiction on a basis neither party argued (*Harris II*).

The People appealed from the circuit court's order granting petitioner new trials. Among other things, the People argued that the circuit court erred because it (1) granted new trials based on a claim that petitioner did not raise; and (2) incorrectly found that evidence that Area 2 detectives had coerced defendants in other cases would probably change the result of petitioner's trials, even though the circuit court itself found that petitioner's own coercion claim was meritless, and the evidence of petitioner's guilt is overwhelming, as it includes not only his voluntary confessions but also DNA evidence, ballistics evidence, and multiple eyewitnesses who identified him as the perpetrator. *People v. Harris*, 2023 IL App (1st) 221033, ¶ 3 (*Harris II*).

In response, petitioner argued that the appellate court lacked jurisdiction because the circuit court "grant[ed]" petitioner "a new trial" and "an order granting a new trial is not an appealable interlocutory order" under

Supreme Court Rule 604(a)(1). A118 (Petitioner's Brief in *Harris II*). Petitioner acknowledged that the mandate in *Harris I* "d[id] not dictate the proceedings after the motion to suppress" was heard on remand, A125, but contended that the mandate permitted the circuit court to consider the merits of the new constitutional claims he raised on remand and determine whether he was entitled to new trials following the suppression hearing, A125-34.

Petitioner argued that it was appropriate for the circuit court to order new trials because on remand he had "repeatedly" asked it to do so based on his Fifth Amendment and *Brady*/*Giglio* claims. A126-28. Petitioner further argued that if the appellate court did not agree with the circuit court's conclusion that he was entitled to new trials based on the effect that evidence of Area 2 detectives' misconduct in other cases might have on a jury at a new trial, then the appellate court "should reach the issue of whether the circuit court erred in denying [petitioner's] motion to suppress, and if the Court finds error, new trials should be granted." A134.

The People argued in their reply brief that the appellate court had jurisdiction because the proceedings conducted on remand from *Harris I* were a continuation of the postconviction proceedings and it is settled that the People may appeal a postconviction order granting a new trial. *Harris II*, 2023 IL App (1st) 221033, ¶ 31 (citing *People v. Joyce*, 1 Ill. 2d 225 (1953)).

The People's appeal was assigned to a new panel, *i.e.*, three justices who had not authored *Harris I*. In a 2-1 decision, the new panel held that the

appellate court lacked jurisdiction on a basis that neither party had argued: that *Harris I* had "implicitly" vacated petitioner's convictions and granted him new trials, *id.* at ¶¶ 33, 39, reasoning that because *Harris I* had reversed the circuit court's order denying postconviction relief, "it was implicitly *granting* the relief sought in the petition," *id.* at ¶ 33 (emphasis in original). Contrary to petitioner's argument that the *Harris I* mandate "d[id] not dictate the proceedings after the motion to suppress" was heard on remand and that it was the circuit court's duty on remand to determine whether new trials were warranted, A125, the majority held that *Harris I* "intended that [petitioner's] convictions would be vacated" and new trials would be conducted "regardless of the outcome of the suppression hearing," *Harris II*, 2023 IL App (1st) 221033, ¶ 39. That is, the majority stated that *Harris I* "implicitly" held that if the motion to suppress were granted, "the State could then determine whether to pursue the prosecution in the absence of that evidence" and if the motion to suppress were denied "a new trial was still required." *Id.* at ¶¶ 33, 39. Therefore, "the circuit court's order granting a new trial was not necessary as a new trial was already contemplated by [*Harris I*]." *Id.* at ¶ 39. And because *Harris I* had already implicitly granted petitioner new trials, the circuit court's order granting petitioner new trials was superfluous and unappealable. *Id.* The majority concluded: "with the clarification that [*Harris I*] vacated [petitioner's] convictions, necessitating a new trial, we dismiss the appeal for lack of jurisdiction." *Id.* at ¶ 40.

The dissent concluded that the appellate court had jurisdiction because the proceedings on remand from *Harris I* "were a continuation of [petitioner's] efforts at postconviction relief, and the State may properly appeal the grant of postconviction relief." *Id.* at ¶ 45 (Mitchell, J., dissenting). The dissent pointed out that "[t]here is *no* indication in [*Harris I*] that we ever vacated [petitioner's] convictions or ordered a new trial." *Id.* at ¶ 46 (emphasis in original). Rather, "[t]he focus of that prior opinion was on the necessity of a new suppression hearing" and "[t]here was no discussion of vacating convictions or granting a new trial." *Id.* The dissent observed that "[t]he suggestion that a reviewing court would undertake to vacate criminal convictions and order a new trial entirely *sub silentio* finds no precedent in our cases" and "with good reason," for "[s]uch a process is manifestly unfair to the State because it prevents an intelligent decision on when to seek leave to appeal." *Id.* at ¶ 48. The dissent further noted that *Harris I* could not have vacated petitioner's convictions because "the only relief [petitioner] sought in his brief was a new suppression hearing." *Id.* at ¶ 47. Therefore, the dissent concluded, "the proceedings on remand were a continued adjudication of [petitioner's] postconviction petition and [ ] we have jurisdiction to entertain the State's appeal on the merits." *Id.* at ¶ 49.

STANDARD OF REVIEW

Whether the appellate court had jurisdiction over the People's appeal is a question of law that this Court reviews de novo. *People v. Salem*, 2016 IL 118693, ¶ 11.

ARGUMENT

The People ask this Court for modest but important relief: a remand to the appellate court so that the People may challenge the circuit court's postconviction order vacating petitioner's convictions for multiple murders, attempted murder, and multiple aggravated criminal sexual assaults, and ordering new trials. The *Harris II* majority's conclusion that the circuit court's order granting that postconviction relief was not final and appealable rests on the misapprehension that *Harris I* had already implicitly granted petitioner new trials when it remanded for a suppression hearing to determine the merits of petitioner's Fifth Amendment claim that his confessions were coerced. *Harris II*, 2023 IL App (1st) 221033, ¶¶ 3, 33, 39. But *Harris I* did not grant petitioner new trials, and the *Harris II* majority cannot retroactively amend or modify *Harris I* to change that fact.

To read *Harris I* as implicitly granting petitioner new trials would require a presumption that the appellate court in *Harris I* not only ignored basic practices of judicial drafting, leaving the parties and the circuit court to guess what had been ordered, but also profoundly misunderstood the Post-Conviction Hearing Act, which allows vacatur of a conviction and a new trial only if the petitioner proves that his constitutional claim is meritorious and

which *Harris I* recognized petitioner here had yet to do. Indeed, the parties themselves recognized that petitioner had not yet proved his constitutional claim, and so petitioner expressly stated in *Harris I* that he was *not* asking the appellate court to vacate his convictions and remand for new trials. And, tellingly, the parties and the circuit court proceeded on remand with the shared understanding that further postconviction proceedings were required to determine whether petitioner could prove his claim was meritorious, such that he was entitled to postconviction relief. Simply put, *Harris I* did not grant petitioner new trials, and the *Harris II* majority cannot amend it to retroactively grant him that postconviction relief.

Lastly, even if the appellate court lacked jurisdiction over the People's appeal in *Harris II*, this Court should exercise its supervisory authority and direct the appellate court to consider the People's appeal. Otherwise, the appellate court's opaque drafting of *Harris I* would deny the People their opportunity to challenge the circuit court's grant of postconviction relief.

I. The Appellate Court Had Jurisdiction over the People's Appeal Because *Harris I* Neither Expressly nor Implicitly Granted Postconviction Relief by Vacating Petitioner's Convictions and Remanding for New Trials.

The majority below erred by holding that the appellate court lacked jurisdiction over the People's appeal from the circuit court's order granting postconviction relief because *Harris I* had already granted that relief. When the appellate court remands a case for further proceedings, the circuit court "must look to the opinion for directions and will of necessity construe the

language of the opinion when needed." *People v. Palmer*, 148 Ill. 2d 70, 81 (1992). The relief granted by the appellate court, and the directions provided by the appellate court's ruling, are limited to the relief and directions articulated by the express terms of that ruling and matters that are "the clear and necessary implication from the language employed in the remanding order of the reviewing court." *Id.* (cleaned up).

It is undisputed that *Harris I* did not expressly vacate petitioner's conviction and order new trials. *Harris I*, 2021 IL App (1st) 182172, ¶ 1. By its plain language, *Harris I* "reverse[d] the circuit court's dismissal of [petitioner's] petition after an evidentiary hearing and remand[ed] for a new suppression hearing." *Id.* at ¶ 64. The question before this Court, therefore, is whether vacatur of petitioner's convictions and remand for new trials was "the clear and necessary implication" of *Harris I*.

When *Harris I* reversed the circuit court's judgment of dismissal and ordered a suppression hearing for petitioner to prove his Fifth Amendment claim, it did not clearly and necessarily imply that it was granting relief on that yet-unproven claim by vacating petitioner's convictions and ordering new trials. Granting postconviction relief was not necessarily implicit because *Harris I* recognized that petitioner had not yet proved his claim and the Post-Conviction Hearing Act allows relief only if a petitioner has proved his constitutional violation. Nor was granting postconviction relief clearly implicit in *Harris I*, for none of petitioner, the People, or the circuit court

understood *Harris I* to have vacated petitioner's convictions and ordered new trials. Rather, both the parties and the court understood *Harris I* to have remanded the case for further postconviction proceedings on petitioner's Fifth Amendment claim.

A. *Harris I* did not implicitly vacate petitioner's convictions and order new trials because it found that petitioner had not yet proved a constitutional violation.

Harris I did not implicitly vacate petitioner's convictions and order new trials for the fundamental reason that it could not have done so. *Harris I* plainly found that, at that point in the postconviction proceedings, petitioner had not yet proved that his constitutional rights had been violated, and therefore postconviction relief could not yet be granted.

The Post-Conviction Hearing Act authorizes a court to vacate a petitioner's convictions and order a new trial only if the petitioner suffered "a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois" in his or her original trial. 725 ILCS 5/122-1(a)(1); *see also People v. Prante*, 2023 IL 127241, ¶ 64 ("Relief under the Act is limited to constitutional violations that occurred at trial."). Thus, a petitioner challenging his conviction is entitled to a new trial only if he proves that he suffered "a denial of a constitutional right by a preponderance of the evidence." *People v. Coleman*, 2013 IL 113307, ¶ 92 (cleaned up); *see also, e.g., People v. Brisbon*, 164 Ill. 2d 236, 242 (1995) ("In order to prevail under the Act, the defendant must establish a substantial deprivation of his rights under the United States Constitution or the Constitution of Illinois.").

Petitioner claimed that his Fifth Amendment right was violated by the admission of his allegedly coerced confessions at trial. To prove that claim, he had to prove that his confessions were involuntary. *See Vega v. Tekoh*, 597 U.S. 134, 141 (2022) (Fifth Amendment "bars the introduction against a criminal defendant of out-of-court statements obtained by compulsion"); *People v. Logan*, 2024 IL 129054, ¶ 84 ("The fifth amendment prohibits the use of compelled or involuntary statements.").[2]

It is plain that *Harris I* found that petitioner had not yet proved his constitutional rights had been violated. *Harris I*, 2021 IL App (1st) 182172, ¶¶ 50-65. And rightly so, for the circuit court had found that petitioner had failed to prove his confessions were involuntary and therefore was not entitled to postconviction relief. R4956-62. *Harris I* reversed the circuit court's denial of the postconviction petition, not because petitioner had proved that his statements were involuntary, but because it believed the circuit court had skipped a necessary procedural step before reaching that issue.

That is, *Harris I* stated that, "[a]t the evidentiary hearing conducted below, the circuit court's purpose *was not to determine the ultimate issue* of

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[2] Generally, a petitioner cannot obtain relief on a Fifth Amendment claim that his involuntary statement was admitted at trial unless the circuit court further finds that the admission of the statement was not harmless beyond a reasonable doubt, but because petitioner alleged that his statements were involuntary due to physical coercion, prejudice would be presumed if he were to prove involuntariness. *See People v. Wrice*, 2012 IL 111860, ¶ 84 (admission "of a defendant's physically coerced confession as substantive evidence of his guilt is never harmless error").

whether [petitioner's] confession was coerced." 2021 IL App (1st) 182172, ¶ 50 (emphasis added). Instead, according to *Harris I*, at that stage of the proceedings the circuit court (and, in turn, the appellate court when reviewing the circuit court's ruling) had to determine whether petitioner was entitled to a new suppression hearing at which he could then attempt to prove his Fifth Amendment claim by proving that his confessions were involuntary. *Id*. After reviewing petitioner's new evidence of a pattern of police coercion, *Harris I* held that it "was conclusive enough" to establish a probability that the outcome of his original suppression hearing would have been different if the detectives involved in petitioner's criminal cases "had been subject to impeachment based on the new evidence." *Id.* at ¶ 60. *Harris I* believed that the "ultimate issue" of whether petitioner's confessions were coerced could only be answered after a hearing where live witnesses were questioned about, and perhaps impeached by, petitioner's new evidence. *Id*. *Harris I* therefore remanded for a "new suppression hearing," where the detectives and prosecutors involved in petitioner's confessions could be examined regarding petitioner's confessions and the new evidence of the history of coercion in other cases. *Id*. at ¶¶ 57, 62-64.[3] The purpose of that suppression hearing, of course, was to decide the "ultimate issue" of whether

[3] As discussed, no witnesses testified at the third-stage hearing held in the circuit court before *Harris I*; rather, the parties presented only documentary evidence and, thus, at the time of *Harris I*, no witnesses had been examined regarding the new evidence of a pattern of coercion in Area 2. *Supra* pp. 5-6.

petitioner's confessions were coerced, *see id.* at ¶ 50 — *i.e.*, whether his constitutional rights were violated, and he was thus entitled to new trials.

But *Harris I* recognized that postconviction relief could not be granted unless and until petitioner proved his claim of a constitutional violation. *See id.* at ¶ 48 (recognizing that "[t]he Post-Conviction Hearing Act (Act) provides a process in which a defendant can claim his conviction was the result of a substantial denial of his constitutional rights"). Accordingly, it cannot be said that the "clear and necessary implication," *Palmer*, 148 Ill. 2d at 81, of *Harris I* is that, when the appellate court remanded for an evidentiary hearing so that petitioner could attempt to prove his claim, it also granted him relief on that claim by vacating his convictions and ordering new trials. Indeed, if *Harris I* had granted postconviction relief on the ground that the petitioner had proved his involuntary statements were admitted at trial in violation of the Fifth Amendment, then there would be no point in ordering a suppression hearing, for the statements would already have been found involuntary.

To be sure, the extra step in the postconviction process employed here — first conducting an evidentiary hearing solely to determine whether there is a probability the new evidence might lead to a finding that petitioner's confessions were coerced, then conducting a second evidentiary hearing to determine whether his confessions were actually coerced, such that he is entitled to relief — is not how Fifth Amendment claims generally should be

resolved in postconviction proceedings, if only for reasons of judicial economy. To obtain relief under the Post-Conviction Hearing Act, a petitioner must prove by a preponderance of the evidence at the third-stage evidentiary hearing that his constitutional rights were violated. *Supra* pp. 19-20. Once the circuit court has determined that a postconviction claim is meritorious as pleaded and advanced it to the third stage for an evidentiary hearing to determine whether it in fact is meritorious, there is no reason not to simply conduct the third-stage evidentiary hearing, consider the evidence presented, and decide whether the claim has been proved. That *Harris I* nevertheless ordered a new suppression hearing in this case was no doubt influenced by the facts that (1) this was the relief petitioner requested on appeal; and (2) no live testimony was presented at the third-stage hearing, so the witnesses relevant to petitioner's claim had not yet been examined regarding his new evidence of a pattern of coercion by Area 2 detectives, which the *Harris I* panel believed meant that the merits of the claim could not yet be resolved.

But regardless of whether this case employed the correct third-stage procedure, what matters for purposes of this appeal is that *Harris I* did not, and could not, implicitly grant relief on petitioner's Fifth Amendment claim by vacating his convictions and ordering new trials because *Harris I* made clear that petitioner had not yet established that his constitutional rights had been violated.

To his credit, petitioner has consistently acknowledged that he is entitled to new trials only if the evidence proves that his constitutional rights were violated in his original trials. For example, in the circuit court proceedings held before *Harris I*, petitioner stated that if the court denied his motion to suppress — *i.e.*, if the court found that petitioner's constitutional rights had not been violated because his confessions were voluntary — petitioner's "convictions would then stand." R10085. And in his briefs in the appellate court in *Harris I*, he made clear that he was "not asking [the appellate court] for a new trial, or even for this Court to suppress his purported confessions"; instead, he was only asking for a hearing where he would have a chance to prove his Fifth Amendment right was violated by the admission of involuntary statements and that he therefore was entitled to new trials. A59-60. Similarly, on remand, petitioner continued to acknowledge that he would be entitled to new trials only if the circuit court concluded that the evidence proved that his constitutional rights were violated, either because his involuntary statements were admitted at trial in violation of the Fifth Amendment or because (as he claimed for the first time on remand) prosecutors suppressed material impeachment evidence in violation of *Brady* and *Giglio*. *See infra* pp. 34-36 (discussing petitioner's actions during remand); *see also, e.g.,* C3697-776 (petitioner's post-hearing brief). And before the appellate court in this very appeal, petitioner continued to recognize that postconviction relief was contingent on proving

his postconviction claims, arguing that the circuit court correctly ordered new trials because he had proved that his constitutional rights were violated. *E.g.*, A126-129, 134-38.

The majority's decision below that *Harris I* implicitly "intended that [petitioner's] convictions would be vacated" and new trials would be conducted "regardless of the outcome of his suppression hearing" — that is, regardless of whether his Fifth Amendment claim had merit — is thus fundamentally inconsistent with the Post-Conviction Hearing Act. *Harris II*, 2023 IL App (1st) 221033, ¶ 39. If petitioner did not prove that his initial trials were constitutionally infirm, then there would be no basis to vacate his convictions and retry him. Accordingly, it was not the "clear and necessary implication" of *Harris I* that when the appellate court remanded for a hearing at which petitioner could prove his Fifth Amendment claim, it was granting relief on that claim regardless of whether he proved it. Instead, the clear and necessary implication of *Harris I* is that, on remand, petitioner would have to prove that his constitutional rights were violated before he could be granted new trials.

For similar reasons, the majority's reliance on *People v. Almendarez*, 2022 IL App (1st) 210029-U (*Almendarez II*), is misplaced.[4] *Almendarez II* held that two previous mandates, which remanded two related postconviction cases for "a new suppression hearing and, if necessary, a new trial," implicitly

[4] The nonprecedential Rule 23 orders cited in this brief are available on the Illinois courts' website, at https://www.illinoiscourts.gov/top-level-opinions/.

ordered a new trial regardless of whether the circuit court granted the motion to suppress during remand. *Id*. at ¶¶ 10, 21-21. To the extent *Almendarez II* holds that a court may vacate a petitioner's convictions and order new trials absent proof of a constitutional violation, it is wrongly decided and should be overruled. However, a closer review of *Almendarez II* shows that it is a much different case and does not support *Harris II*.

Almendarez II was a consolidated appeal involving two postconviction petitioners (Almendarez and Galvin) who had been convicted of starting a deadly fire together in 1986. 2022 IL App (1st) 210029-U, ¶¶ 3-6. The petitioners claimed that new evidence proved they were actually innocent and their confessions had been coerced; their cases eventually advanced to a joint third-stage evidentiary hearing. *People v. Galvin*, 2019 IL App (1st) 170150, ¶¶ 1, 17-19; *People v. Almendarez*, 2020 IL App (1st) 170028 (*Almendarez I*), ¶¶ 10-11. At that hearing, the petitioners presented evidence in support of their claims of actual innocence and their Fifth Amendment claims, including (1) exculpatory eyewitness testimony; (2) expert testimony that new scientific research proved that the prosecution's theory of how the petitioners started the fire was impossible; and (3) new evidence showing that a woman named Lisa Velez had a motive to start the fire and had threatened to do so shortly before the fire. *Galvin*, 2019 IL App (1st) 170150, ¶¶ 19-60; *Almendarez I*, 2020 IL App (1st) 170028, ¶¶ 11-57. The circuit court denied the postconviction petitions but (in the earlier appeals) the

appellate court reversed; notably, the appellate court found not only that the petitioners were entitled to new suppression hearings, but also that the actual innocence claim provided a basis for relief because, among other reasons, there was "compelling" evidence that Velez started the fire and the other evidence the petitioners presented could impeach the prosecution's witnesses "at trial." *Galvin*, 2019 IL App (1st) 170150, ¶¶ 66-79; *see also Almendarez I*, 2020 IL App (1st) 170028, ¶¶ 10, 69-71, 76 (discussing actual innocence). A meritorious actual innocence claim, of course, entitles a petitioner to a new trial. *E.g., People v. Washington*, 171 Ill. 2d 475, 489 (1996). Therefore, it was not unreasonable for *Almendarez II* to interpret the mandates from the earlier appeals to require new trials regardless of whether the petitioners prevailed at their suppression hearings.

By contrast, in this case, petitioner did not raise an actual innocence claim and, therefore, the appellate court in *Harris I* did not consider an actual innocence claim, let alone find that petitioner had proved an actual innocence claim and therefore was entitled to postconviction relief. Rather, as discussed, *Harris I* made clear that it was premature to determine whether petitioner's Fifth Amendment claim (the only claim he raised on appeal) had merit. *Supra* pp. 20-21. Accordingly, the *Harris II* majority erred by holding that *Harris I* implicitly vacated petitioner's convictions and ordered new trials.

B. *Harris I* did not implicitly vacate petitioner's convictions and order new trials because petitioner stated he was not requesting such relief at that time and neither the parties nor the circuit court understood *Harris I* to have granted such relief.

There are two additional, independent reasons why it cannot be said that the "clear and necessary implication" of *Harris I* is that it vacated petitioner's convictions and ordered new trials: (1) petitioner expressly stated in *Harris I* that he was not yet requesting vacatur of his convictions or new trials; and (2) the record makes clear that the circuit court and the parties understood that *Harris I* had not vacated petitioner's conviction or granted petitioner new trials.

1. *Harris I* did not clearly and necessarily imply a grant of new trials because petitioner expressly stated he was not yet requesting such relief.

A grant of postconviction relief vacating petitioner's convictions and ordering new trials was not clearly implicit in *Harris I* because petitioner expressly stated in his *Harris I* briefs that at that stage of the litigation, he was *not* asking the appellate court to vacate his convictions or order new trials. Simply put, it cannot be said that the "clear and necessary implication" of an appellate ruling is that it granted the extraordinary relief of new trials sub silentio when the petitioner expressly stated he was not requesting such relief.

It is axiomatic that "[o]ur adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief." *Greenlaw v.*

United States, 554 U.S. 237, 243-44 (2008). Reviewing courts therefore "rely on the parties to frame the issues" and must act as the "neutral arbiter of matters the parties present." *Id.*; *see also People v. Givens*, 237 Ill. 2d 311, 323 (2010) (same). Accordingly, subject to limited exceptions not relevant here, it is settled that appellate courts may not grant relief on unbriefed issues. *See, e.g., Givens*, 237 Ill. 2d at 323-24 (appellate court could not reverse the defendant's conviction based on an argument he did not raise).

For these reasons, an appellate court's mandate cannot "implicitly" order relief sub silentio that a party did not request in their appellate briefs. *Crim v. Dietrich*, 2020 IL 124318, ¶¶ 39-41. The plaintiffs in *Crim* filed suit against the doctor who delivered their son, alleging two claims: the defendant (1) failed to obtain informed consent to perform a natural birth; and (2) negligently delivered their son. *Id.* at ¶ 4. At trial, the court granted a partial directed verdict in favor of the defendant on the informed consent claim, and the jury found in favor of the defendant on the negligence claim. *Id.* at ¶ 7. On appeal, the plaintiffs asked for a new trial based on a challenge to the directed verdict on the informed consent claim but did not expressly challenge the jury's verdict on the negligence claim. *Id.* at ¶ 10. The appellate court reversed the trial court's judgment and remanded "for such other proceedings as required by order of this court." *Id.* at ¶ 11. On remand, the parties disagreed about what claims could be retried pursuant to the appellate court's ruling; the defendant contended that only a retrial on

the informed consent claim was required by the appellate court's mandate, while the plaintiffs argued that the appellate court intended that all claims be retried. *Id.* at ¶¶ 12-14. The trial court certified the question to the appellate court; in response, the appellate court held that its ruling "implied" that a new trial was required for all claims. *Id.* at ¶¶ 14-15, 22.

This Court disagreed and held that the appellate court's mandate did not imply that the trial court should hold a new trial on all claims. *Id.* at ¶¶ 39-41. As relevant here, this Court held that the mandate could not have implicitly ordered a new trial on all claims because the plaintiffs' briefs in the first appeal did not challenge the jury's verdict on the negligence claim; indeed, the plaintiffs' briefs stated that "this appeal is not based on the verdict of a jury." *Id.* at ¶ 39. As this Court put it, "the appellate court's mandate could not remand the matter for a new trial on an issue never raised and not considered." *Id.* at ¶ 40.

That same principle applies here: *Harris I* could not have implicitly vacated petitioner's convictions and ordered new trials in his three criminal cases because petitioner repeatedly and expressly stated that he was *not* asking the court to grant such relief. To begin, the record shows that at the evidentiary hearing held before *Harris I*, petitioner disclaimed any argument that he was entitled to new trials at that point. R9954 ("We're not asking your Honor to grant a new trial. We're not even asking at this point that your Honor suppress the confessions. We're only asking for a new

suppression hearing[.]"). Petitioner took the same position on appeal, repeatedly emphasizing that he was not asking the appellate court to order new trials. A59-60 (petitioner stating in his brief: "At this procedural juncture, Petitioner is not asking this Court for a new trial, or even for this Court to suppress his purported confessions."). Rather, petitioner explained that he was asking only that the case be remanded for a new hearing where he could present all of his evidence in front of a new judge who would determine whether petitioner's Fifth Amendment claim had merit and, thus, whether petitioner was entitled to new trials. A59-60, 79.

In turn, *Harris I* specifically noted the limited nature of petitioner's requested relief, stating that petitioner only requested a "new suppression hearing." 2021 IL App (1st) 182172, ¶ 1. Therefore, as the *Harris II* dissent correctly recognized, *Harris I* could not have vacated petitioner's convictions and ordered new trials because "the only relief [petitioner] sought in his brief was a new suppression hearing." *Harris II*, 2023 IL App (1st) 221033, ¶ 47 (Mitchell, J., dissenting).

The principle that an appellate court cannot implicitly vacate a petitioner's convictions and order a new trial sub silentio when the petitioner did not request such relief is necessary to ensure a just and efficient judicial system. As the dissent correctly pointed out, the suggestion that an appellate court "would undertake to vacate criminal convictions and order a new trial entirely *sub silentio* finds no precedent in our cases. And with good reason.

Such a process is manifestly unfair to the State because it prevents an intelligent decision on when to seek leave to appeal." *Id.* at ¶ 48.

This case aptly illustrates the injustice that can result if an appellate court is permitted to interpret a prior mandate to "implicitly" vacate convictions and order new trials sub silentio even though the petitioner did not request such relief. Because *Harris I* did not even mention "new trials," and petitioner emphasized in *Harris I* that he was *not* yet requesting new trials, the People had no reason to believe that the *Harris I* mandate vacated petitioner's convictions and ordered new trials, and thus had no reason to seek leave to appeal on that basis following *Harris I*. But now the *Harris II* majority has held that *Harris I* implicitly granted postconviction relief, vacated petitioner's convictions, and ordered new trials, such that the People now have no avenue to appeal the grant of postconviction relief because the time to do so was in a petition for leave to appeal following *Harris I*. Consequently, the effect of the majority's interpretation of the mandate is to deny the People an opportunity to challenge a decision vacating petitioner's convictions and ordering new trials in two murder cases and an aggravated criminal sexual assault case where petitioner was convicted based on DNA evidence, eyewitness testimony, ballistics evidence, and confessions that have repeatedly been found to be voluntary, an accumulation of evidence that the appellate court and trial court have repeatedly described as "overwhelming." *See, e.g.,* CI184-88, 199, 4542-47, 4554-55; C194-95.

Depriving the People an opportunity to seek leave to appeal in these circumstances is plainly an unjust result, which is why an appellate court cannot "implicitly" vacate convictions and order new trials sub silentio when the petitioner repeatedly made clear he was not requesting such relief. Therefore, this Court should reverse *Harris II* and remand for consideration of the merits of the People's appeal.

2. *Harris I* did not clearly imply that it granted petitioner's postconviction petitions because the parties and the circuit court understood that *Harris I* did not vacate petitioner's convictions or order new trials.

That *Harris I* did not implicitly grant petitioner's postconviction petitions is further evident from the fact that neither the parties nor the circuit court understood it to have granted postconviction relief, and they conducted themselves accordingly on remand. The *Harris II* majority therefore erred when it concluded that the suggestion the hearing on remand "was a continuation of the postconviction proceedings" is "belied by the record." 2023 IL App (1st) 221033, ¶ 35. Specifically, the majority observed that during remand, the People did not dispute the circuit court's belief that the People bore the burden of proving that petitioner's confessions were voluntary; according to the majority, this proved the parties believed that the postconviction proceedings had ended, and new criminal proceedings had begun, because in postconviction proceedings the People never bear the burden of proof. *Id.* That reasoning, however, fails to consider both prior precedent and the record in this case.

To begin, the majority failed to consider that some precedent holds that the burden of proof sometimes shifts to the People in postconviction proceedings. *E.g., People v. Chairez*, 2018 IL 121417, ¶¶ 50-56, 66 (vacating petitioner's convictions where the People failed to carry their burden to show a public-interest basis for statute petitioner claimed was unconstitutional). That the circuit court believed the People bore the burden of proof to show on remand that petitioner's statement was voluntary therefore does not prove that the court or the parties believed that *Harris I* had granted petitioner new trials or that the postconviction proceedings were over.

To the contrary, the record makes clear that the circuit court and the parties understood that *Harris I* had *not* vacated petitioner's convictions or granted new trials. Perhaps most clearly, the circuit court observed in open court during the remand proceedings that the appellate court had "told this court [to] conduct a suppression hearing" but had "not instructed [the circuit court] to do a new trial." R13569. And, tellingly, petitioner did not disagree with the circuit court's observation that *Harris I* had not granted him new trials. *See id.*

Indeed, the actions of petitioner and his counsel on remand demonstrate that they understood that *Harris I* had not vacated petitioner's convictions or ordered new trials and, therefore, the postconviction proceedings were still ongoing. Notably, on remand petitioner captioned his many pleadings and filings as "Post-Conviction Cases," and referred to the

new claims he raised during remand as "post-conviction" claims. *See, e.g.*, C3159, 3194, 3230, 3240, 3284, 3319, 3684, 3697, 3772. And in those pleadings, petitioner asked the circuit court to find that his confessions were coerced and grant him "new trials" on that basis; he also asserted a new postconviction claim — the *Brady*/*Giglio* claim — and asked the circuit court to grant him new trials on that alternative basis. *E.g.*, C3692, 3697-776.

For example, during remand petitioner moved for "New Trials," arguing that the circuit court should "grant a new trial as a result of the State's 1998 *Brady* and *Giglio* violations." C3692; *see also, e.g.*, C3331 (arguing that "the only remedy is that [petitioner's] convictions be vacated and that he receive new trials"). Then, after the suppression hearing held on remand, petitioner filed a post-hearing brief in support of his motion "For New Trials," in which he claimed that the circuit court should grant him "new trials" because he had proved during the remand proceedings that his constitutional rights had been violated in two ways: (1) his confessions had been coerced; and (2) prosecutors had violated *Brady* and *Giglio*. C3697-776; *see, e.g.*, C3776 (asking the circuit court to "order new trials on each of the charges against him"). Asserting new constitutional claims and asking the circuit court to grant new trials is, of course, consistent with a petitioner who knows that the postconviction proceedings are still ongoing, and that a prior appellate court ruling did not vacate his convictions or order new trials.

Simply put, there would be no reason to seek new trials if new trials had already been ordered.

In still other ways, petitioner demonstrated his understanding that it was the circuit court that granted him new trials following the proceedings on remand, not the appellate court in *Harris I*. Specifically, after the circuit court made its oral ruling granting petitioner new trials, petitioner moved for "Pretrial Release," recognizing that the circuit court's ruling "resulted in [his] convictions being vacated" and meant that petitioner "is no longer convicted of any offense and rather is being held pretrial." C3899.

And in this appeal, petitioner continued to take the position that the circuit court granted him new trials on remand, not the appellate court in *Harris I*. Indeed, petitioner expressly stated in his appellate brief that it was the circuit court during remand that "grant[ed]" petitioner "a new trial." A118. And, notably, petitioner observed in his brief that the mandate in *Harris I* "does not dictate the proceedings after the motion to suppress hearing" that was held during remand. A125. Petitioner contended instead that the mandate permitted the circuit court to consider the merits of his constitutional claims on remand and determine whether he was entitled to new trials following the hearing. A123-26. As petitioner put it, the *Harris I* mandate "endowed the circuit court with the power to grant new trials at the conclusion of the suppression hearing" if petitioner proved his constitutional claims were meritorious. A124. Petitioner further argued that if the

appellate court did not agree with the circuit court that petitioner was entitled to new trials because evidence of Area 2 detectives' misconduct in other cases might change the result of petitioner's trials, then the appellate court "should reach the issue of whether the circuit court erred in denying [petitioner's] motion to suppress, and if the Court finds error, new trials should be granted." A134.

Therefore, the record is clear that petitioner, the People, and the circuit court all understood that *Harris I* did not vacate petitioner's convictions or order new trials. For this additional reason, it cannot be said that the "clear and necessary" implication of *Harris I* was that the appellate court granted petitioner such relief.

* * *

In sum, *Harris I* did not vacate petitioner's convictions or order new trials. Accordingly, the proceedings on remand were a continuation of the postconviction proceedings, and the appellate court has jurisdiction to consider the People's appeal.

II. The *Harris II* Majority Cannot Amend *Harris I* to Vacate Petitioner's Convictions and Order New Trials.

Because *Harris I* did not expressly or implicitly vacate petitioner's convictions and order new trials, *see supra* Section I, the *Harris II* majority could not amend *Harris I* to retroactively grant such relief. Once the appellate court issued its mandate in *Harris I* and remanded the case to the circuit court, jurisdiction revested with the circuit court, and the appellate

court's jurisdiction terminated; the appellate court could not thereafter modify the mandate. *E.g.*, *Crim*, 2020 IL 124318, ¶ 21; *see also People v. Collins*, 202 Ill. 2d 59, 65 (2002) (once the appellate court is divested of jurisdiction, it may not take further action). The bar against amending a mandate in those circumstances also means the appellate court may not provide "a new interpretation as to the *meaning* or *intent*" of its prior ruling. *Crim*, 2020 IL 124318, ¶ 21 (emphasis in original). Therefore, the *Harris II* majority could not reinterpret *Harris I* to provide relief that it did not grant.

In its opinion below, the majority described *Harris II* as a "clarification" of *Harris I*, *i.e.*, the majority stated that it was clarifying that *Harris I* vacated petitioner's convictions and ordered new trials. *Harris II*, 2023 IL App (1st) 221033, ¶ 40. That the majority believed it was necessary to "clarify" that *Harris I* intended to vacate petitioner's convictions and order new trials further demonstrates that such relief was not the "clear and necessary" implication of *Harris I*, because an instruction that is "clear" does not need clarification. When the majority said it was clarifying *Harris I*, it instead was modifying *Harris I* to provide relief that *Harris I* did not and could not provide. *See supra* Section I. And because the majority did not have the power in *Harris II* to modify *Harris I*, the majority's decision must be overturned for this additional reason.

III. If This Court Finds That the Appellate Court Lacked Jurisdiction, It Should Exercise Its Supervisory Authority to Order the Appellate Court to Consider the People's Appeal.

Lastly, if this Court were to find that the appellate court lacked jurisdiction, then the People respectfully request that this Court exercise its supervisory authority and direct the appellate court to consider the merits of the People's appeal.

This Court has the power to instruct the appellate court to consider an appeal even if the appellate court ordinarily would lack jurisdiction. *See, e.g.*, *People v. Salem*, 2016 IL 118693, ¶¶ 20-22. In *Salem*, for example, this Court held that the appellate court lacked jurisdiction to consider the defendant's appeal because his notice of appeal was untimely. *Id*. at ¶¶ 11-18. However, this Court exercised its supervisory authority and ordered the appellate court to consider the defendant's appeal because there had been confusion about when the notice of appeal was due, which deprived the defendant of the opportunity to pursue the normal appellate process. *Id*. at ¶¶ 20-22.

By the same token, if this Court finds that *Harris I* granted petitioner new trials or otherwise ended the postconviction proceedings, then plainly there was confusion on that point, because the record is clear that petitioner, the People, and the circuit court all understood that *Harris I* did not grant petitioner new trials. *Supra* Section I.B. And that confusion would have serious and unjust consequences: it would deny the People their chance to challenge a decision vacating petitioner's convictions and ordering new trials in two murder cases and an aggravated criminal sexual assault case where

petitioner was convicted based on DNA evidence, eyewitness testimony, ballistics evidence, and confessions the circuit court on remand found to be voluntary, evidence has been described in prior opinions as "overwhelming." CI184-88, 199, 4542-47, 4554-55; C194-95. Therefore, if this Court finds that the appellate court lacked jurisdiction in *Harris II*, then the People respectfully request that this Court exercise its supervisory authority and direct the appellate court to consider the merits of the People's appeal.

CONCLUSION

This Court should reverse the appellate court's judgment and remand to the appellate court for consideration of the People's appeal. Alternatively, this Court should exercise its supervisory authority and direct the appellate court to consider the merits of the People's appeal.

July 24, 2024

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

MICHAEL L. CEBULA
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-6952
eserve.criminalappeals@ilag.gov

Counsel for Respondent-Appellant
People of the State of Illinois

RULE 341(c) CERTIFICATE

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 40 pages.

/s/ Michael L. Cebula
MICHAEL L. CEBULA
Assistant Attorney General

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People v. Harris

Appellate Court of Illinois, First District, Sixth Division

March 5, 2021, Decided

No. 1-18-2172

Reporter
2021 IL App (1st) 182172 *; 199 N.E.3d 722 **; 2021 Ill. App. LEXIS 85 ***; 460 Ill. Dec. 1 ****

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RALPH HARRIS, Defendant-Appellant.

Subsequent History: Appeal dismissed by *People v. Harris, 2023 IL App (1st) 221033, 2023 Ill. App. LEXIS 400 (Nov. 3, 2023)*

Prior History: Appeal from the Circuit Court of Cook County. Nos. 95 CR 27596; 95 CR 27598; 95 CR 27600 **[***1]** . Honorable Dennis J. Porter, Judge Presiding.

Disposition: Reversed and remanded with directions.

Case Summary

Overview

HOLDINGS: [1]-The trial court erred by denying the inmate's petition for postconviction relief under the Post-Conviction Hearing Act (Act), *725 ILCS 5/122-1 et seq.* (2010), because its consideration of information outside the record regarding the notoriety of the case when determining witness credibility was error. Furthermore, the inmate's new evidence that the detective had worked from Area 2 while the former commander there and that he also engaged in abusive practices was of such character that the outcome of the suppression hearing would likely have changed if the detective's testimony, and the testimony of other officers, had been subject to impeachment.

Outcome

Judgment reversed and remanded for a new suppression hearing.

Counsel: For Appellant: James E. Chadd, Douglas R. Hoff, and Charles W. Hoffman, of State Appellate Defender's Office, of Chicago.

For Appellee: Myles P. O'Rourke, Special State's Attorney, of Chicago (Andrew N. Levine, Ariel Yang Hodges, Elisabeth Gavin, and Lawrence Rosen, Assistant Special State's Attorneys, of counsel), for the People.

Judges: JUSTICE HARRIS delivered the judgment of the court, with opinion. Justice Connors and Justice Oden Johnson concurred in the judgment and opinion.

Opinion by: HARRIS

Opinion

[*P1] **[****4]** **[**725]** Defendant, Ralph Harris, filed a postconviction petition alleging that his pretrial statements were the product of police coercion, and for relief, he requested a new suppression hearing. In his petition, defendant alleged that he has new evidence of a pattern and practice of torture and physical abuse at a Chicago Police Department station (Area 2) involving Detective Michael McDermott, who was one of his arresting officers and one of the detectives investigating his cases. After an evidentiary hearing, the circuit court denied the postconviction petition. On appeal, **[***2]** defendant contends that the court's determination was error because his new evidence, when weighed against the testimony presented by the State at his pretrial suppression hearing, likely would have changed the outcome of his suppression hearing. For the following reasons, we reverse and remand the cause for a new suppression hearing.

[*P2] I. JURISDICTION

[*P3] The trial court's order denying postconviction relief was entered on September 21, 2018. A notice of appeal was filed that same day. Accordingly, this court has jurisdiction pursuant to *article VI, section 6, of the Illinois Constitution* (*Ill. Const. 1970, art. VI, § 6*) and *Illinois*

Supreme Court Rule 651 (eff. Feb. 6, 2013), governing appeals in post-conviction proceedings.

[*P4] II. BACKGROUND

[*P5] In 1995, defendant was charged in three separate cases (95 CR 27596 (the Ford case), 95 CR 27598 (the Patterson case), and 08 CR 10783 (the RT case)), with offenses including murder, attempted murder, aggravated criminal sexual assault, and armed robbery. The complete background of those cases can be found in *People v. Harris*, No. 1-05-0320 (2005) (unpublished order under Illinois Supreme Court Rule 23) (Ford), *People v. Harris*, No. 1-05-0323 (2005) (unpublished order under Illinois Supreme Court Rule 23) (Patterson), and *People v. Harris*, No. 1-08-2410 (2010) (unpublished order under Illinois Supreme Court Rule 23) (RT). For purposes of this appeal, we set forth only those facts **[***3]** pertaining to defendant's motion to suppress.

[*P6] On June 10, 1998, defendant filed an omnibus motion to suppress his confessions in these cases prior to trial. In his amended motion to suppress, defendant alleged, among other claims, that (1) his statements were obtained as a result of interrogation that took place after he elected to remain silent and/or requested an attorney, (2) detectives showed him Polaroids of Patrick Brunt "with their arms around him and telling the defendant that he would bury him," (3) his statements were obtained as a result of physical coercion, specifically Detectives Boyle and McDermott "hit the defendant with their fists in the stomach, and also about the head and neck. They also placed a gun to his head and mouth and hit him with a phone book," and (4) his statements were the result of psychological and mental coercion where Detective John Yucaitis told him that he would arrest and charge Angie Clark, defendant's girlfriend, and place her children with the Department of Children and Family Services (DCFS).

[*P7] At the pretrial suppression hearing, Detective McDermott testified that on August 29, 1995, he arrived at a garden apartment located at 3601 West 79th **[***4]** Street in Chicago. He was accompanied by **[**726]** **[****5]** his partner, James Boylan, and Detective Hamilton. They knocked on the door, and a female voice inside asked, "who is it." They responded, "the police" and the door started to open. McDermott heard a male voice inside say "don't let them in or something to that effect." When the door opened, they saw a woman with a man behind her. McDermott recognized the man as defendant, "the individual they were looking for."

[*P8] The police ordered defendant to show his hands and get to the ground. Defendant did not comply, so the officers, with their "guns out, continued to approach the both of them. They were backing up." The officers continued their approach, "continuing yelling at them," and at some point "we all kind of jumped on [defendant]." They pushed the woman aside and "fell on top of him, start trying grabbing [*sic*] his arms trying to force him to the ground." They eventually got him to the ground and handcuffed him. Detective Hamilton took defendant to Area 2 headquarters.

[*P9] McDermott testified that, after defendant was taken to Area 2, he saw him "off and on" and had contact with him "at about 9, 10, 11 o'clock" that morning. Before he saw defendant **[***5]** in the interview room, McDermott spoke with Detective Hamilton, who said that defendant told him about "a shooting robbery that occurred at 101st and Wallace and the victim's last name was Brown." McDermott and Boylan then had a brief five-minute conversation with defendant.

[*P10] McDermott saw defendant again 13 or 14 hours later, at midnight or 1 a.m. Around that time, McDermott spoke with Detective Yucaitis, who had some information regarding a possible murder weapon. McDermott checked on the information, and when it was verified, he "poked [his] head into the room" and told Yucaitis. Defendant was in the room at the time. McDermott left and had no further contact with him. In his presence, defendant never stated that he wanted to remain silent, nor did he ask for an attorney. McDermott denied that he or Boylan hit defendant in the stomach, head, and neck with their fists. He denied that he or Boylan put a gun in defendant's mouth or hit him with a phone book. McDermott never heard Yucaitis threaten to arrest defendant's girlfriend, Angie Clark, or threaten to place her children with DCFS.

[*P11] McDermott acknowledged that he and Boylan knew defendant from a prior encounter. On April 4, 1991, **[***6]** McDermott arrested defendant, and he was subsequently charged with two counts of armed robbery. He had "robbed and shot at one of my sergeants from Area Two." McDermott investigated that case, and defendant pleaded guilty.

[*P12] On cross-examination, McDermott did not recall whether defendant was only wearing boxer shorts when the officers entered the apartment on August 29, 1995. He could not tell whether defendant had a gun because he could not see his hands. When asked whether defendant threatened the officers, McDermott responded, "He was threatening in not complying with our

orders, yes. But did he physically assault us? No." While defendant did not comply with their orders, "he didn't verbally threaten [the officers]." McDermott stated that the situation was "stressful." Although the officers were not in uniform, McDermott "was pretty sure [defendant] knew who I was" due to their involvement with each other in 1991. McDermott brought the woman, Clark, to the station. She agreed to come and was never placed under arrest.

[*P13] McDermott verified on cross-examination that he had contact with defendant at Area 2 twice from August 29, 1995, to **[**727]** **[****6]** the early morning hours of August 30, 1995. The **[***7]** first "was earlier during the day. It could be between nine and eleven. I'm not sure exactly what time. We were up all night. The other one was after midnight, yes." After that, McDermott only had contact with defendant when he escorted him to the bathroom or to other rooms in the station or when he assisted in the lineups.

[*P14] McDermott acknowledged that he had his gun on him when he entered the room to speak with defendant. Defense counsel asked, "based on your contacts in the past with Mr. Harris, you didn't like Mr. Harris, isn't that correct?" The State objected, and the trial court sustained the objection at first. The court, however, changed its mind and allowed McDermott to answer.

> "A. Although he cooperated in the '91 case and in the '95, case as a person I think he's evil, you know. He's a bad person.
>
> Q. And, wouldn't the fact that he shot at a fellow officer exaggerate your feelings of dislike for Mr. Harris?
>
> A. I think he is extremely dangerous. We tried to gain his confidence. That's one of the reasons we let Detective Hamilton talk to him because they kind of hit it off together."

[*P15] Detective Boylan's testimony at the suppression hearing corroborated the testimony of McDermott. **[***8]**

[*P16] Detective John Yucaitis testified at the pretrial hearing that on August 29, 1995, he was at Area 2 and around 6:45 p.m. he left to get pizzas. He returned with the pizzas around 8:30 p.m., and he talked with officers who told him that defendant was cooperating and giving them information about robberies he had committed. When Yucaitis brought him pizza around 8:30 to 8:45 p.m., defendant asked why Patrick Brunt was at the police station. Yucaitis stepped out of the room and saw McDermott and Boylan with Brunt by the water fountain. Yucaitis believed they were taking Brunt to the bathroom.

[*P17] Yucaitis informed defendant that, since he had invoked his right to remain silent, Yucaitis was told not to talk to him. Defendant stated he wanted to talk, and Yucaitis read him his *Miranda* rights. See *Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)*. Defendant agreed to talk, and he asked to see Detective Hamilton. With Yucaitis present, he told Detective Hamilton about a murder that occurred on Greenwood. Around 10 p.m., Assistant State's Attorney (ASA) Tom Darman arrived. Some time between midnight and 1 a.m., defendant gave an oral statement to ASA Darman. When Darman left the room, Yucaitis asked defendant about the location of the gun. **[***9]** He said it was at a friend's house, and Yucaitis relayed that information to McDermott. Yucaitis was present when defendant gave his handwritten statement.

[*P18] Yucaitis testified that defendant never asked for an attorney. He never saw McDermott or Boylan hit defendant in the stomach, head, or neck with their fists. Defendant did not tell him that they placed a gun on his head or hit him with a phone book. Yucaitis also denied saying he would arrest and charge Clark or that her children would be placed with DCFS. He denied showing defendant a Polaroid of Brunt with an officer's arms around him.

[*P19] On cross-examination, Yucaitis stated that he was told not to talk to defendant because he had "invoked his rights and they didn't want to screw up the case." Yucaitis also stated that, when he brought the pizza, he opened the door and defendant looked out and said, "what's Brunt doing here."

[*P20] Detective John Hamilton testified at the pretrial hearing that he spoke briefly **[**728]** **[****7]** with defendant around 1 a.m. on August 29, 1995, after he was arrested. Detective Hamilton first had a conversation with defendant at Area 2 around 1:30 a.m. Detective Hamilton spoke with defendant "on or off for several hours" **[***10]** during which time defendant gave oral admissions on three sexual assault cases. Later that morning, around 7:30 a.m., witnesses came to the station to view lineups. During breaks between lineup viewings, Detective Hamilton spoke with defendant. Around 9 or 10 a.m., he made a statement about the armed robbery shooting of James Brown and Detective Hamilton relayed this information to McDermott and Boyle "because they were familiar with the case." ASA Leslie Quade then spoke with defendant around 3:30 p.m., but he was not present during that conversation. When ASA Quade came out of the room, she informed Detective Hamilton that defendant had requested an attorney. At that time,

their conversation terminated.

[*P21] Around 8:30 p.m. that evening, Detective Hamilton spoke again with defendant. Detective Yucaitis had called him into the interview room because defendant told Yucaitis that he wanted to talk to Detective Hamilton. With Yucaitis present, defendant told him that he wanted to talk about a murder. Detective Hamilton stopped the conversation, reminding defendant that he had asked for an attorney. Defendant said he wanted to talk, and he was given his rights again. He then made statements **[***11]** about the murder on Greenwood.

[*P22] Detective Hamilton saw defendant again on September 22, 1995, when he was brought back to the station to participate in lineups. That evening, defendant gave oral statements regarding a number of cases they were investigating. Detective Hamilton stated that he was not aware of a Polaroid of Patrick Brunt, nor did he see anyone show defendant a Polaroid of Brunt or tell defendant he would be buried. He did not see McDermott or Boylan hit defendant in the stomach, head, or neck with their fists, place a gun to his head or in his mouth, or hit him with a phone book. Detective Hamilton stated that he did not hear Yucaitis tell defendant that he would arrest and charge Angie Clark if he did not give a statement. He did not hear Yucaitis tell defendant that he would have Clark's children placed with DCFS.

[*P23] On cross-examination, Detective Hamilton confirmed that he spoke with defendant around 1:30 a.m. After he made statements about the three sexual assault cases, "[t]here was a lot of stuff going on. They were so many cases, we were pulling reports, attempting to contact victims." This occurred between 3 and 4 a.m. Detective Hamilton stated that between 1:30 **[***12]** and 4 a.m., he "left and re-entered [the interrogation room] several times." He acknowledged that he did not take notes when defendant gave his oral statements because he "was familiar with the case." From 3 or 4 a.m. until 7 a.m., he remained in the area and did not see anyone enter the interrogation room. Detective Hamilton recalled that McDermott and Boylan were at the station in the early morning hours.

[*P24] Around 3 or 3:30 p.m. that afternoon, ASA Quade informed him that defendant had asked for an attorney. He did not speak to defendant again until around 8:30 pm., after Yucaitis had come back with pizzas. Yucaitis called from the room that defendant wanted to talk to Detective Hamilton. He wanted to talk about a murder, but Detective Hamilton reminded him that he had asked for an attorney. Yucaitis then said, "yeah, we just discussed that. I readvised him of his rights. He doesn't want a lawyer." Before speaking with defendant, Detective Hamilton did not advise **[**729]** **[****8]** him of his rights "because Detective Yucaitis just advised me that he had done that, and I verified it by asking [defendant]."

[*P25] Defendant did not testify at the suppression hearing. After closing arguments, the trial court **[***13]** denied the motion to suppress.

[*P26] The case proceeded to trial, and defendant was found guilty in all three cases. He was sentenced to death in the Ford and Patterson cases and received sentences totaling 120 years' imprisonment in the RT case. After his convictions were affirmed on direct appeal, defendant filed postconviction petitions asserting that newly discovered evidence corroborated his claim that his confessions were obtained through coercion and torture. The circuit court advanced the petitions to third-stage postconviction proceedings and ordered a combined evidentiary hearing for the three petitions.

[*P27] Pursuant to motions *in limine* filed by the parties, the circuit court ruled that the evidentiary hearing would be 'confined to what [petitioner's] new information is, what [the State's] rebuttal evidence is to your new evidence, and then comparing that to the evidence that was offered 20 years ago at the original suppression hearing."

[*P28] The evidentiary hearing began on June 21, 2018. Defendant first presented evidence for the limited purpose of showing that he has consistently and repeatedly alleged that he was physically abused by McDermott and Boylan at Area 2 on August 29-30, **[***14]** 1995. Along with his amended pretrial motion to suppress statements, defendant presented his February 25, 1999, trial testimony in the Patterson case (95 CR 27598).

[*P29] He testified that around 1 a.m. on August 29, 1995, he was at 3601 West 79th Street, which was an apartment he shared with Angela Clark. At the time, they were sleeping. There was a knock at the door, and Clark got out of bed first. She was wearing a nightgown, and defendant was wearing boxer shorts. He heard a voice saying that it was the police. Clark started to open the door and then "the door just crashed in, knocked her back into me the police came in with weapons drawn. He heard, "Put your motherf*** hands up. I am going to kill you." They knocked down Clark and attacked him "with guns out." They threw him to the ground, put a knee to his back and neck, and pointed a gun at him. Defendant was then handcuffed.

[*P30] When they got to Area 2, Detective Hamilton and another detective took him to an interview room. Defendant was handcuffed to a loop in the room. After Detective Hamilton brought him to the room, he was left alone. McDermott and Boylan were the first detectives to come in and talk to him. They said, "How you doing, Ralphy **[***15]** boy? You thought we forgot about you? You thought [we] forgot about what you did to Rudy?" McDermott then grabbed defendant near the throat and pushed him against the wall. McDermott punched him in the stomach and told him they would put him in the penitentiary forever.

[*P31] After they left, Detective Hamilton came in and started questioning defendant about a murder. Defendant said he did not want to talk and that he wanted a lawyer. He testified that he talked to Hamilton after the first time McDermott and Boylan came into the room. Detective Hamilton never hit him.

[*P32] After defendant spoke with Detective Hamilton, McDermott and Boylan came back and "smacked" and "choked" him. They told him that he was going to cooperate with them and that he had information about murders they were investigating. Later that afternoon, defendant **[**730]** **[****9]** saw ASA Quade. When he asked for an attorney, ASA Quade stopped talking to him. Detective Hamilton then came in and told defendant that McDermott and Boylan "really wanted [him]" and there was nothing he could do for defendant unless he cooperated with Hamilton and "do what they want you to do." Detective Hamilton then asked him if he knew about some murders. He told **[***16]** him that he did not.

[*P33] McDermott and Boylan came in a third time. McDermott grabbed defendant's arm and choked and hit him. Afterward, Detective Hamilton came in with blank pieces of paper and told him they would arrest Clark. When defendant refused to talk, Hamilton left, and McDermott and Boylan returned. McDermott sat in a chair and pointed a gun toward defendant's face. He grabbed him by the throat and pointed the gun at his head, telling him, "I am going kill [*sic*] you." He also forced the gun into defendant's mouth.

[*P34] Detective Yucaitis came in after this fourth visit by McDermott and Boylan. He told defendant that he was going to jail and he would be taking Clark down with him. Detective Hamilton returned with blank pieces of paper. He told defendant that he could not help him unless he did what they wanted him to do. Defendant signed the bottom of the paper as Detective Hamilton told him to do. ASA Quade was not present in the room during this time. Defendant did not tell her about what happened with McDermott and Boylan.

[*P35] Defendant presented the testimony of McDermott, Boylan, Yucaitis, and Hamilton that was given at the hearing on his amended motion to suppress, as set forth above. **[***17]**

[*P36] He also presented new evidence to support his assertion that there was a decades-long pattern and practice of physical abuse and torture committed by Area 2 detectives under Jon Burge, including:

> Exhibit 4: the 2006 report of Special State's Attorneys (SSA) Egan and Boyle on allegations of torture, perjury, obstruction of justice, and other offenses under the command of Jon Burge at Area 2. The report concluded that Burge was guilty of "prisoner abuse" and "[i]t necessarily follows that a number of those serving under his command recognized that, if their commander could abuse persons with impunity so could they." Report of the Special State's Attorney at 16, *In re* Appointment of Special Prosecutor, No. 2001-Misc-4 (Cir. Ct. Cook County, July 19, 2006) (2006 Report), available at http://www.aele.org/law/2006LROCT/chicagoreport.pdf [https://perma.cc/ZW5U-YNR8].
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> Exhibit 14: the City of Chicago's "Reparations for Burge Torture Victims" ordinance and the city council's Resolution for Burge Torture Survivors, May 6, 2015, in which the city apologized for the acts of torture committed by Burge and others under his command. Chicago Ordinance 2015-2687 (adopted at Chi. City Clerk J. Proc. 107,714 **[***18]** (May 6, 2015)); Chicago Resolution 2015-256 (adopted at Chi. City Clerk J. Proc. 107,717 (May 6, 2015).
>
> Exhibit 29: *In re Charges Filed Against Commander Jon Burge, Star No. 338*, Nos. 91-1856, 91-1857, 92-1858, Chicago Police Bd. (February 11, 1993). The matter included charges against Patrick O'Hara and John Yucaitis. Burge and Yucaitis were disciplined for the torture of Andrew Wilson at Area 2 on February 14, 1982. Burge was fired, and Yucaitis was suspended for 15 months for failing to take action to stop the torture, or secure medical care for Wilson, and failing to report Burge's actions to his commanding officer or others at the police department.
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> **[**731]** **[****10]** Exhibit 26: an excerpt from the 2006 report on the abuse of Alfonso Pinex by Detectives McDermott and Anthony Maslanka, finding that there was sufficient evidence to seek

their indictment for aggravated battery, perjury, and obstruction of justice. Report of the Special State's Attorney at 290, *In re* Appointment of Special Prosecutor, No. 2001-Misc-4 (Cir. Ct. Cook County, July 19, 2006) (2006 Report), available at http://www.aele.org/law/2006LROCT/chicagoreport.pdf [https://perma.cc/ZW5U-YNR8]. The report found credible Pinex's testimony **[***19]** that Maslanka struck him in the eye and McDermott hit him in the ribs and grabbed his legs so that he could not move. It also found credible his testimony that the detectives beat Pinex until he defecated in his pants. Maslanka and McDermott also provided false testimony that Pinex did not tell them he had a lawyer or that he wanted his lawyer present. *Id.* at 288.

Exhibit 20: McDermott's immunized testimony at Burge's federal criminal trial in which he admitted that he was not truthful in testifying at Pinex's suppression hearing. He also admitted that he had struck Pinex in the chest and knocked him down before interrogating him. He admitted that he had not been truthful at the suppression hearing "because [Pinex] was a murderer, and [McDermott] didn't want him to get off."

Exhibit 23: In People v. Anderson, 90 CR 11984 (Cir. Ct. Cook County), Anderson testified that on April 18, 1990, he was taken into custody and taken to Area 2. McDermott refused his repeated requests for a telephone call and later asked Anderson about several armed robberies. When Anderson responded that he did not know about them, McDermott "put a gun to [his] head" and threatened to "blow [his] brains out." See *People v. Anderson, 375 Ill. App. 3d 121, 127, 872 N.E.2d 581, 313 Ill. Dec. 598 (2007)*.

Exhibit 28: The Torture Inquiry and Relief Commission's (TIRC) **[***20]** disposition in the Anderson case, TIRC claim No. 2011.014-A, and attached database of abuse allegations against McDermott. *In re Claim of Anderson*, No. 2011.014-A (Ill. Torture & Relief Comm'n, May 20, 2013). The TIRC found Anderson's claims credible, meriting judicial review and appropriate relief. Although Detective Burge had been transferred to Area 3 at this point, while questioning Anderson, McDermott and Maslanka held a gun to Anderson's head and threatened to blow his brains out, and Maslanka jabbed Anderson with a night stick in his thighs and back. The TIRC also noted that McDermott had 13 other complaints of abuse against him of which it was aware.

Exhibit 27: McDermott's invocation of his *fifth amendment* right against self-incrimination before the Cook County special grand jury, convened by SSAs Egan and Boyle.

[*P37] After defendant presented his evidence, the State submitted its offer of proof. The offer consisted of photographs of defendant taken at Area 2 on August 29-30, 1995, the Patterson trial testimony of medical technician Patricia Hayes, the Patterson trial testimony of ASA Quade, and the testimony of Area 2 Detective Frank Luera at the sentencing in the Ford case.

[*P38] Hayes testified that **[***21]** she saw defendant on August 31, 1995, and she asked whether he needed any medical attention. She prepared a medical intake record for him. Defendant told her he was shot in the back three months ago, but he denied any past medical head injuries. He did not **[**732]** **[****11]** have any medical complaints. She took a photograph, which was introduced at trial.

[*P39] ASA Quade testified that on August 30, 1995, she spoke with defendant and advised him of his *Miranda* rights. He told her that when Yucaitis brought him food, he saw Brunt and asked Yucaitis why Brunt was there. Yucaitis said that he could not speak with defendant because defendant asked for an attorney. Defendant said that he did not care about an attorney, and Yucaitis read him his rights. Defendant agreed to speak because he wanted to tell his side of the story and he wanted to talk about Brunt. He gave inculpatory statements as to the Patterson and Ford murders and other murders. ASA Quade took three separate handwritten statements, and after reviewing them, defendant signed the bottom of the pages. He told ASA Quade that he was treated well, especially by Hamilton. He was given food and drink, and no one made any threats or promises to him. Defendant **[***22]** was cooperative, talkative, and self-assured.

[*P40] Detective Luera testified that on August 29, 1995, lineups were conducted in which defendant participated. From 7:30 a.m. to 9 a.m., a number of witnesses identified defendant from the lineup. Detective Luera then stated that, at 1 p.m., a witness identified defendant and, at 3:50 p.m., another witness identified defendant.

[*P41] After closing arguments, the circuit court took the matter under advisement. In its September 21, 2018, ruling, the court stated that defendant "accurately framed the issue as would the result of the suppression hearing likely be different if the new evidence had been presented

at the suppression hearing." The court also stated that it took "likely" to mean the "common law usage" of the word.

[*P42] The court found that defendant established a pattern and practice "of certain individuals at Area Two: detectives, abuse, physical abuse and torture." Defendant further established "Detective McDermott and his complicity in the abuse conducted by the late John [*sic*] Burge, his active participation in some, at least one instance. And his assertion of *Fifth Amendment* with regard to another case." The court found that this evidence "would justify **[***23]** certainly calling his testimony into doubt." The court noted, however, that it had to look at McDermott's role under the particular facts of the case.

[*P43] First, the court noted that there "was a great deal of notoriety about this case. At the time the news media referred to the defendant as the Chatham rapist before he was caught. Had his own name. So this was a heater case for the police." Also, the incidents of this case occurred two years after Burge was fired, and "no other detective involved in this pattern and practice was involved in this case." The only person in the pattern and practice evidence who was alleged to have beaten defendant was McDermott.

[*P44] The court looked at defendant's stay at Area 2 and found that Hamilton stated he was the first to speak with defendant after his arrest. It was during this time that defendant made statements regarding the sexual assault cases. The detectives then left the room to pull reports and contact victims. Detective Hamilton did not return to defendant's room until 7 a.m., and he testified that no other detectives went into the room between the time he last spoke with defendant, until that time. The court noted that McDermott and Boylan spoke **[***24]** with defendant sometime between 9 a.m. and 11 a.m. but found credible their testimony that nothing happened because "Boylan corroborates McDermott there."

[*P45] The court also found it "impossible" that, if defendant was beaten as badly as **[**733]** **[****12]** he said, "the next thing he's asking for is a lawyer. Beaten so bad, so I don't think—there's two things that corroborate McDermott right there that nothing happened." The court noted that defendant had "one small scratch on the side of his head which is readily explained by the taking down of the defendant at the time of his arrest by three individuals." The court continued:

> "I think it's important to recognize that in this case the police are not trying to get defendant to confess to a crime. They are trying to figure out what crime the defendant is confessing to.
>
> When he tells them about these things they are going, they are pulling files, looking through the files to see if they can match up what he's told. It's almost like defendant's claiming they were beating the statement out of him to make him confess to things they didn't realize he had committed, which is given the factual situation I think is, the notion is absurd frankly."

[*P46] Before rendering its **[***25]** determination, the court again referred to the case as a "heater case." It pointed to the testimony of Yucaitis, who said he was told not to talk to defendant because they did not want to "screw up the case." Given the evidence the police "had on [defendant] at the time," the court believed they would not "want anything to mess it up" because "this is a heater case for the police." Furthermore, "by the testimony of Hamilton defendant already confessed to the rape case" and others "[p]rior to McDermott even seeing him." The court found that McDermott's testimony was corroborated by the facts and "by the other officers." Therefore, it denied defendant's postconviction petition for relief in all three cases. Defendant filed this appeal.

[*P47] III. ANALYSIS

[*P48] On appeal, defendant contends that the trial court erred in denying his request for postconviction relief. The Post-Conviction Hearing Act (Act) (*725 ILCS 5/122-1 et seq.* (West 2010)) provides a process in which a defendant can claim that his conviction was the result of a substantial denial of his rights under the United States Constitution or the Illinois Constitution or both. *People v. Cathey, 2012 IL 111746, ¶ 17, 965 N.E.2d 1109, 358 Ill. Dec. 630*. The Act provides a three-stage process for non-death-penalty cases. *People v. Jones, 213 Ill. 2d 498, 503, 821 N.E.2d 1093, 290 Ill. Dec. 519 (2004)*. To survive summary **[***26]** dismissal at the first stage, defendant need only present the gist of a constitutional claim. *Id. at 504*. The circuit court may summarily dismiss a postconviction petition at this stage if it is frivolous or patently without merit. *Cathey, 2012 IL 111746, ¶ 17, 965 N.E.2d 1109, 358 Ill. Dec. 630*. If the court does not dismiss the petition, it advances to the second stage where defendant may be appointed counsel. *People v. Tate, 2012 IL 112214, ¶ 10, 980 N.E.2d 1100, 366 Ill. Dec. 741*. If at the second stage defendant makes a substantial showing of a constitutional violation, the petition advances to the third stage where the court conducts an evidentiary hearing. *Id.* The circuit court below denied defendant's petition for

relief after a third-stage evidentiary hearing.

[*P49] The circuit court acts as the finder of fact at the evidentiary hearing, resolving any conflicts in the evidence and determining the credibility of witnesses and the weight to be given their testimony. *People v. Williams, 2017 IL App (1st) 152021, ¶ 22, 414 Ill. Dec. 628, 80 N.E.3d 771*. We generally defer to the circuit court as the finder of fact since it is in the best position to observe the conduct and demeanor **[**734]** **[****13]** of the parties and witnesses. *In re D.F., 201 Ill. 2d 476, 498, 777 N.E.2d 930, 268 Ill. Dec. 7 (2002)*. When reviewing the court's determination after a third-stage evidentiary hearing, we will not reverse its decision unless it is manifestly erroneous. *Williams, 2017 IL App (1st) 152021, ¶ 22, 414 Ill. Dec. 628, 80 N.E.3d 771*. A finding is against the manifest weight of the **[***27]** evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *D.F., 201 Ill. 2d at 498-99*.

[*P50] At the evidentiary hearing conducted below, the circuit court's purpose was not to determine the ultimate issue of whether defendant's confession was coerced. *People v. Whirl, 2015 IL App (1st) 111483, ¶ 80, 395 Ill. Dec. 647, 39 N.E.3d 114*. Rather, the sole issue before the circuit court was whether the outcome of defendant's suppression hearing would have been different if the officers who denied using physical coercion had been subject to impeachment based on defendant's evidence showing a pattern and practice of police abuse. *Id.* Relevant to the court's determination are (1) whether any of the officers who interrogated defendant may have participated in systemic interrogation abuse at Area 2 and (2) whether those officers' credibility at the suppression hearing might have been impeached as a result. *People v. Patterson, 192 Ill. 2d 93, 144-45, 735 N.E.2d 616, 249 Ill. Dec. 12 (2000)*.

[*P51] The court below found that defendant's new evidence established a pattern and practice of certain individuals at Area 2 to engage in "physical abuse and torture" and that Detective McDermott was complicit in the abuse conducted by Burge. The court concluded that the evidence "would justify certainly calling **[***28]** his testimony into doubt." Nevertheless, it found McDermott's credibility unimpeached because his testimony was corroborated by the facts and by the testimony of other officers.

[*P52] In finding the facts support McDermott's testimony that he did not physically abuse defendant, the circuit court relied on Detective Hamilton's testimony that he was the first to speak with defendant at Area 2. Hamilton also stated that, while he interviewed defendant off and on for a few hours, defendant made statements regarding several sexual assault cases. From this testimony, the court determined that defendant had made incriminating statements before McDermott ever saw him at the station. The court found defendant's claim that McDermott was "beating the statement out of him" absurd, because "in this case the police are not trying to get defendant to confess to a crime. They are trying to figure out what crime the defendant is confessing to." The court also found it "impossible" that defendant was beaten as badly as he claimed, noting that he had "one small scratch on the side of his head which is readily explained by the taking down of the defendant at the time of his arrest by three individuals."

[*P53] The **[***29]** circuit court found the testimony of Hamilton and other detectives credible, in part, because there "was a great deal of notoriety about this case. At the time the news media referred to the defendant as the Chatham rapist before he was caught. Had his own name. So this was a heater case for the police." The court concluded that the police would not want the use of coercive tactics "to mess it up" since "this is a heater case for the police."

[*P54] This finding, however, was not based on evidence presented at the suppression hearing. Yucaitis testified only that he was told not to talk to defendant because he had "invoked his rights and they didn't want to screw up the case." **[**735]** **[****14]** No one testified that police viewed defendant's case as a "heater case," nor did anyone testify that police would not engage in abusive tactics because it was a "heater case." Rather, the court relied on information outside the record regarding the "notoriety about this case" in finding the detectives' testimony credible. Judges are expected to make determinations based only upon the evidence presented. *People v. Steidl, 177 Ill. 2d 239, 266, 685 N.E.2d 1335, 226 Ill. Dec. 592 (1997)*. The court's consideration of information outside the record when determining witness credibility was error. *People v. Brantley, 43 Ill. App. 3d 616, 618-20, 357 N.E.2d 105, 2 Ill. Dec. 128 (1976)*.

[*P55] The **[***30]** court also gave significance to the fact that the suppression hearing took place two years after Burge was fired. It made this finding despite exhibit 28, which was a report finding that certain abuse claims against McDermott were credible even though Burge had transferred out of Area 2 when the torture allegedly occurred. The court further found that defendant never

alleged anyone other than McDermott beat him, nor were any of the detectives who interrogated defendant named in the reports. However, it made no reference to exhibit 29, which showed that another detective involved in defendant's case, Yucaitis, was suspended for failing to stop an incident of torture and for failing to report Burge to commanding officers.

[*P56] The fact that other officers may have stood by doing nothing, while McDermott committed acts of abuse, is relevant to the issue of McDermott's and the other detectives' credibility. *Whirl, 2015 IL App (1st) 111483, ¶ 103, 395 Ill. Dec. 647, 39 N.E.3d 114*. The circuit court did not consider whether other detectives may have displayed a "silent acceptance" of abusive tactics or whether McDermott's credibility was impaired as a result. See *id.* While we generally defer to the circuit court's resolution of conflicts in the evidence and its determination **[***31]** on the credibility of witnesses, "the manifest weight standard is not a rubber stamp. It does not require mindless acceptance in the reviewing court." *People v. Anderson, 303 Ill. App. 3d 1050, 1057, 709 N.E.2d 661, 237 Ill. Dec. 406 (1999)*. We must not "abdicate our responsibility to examine factual findings" and determine whether the court's finding was unreasonable, arbitrary, or not based on the evidence presented. *Id.*

[*P57] Furthermore, defendant's new evidence was of such character that the outcome of the suppression hearing would likely have changed if McDermott's testimony, and the testimony of other officers, had been subject to impeachment. "Probability, not certainty, is the key" as the court effectively predicts the outcome of the suppression hearing, "considering all the evidence, both new and old, together." *People v. Coleman, 2013 IL 113307, ¶ 97, 996 N.E.2d 617, 374 Ill. Dec. 922*.

[*P58] Defendant has consistently alleged that his confessions were coerced, and his allegations of coercion are comparable to the acts of coercion set forth in the new evidence. In his pretrial motion to suppress, defendant alleged that his statements were obtained as a result of interrogations that took place after he elected to remain silent and/or requested an attorney and that his statements were obtained as a result of physical coercion, specifically that **[***32]** Detectives Boyle and McDermott "hit the defendant with their fists in the stomach, and also about the head and neck. They also placed a gun to his head and mouth and hit him with a phone book." At the Patterson trial, defendant testified that, before he spoke with Detective Hamilton, McDermott grabbed defendant near the throat and pushed him against the wall. McDermott then punched defendant in the **[**736]** **[****15]** stomach and told defendant they would put him in the penitentiary forever. Defendant testified that, at another visit by McDermott, he grabbed defendant by the throat and pointed a gun at his head, telling him, "I am going kill [*sic*] you." He also forced the gun into defendant's mouth. McDermott, who had prior dealings with defendant, testified at the pretrial suppression hearing that defendant was an "evil" person who was "extremely dangerous."

[*P59] Defendant's new evidence established that McDermott worked from Area 2 while Burge was commander there and that he also engaged in abusive practices. Both Detectives Hamilton and Yucaitis worked with McDermott and regularly apprised him of the progress of defendant's case. A report found that Yucaitis had known of incidents of torture by Burge but **[***33]** failed to report Burge to his commanding officer or anyone else. Defendant's allegations that McDermott hit him in the head, neck, and chest are similar to findings in another report that McDermott hit Alfonso Pinex in the ribs and chest, knocking him down before interrogating him. Defendant's claim that McDermott placed a gun to his head and mouth compares to the finding in the *Anderson* case that McDermott "put a gun to [Anderson's] head" and threatened to "blow [his] brains out." McDermott acknowledged that he did not testify truthfully at Pinex's suppression hearing because Pinex "was a murderer, and [he] didn't want him to get off." McDermott had a previous encounter with defendant that involved the shooting of a fellow officer, and he acknowledged that he viewed defendant as an "evil" person who was "extremely dangerous."

[*P60] This new evidence was conclusive enough that the outcome of the suppression hearing likely would have been different if McDermott had been subject to impeachment based on the new evidence. See *Patterson, 192 Ill. 2d at 144-45* (finding that new evidence of police torture was material and would likely change the result upon retrial where defendant consistently claimed he was tortured, his claims **[***34]** of torture were "strikingly similar to other claims" depicted in the new evidence, and the officers identified in the evidence were also involved in defendant's case). Therefore, we find the circuit court's opposite conclusion manifestly erroneous and reverse the decision to deny defendant's petition for postconviction relief.

[*P61] Due to our resolution of this appeal, we need not consider the issue raised in defendant's supplemental

brief of whether the circuit court deprived defendant of a fair evidentiary hearing when it considered excluded trial testimony in violation of its ruling on the motion *in limine*.

[*P62] Defendant requests that, if his case is remanded for a new suppression hearing, this court assign the matter to a different judge. The circuit judge below presided over all three of defendant's trials as well as his prior suppression hearing and from its rulings has expressed a tendency to affirm the officers' credibility while giving little weight to defendant's new evidence. This court has the authority to reassign a matter to a new judge on remand. *People v. Serrano, 2016 IL App (1st) 133493, ¶ 45, 404 Ill. Dec. 189, 55 N.E.3d 285*. We agree that the interests of justice would be best served if the case were assigned to another judge on remand.

[*P63] IV. CONCLUSION

[*P64] **[***35]** For the foregoing reasons, we reverse the circuit court's dismissal of defendant's petition after an evidentiary hearing and remand for a new suppression hearing.

[*P65] **[****16]** **[**737]** Reversed and remanded with directions.

End of Document

People v. Harris

Appellate Court of Illinois, First District, Fifth Division

November 3, 2023, Decided

Nos. 1-22-1033, 1-22-1034, & 1-22-1035 Consolidated

Reporter
2023 IL App (1st) 221033 *; 2023 Ill. App. LEXIS 400 **; 231 N.E.3d 161

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. RALPH HARRIS, Defendant-Appellee.

Subsequent History: Appeal denied by *People v. Harris, 2024 Ill. LEXIS 290 (Ill., Mar. 27, 2024)*

Prior History: **[**1]** Appeal from the Circuit Court of Cook County. Nos. 95 CR 27596, 95 CR 27598, 95 CR 27600. Honorable Michael Clancy, Judge Presiding.

People v. Harris, 2021 IL App (1st) 182172, 2021 Ill. App. LEXIS 85, 460 Ill. Dec. 1, 199 N.E.3d 722 (Mar. 5, 2021)

Disposition: Appeal dismissed.

Case Summary

Overview
HOLDINGS: [1]-The trial court's grant of a new trial was not appealable, and the State did not seek leave of court to file the instant appeal; the suppression hearing was not a continuation of the postconviction proceeding, as the State maintained, but was instead part of defendant's underlying criminal cases; [2]-The circuit court's order granting a new trial was not necessary as a new trial was already contemplated by the appellate court's order; even so, the order granting the new trial was not a final order and was not one of the interlocutory orders the State could appeal.

Outcome
The appeal was dismissed.

Counsel: Robert J. Milan, Special State's Attorney, of Chicago (Myles P. O'Rourke, Assistant Special State's Attorneys, of counsel), and Alan J. Spellberg, Assistant Special State's Attorney, of Highland Park, for the People.

Leonid Feller, of Quinn Emanuel Urquhart & Sullivan, of Chicago, for appellee.

Judges: JUSTICE LYLE delivered the judgment of the court, with opinion. Justice Mikva concurred in the judgment and opinion. Presiding Justice Mitchell dissented, with opinion. PRESIDING JUSTICE MITCHELL, dissenting.

Opinion by: LYLE

Opinion

JUSTICE LYLE delivered the judgment of the court, with opinion.

Justice Mikva concurred in the judgment and opinion.

Presiding Justice Mitchell dissented, with opinion.

OPINION

[*P1] Defendant Ralph Harris was found guilty in three separate cases of the August 17, 1992, murder and attempted armed robbery of David Ford (No. 95-CR-27596) (the Ford case), the August 17, 1992, murder and attempted robbery of Wiliam Patterson and the attempted murder of James Patterson (No. 95-CR-27598) (the Patterson case), and the July 18, 1995, aggravated criminal sexual **[**2]** assault and armed robbery of R.T. (No. 95-CR-27600) (the R.T. case). After this court upheld those convictions on appeal, Mr. Harris filed a petition pursuant to the *Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 et seq.* (West 2016)), alleging, *inter alia*, that his pretrial inculpatory statements were the product of police coercion. He sought a new suppression hearing and new trials where he could introduce evidence of the "pattern and practice" of abuse and torture at the Area 2 Chicago Police Department, where he was held

following his arrest. The circuit court denied Mr. Harris's petition after a third-stage evidentiary hearing, and Mr. Harris appealed. This court reversed the circuit court's ruling and remanded the matter for a new suppression hearing. *People v. Harris, 2021 IL App (1st) 182172, 460 Ill. Dec. 1, 199 N.E.3d 722*.

[*P2] On remand, the trial court conducted a new suppression hearing where it heard testimony from the officers involved in Mr. Harris's arrest and interrogation, and Mr. Harris presented evidence of the pattern and practice of physical abuse committed by Area 2 police detectives during the time of his arrest. Following the hearing, the circuit court denied the motion to suppress Mr. Harris's custodial statements. The court, however, granted Mr. Harris new trials finding that he and his **[**3]** defense counsel were prejudiced by the lack of information about the complaints of physical abuse and misconduct committed by the detectives involved in Mr. Harris's cases. The State now appeals.

[*P3] On appeal, the State contends that the circuit court erred in granting Mr. Harris new trials where the circuit court exceeded its limited jurisdiction on remand, improperly granted Mr. Harris relief based on an abandoned postconviction claim, improperly granted a new trial despite denying the motion to suppress, and failed to consider whether the proffered newly discovered evidence was of such a conclusive character that it was likely to change the result on retrial. For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

[*P4] I. BACKGROUND

[*P5] This court has previously detailed the facts giving rise to Mr. Harris's convictions in his direct appeals. See *People v. Harris, 358 Ill. App. 3d 1180, 901 N.E.2d 1087, 327 Ill. Dec. 354 (2005)* (table) (unpublished order under *Illinois Supreme Court Rule 23*) (the Ford case and the Patterson case); *People v. Harris, 402 Ill. App. 3d 1186, 376 Ill. Dec. 786, 1 N.E.3d 119 (2010)* (table) (unpublished order under *Illinois Supreme Court Rule 23*) (the R.T. case). We have also discussed Mr. Harris's postconviction petition and the evidence presented at the third stage evidentiary hearing in his previous appeal. See *Harris, 2021 IL App (1st) 182172*. Therefore, we will only discuss those facts **[**4]** relevant to our disposition in this case.

[*P6] Mr. Harris was arrested in August 1995 pursuant to a warrant and was investigated in connection with an aggravated criminal sexual assault. During the investigation, officers connected Mr. Harris to previously unsolved murders that took place in 1992. Mr. Harris eventually went to trial in the three separate cases noted above.

[*P7] In June 1998, Mr. Harris filed an omnibus motion to suppress his confessions in his three cases. In his amended motion, Mr. Harris contended, *inter alia*, that his statements were obtained as a result of physical coercion by the interrogating detectives. The trial court denied the motion to suppress after hearing testimony from the detectives. The court found Mr. Harris guilty in all three cases, and those convictions were affirmed on direct appeal.

[*P8] Mr. Harris subsequently filed postconviction petitions asserting that newly discovered evidence corroborated his claims that his confessions were obtained through police coercion and abuse. The circuit court advanced Mr. Harris's petitions to the third stage of postconviction proceedings, where it held a combined evidentiary hearing on the claims of a coerced confession.

[*P9] At **[**5]** the evidentiary hearing, Mr. Harris presented his testimony from the Patterson case, where he described the circumstances surrounding his arrest and interrogation and the police misconduct and violence that he alleged occurred. Mr. Harris also presented numerous exhibits that he alleged constituted new evidence to support his claim of the decades-long pattern of physical abuse and torture committed by the Area 2 detectives under Jon Burge. In response, the State presented photographs taken of Mr. Harris after his arrest, as well as the testimony of a medical technician who examined Mr. Harris after his arrest, the trial testimony of the assistant state's attorney (ASA) who took Mr. Harris's statement in the Patterson case, and the testimony of the Area 2 detective who conducted Mr. Harris's lineup in the Ford case. The circuit court denied Mr. Harris relief on each of his petitions, finding that the evidence supported the testimony of the detectives that Mr. Harris was not beaten or coerced and gave his statements voluntarily.

[*P10] On appeal, this court reversed the circuit court's denial of the petition finding that its ruling was not based on the evidence presented. *Harris, 2021 IL App (1st) 182172, ¶ 54, 460 Ill. Dec. 1, 199 N.E.3d 722*. This court also **[**6]** found that the circuit court erred in relying on evidence outside of the record when it found that this case was a " 'heater case' " for support for its determination that the detectives would not want to " 'screw up the case.' " *Id.* This court further found that the circuit court ignored credible evidence that former

Chicago police Detective Michael McDermott, who was involved in Mr. Harris's arrest and interrogation, was allegedly involved in torture and abuse even after Burge was fired. *Id. ¶ 55*. This court determined that the new evidence Mr. Harris presented was "of such character that the outcome of the suppression hearing would likely have changed if McDermott's testimony, and the testimony of other officers, had been subject to impeachment." *Id. ¶ 57*. This court concluded that the circuit's court ruling in denying the petitions was manifestly erroneous, and we remanded for a new suppression hearing. *Id. ¶¶ 60, 64*. This court also assigned the case to a different circuit court judge finding the circuit court judge below "ha[d] expressed a tendency to affirm the officers' credibility while giving little weight to defendant's new evidence." *Id. ¶ 62*.

[*P11] On remand, the circuit court recognized that: "These matters are **[**7]** before the Court to conduct a new suppression hearing that's based on the Appellate Court granting the request for postconviction relief of the defendant/petitioner asking for a new suppression hearing. So we're here for a new suppression hearing."

[*P12] At the suppression hearing, former Area 2 Detective James Boylan testified that he and his partner, Detective McDermott, arrested Mr. Harris pursuant to a warrant on August 29, 1995. Officers approached Mr. Harris with guns drawn and tackled him to the ground, but Detective Boylan did not see any of the officers hold a gun to Mr. Harris's head. While Mr. Harris was in custody, Detective Boylan executed a search warrant at Mr. Harris's address along with several other officers. The officers recovered .380 cartridges and holsters and pages of a catalog regarding .380 handguns. When Detective Boylan returned to the police station, he assisted in conducting lineups for the investigation. Detective Boylan denied abusing or threatening Mr. Harris and denied seeing any other officers abuse or threaten him.

[*P13] Former Area 2 Detective John Hamilton testified that he was one of the officers who aided in the arrest of Mr. Harris in August 1995. Detective **[**8]** Hamilton testified that the officers entered the apartment with their guns drawn because they believed Mr. Harris was armed. After a struggle, Detective Hamilton wrestled Mr. Harris to the ground. Detective Hamilton noted that there was a gun pointed at Mr. Harris's left temple that left "scratches" near that area. Detective Hamilton did not hear any of the other officers threaten Mr. Harris during the arrest. Detective Hamilton participated in the interrogation of Mr. Harris at the police station and also helped execute the search warrant at his home.

[*P14] At the police station, Mr. Harris agreed to speak with Detective Hamilton and acknowledged that he committed murders in 1992. Detective Hamilton took handwritten notes about what Mr. Harris told him about the murders and both Detective Hamilton and Mr. Harris signed the notes. After taking the information from Mr. Harris, Detective Hamilton spoke to ASA Leslie Quade, who took additional statements from Mr. Harris about the murders. Before taking the statements, ASA Quade advised Mr. Harris of his *Miranda* rights (see *Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)*), and Mr. Harris acknowledged that while he was at the Area 2 police station, he had been provided with food, drinks, and cigarettes. **[**9]** Detective Hamilton denied ever threatening or abusing Mr. Harris and denied seeing anyone else threaten or abuse him. Detective Hamilton noted that Mr. Harris refused to speak with Detectives Boylan and McDermott.

[*P15] The correctional medic at Cermak Health Services who conducted Mr. Harris's intake screening in August 1995 noted that, at the time of the screening, Mr. Harris did not have any physical injuries.

[*P16] Former Area 2 Detective Linda Drozdek testified that she prepared a series of lineups at the Area 2 police station that included Mr. Harris. Detective Drozdek testified that during those lineups she did not observe any injuries to Mr. Harris and he did not complain of any injuries or mistreatment.

[*P17] Angela Alexander[1] testified that she was with Mr. Harris at her apartment at the time of his arrest in August 1995. When police arrived and knocked on the apartment door, Mr. Harris told her to not open the door because he did not want to go "back to jail." When the officers entered the apartment, Ms. Alexander was thrown to the floor and one of the officers pinned her down. Ms. Alexander was face down on the floor, so she could not see anything, but she heard the officers say, "[s]how **[**10]** us your hands," and she felt a gun being pressed into the back of her head. When she was allowed up off the floor, she observed Mr. Harris sitting on the kitchen floor in handcuffs. Ms. Alexander did not hear any of the officers threaten Mr. Harris during the arrest.

[*P18] Ms. Alexander was taken to the Area 2 police

[1] Angela Alexander was Angela Clark at the time of Mr. Harris's arrest.

station, where she was interviewed by detectives. She testified that none of the officers harmed or threatened her while she was at the police station. After Ms. Alexander spoke to the detectives, she was permitted to leave the police station. A few days later, Ms. Alexander spoke to Mr. Harris on the phone. During the conversation, he never told her that the police had mistreated or threatened him. Ms. Alexander saw Mr. Harris in person a couple weeks later, and he likewise did not raise any complaints about his treatment from the officers.

[*P19] ASA Thomas Darman testified that he took a statement from Mr. Harris following his arrest. ASA Darman asked Mr. Harris how he had been treated at the police station, and Mr. Harris responded that he had been treated "fine" and did not have any complaints. Mr. Harris did not complain of any injuries and was "conversational." Mr. Harris's **[**11]** statements about how he had been treated were memorialized in his handwritten statement to ASA Darman:

> "Harris states that he has been treated well by Assistant State's Attorney Thomas Darman, as well as by the Chicago Police. Harris states that he has been given pizza, bologna sandwiches to eat, several sodas to drink, and as many cigarettes as he wanted to smoke, and was allowed to use the bathroom whenever he wished.
>
> Harris states that no threats or promises have been given to him in return for this statement, and that he is giving this statement freely and voluntarily."

[*P20] ASA Quade also took a statement from Mr. Harris at the Area 2 police station. When she first arrived at the police station, Mr. Harris stated that he wanted to speak to an attorney, and ASA Quade left the interview room. Mr. Harris later reinitiated contact with the detectives and agreed to speak to ASA Quade without an attorney present. Outside the presence of the detectives, ASA Quade asked Mr. Harris how he had been treated at the police station. Mr. Harris stated that he had been treated "well" and had been treated "especially" well by Detective Hamilton. ASA Quade confirmed that Mr. Harris had eaten and had been **[**12]** permitted to smoke cigarettes. Mr. Harris gave inculpatory handwritten statements to both ASA Darman and ASA Quade.

[*P21] The court also admitted the prior testimony of Detective John Yucatis, who was deceased at the time of the suppression hearing. Detective Yucatis had previously testified at the original hearing on Mr. Harris's motion to suppress and had testified at Mr. Harris's trials. That testimony is recounted in Mr. Harris previous appeals. See *Harris, 358 Ill. App. 3d 1180*. Detective Yucatis testified consistently with the other Area 2 detectives and the ASAs regarding Mr. Harris's treatment at the police station.

[*P22] Mr. Harris called Dr. Steven Miles, an expert in the area of "torture, particularly in the area of medical observation and evaluation." Dr. Miles testified that while Mr. Harris was at the Area 2 police station, he "possibly" suffered physical abuse or coercive treatment with the goal of securing his signature on legal documents. Dr. Miles testified that Mr. Harris was also subjected to sleep deprivation and stress and may have been subjected to "stealth torture," which includes physical abuse that does not leave a mark. Dr. Miles observed a photograph of Mr. Harris that depicted an abrasion on the **[**13]** left side of Mr. Harris's head that was taken near the time of his arrest. Dr. Miles testified that the injury depicted in the photograph was not consistent with a gun being held to the side of Mr. Harris's head during his arrest.

[*P23] In order to support his contentions of a pattern and practice of torture at Area 2, Mr. Harris also presented testimony from two arrestees who had been interrogated and subject to physical and psychological torture at the Area 2 police station: Anthony Holmes and Joseph Carroll.

[*P24] Mr. Harris did not testify at the hearing, but his testimony from the Patterson case was admitted into evidence as an exhibit.[2] Mr. Harris also offered numerous exhibits that he contended established a pattern of practice of torture and abuse by Burge and other detectives at Area 2.

[*P25] In an oral ruling, the court found that the State had established the voluntariness of Mr. Harris's confession by a preponderance of the evidence and that Mr. Harris was not "physically, psychologically or mentally coerced into making statements." The court observed that there was testimony regarding the abrasion on the left side of Mr. Harris's face, but Mr. Harris never established that the injury occurred **[**14]** while he was in police custody. The court noted that the arrest was "physical" in that multiple officers entered the apartment with guns drawn and Detective Hamilton tackled Mr. Harris to the ground. The court believed that the injury could have happened during

[2] This testimony is detailed in this court's order on Mr. Harris's direct appeal in the Patterson case. See ***Harris, 358 Ill. App. 3d 1180***.

the arrest but determined that the injury was "insignificant" and was not inflicted as a means of obtaining a confession. Finally, the court found that Mr. Harris was properly questioned by detectives after he invoked his right to counsel when he reinitiated contact with the detectives. The court therefore denied the motion to suppress.

[*P26] The court determined, however, that a new trial was warranted because the defense was "significantly and unfairly prejudiced by the lack of information and knowledge of past misconduct attributed to a number of the detectives involved in the interrogation of Mr. Harris." The court found that the complaints of abuse were unknown to Mr. Harris and his defense counsels at his trials and the evidence would have allowed the triers of fact to consider his custodial statements in a different light. The State now appeals.

[*P27] II. ANALYSIS

[*P28] On appeal, the State contends that the circuit court erred in granting **[**15]** Mr. Harris new trials where the court exceeded its limited authority on remand by vacating Mr. Harris's convictions and ordering the new trials. The State also contends that the court erred in ordering new trials where it denied the motion to suppress because this remedy was not "legally available" and was never addressed by the parties. The State maintains that the court also erred in considering Mr. Harris's claims regarding the effect of the newly discovered evidence concerning Area 2 because that claim was abandoned prior to the third stage evidentiary hearing, and the court failed to properly apply the test for newly discovered evidence to determine whether the evidence was of such a conclusive character that it would probably change the result on retrial.

[*P29] A. Jurisdiction

[*P30] Before we may address the merits of the State's appeal, we must first address our jurisdiction. Mr. Harris filed a motion to dismiss this appeal for lack of appellate jurisdiction and we ordered the motion taken with the case. In his motion to dismiss, Mr. Harris contends that the instant appeal is an "unauthorized interlocutory appeal by the State." Mr. Harris points out that under *Illinois Supreme Court Rule 604(a)* (eff. July 1, 2017), the **[**16]** State may appeal from interlocutory orders of the circuit court only in certain circumstances not present here. Under that rule, the State may appeal,

> "only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in *section 114-1 of the Code of Criminal Procedure of 1963*; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence." *Ill. S. Ct. R. 604(a)(1)* (eff. July 1, 2017).

Mr. Harris maintains that the trial court's grant of a new trial does not fall under any of the circumstances enumerated in the Rule and the State did not seek leave of court to file the instant appeal. Mr. Harris asserts that we should therefore dismiss this appeal.

[*P31] In response, the State contends that the instant appeal is not an interlocutory appeal but was an appeal from a final order by the trial court granting a new trial as a result of proceedings on Mr. Harris's petition for postconviction relief. The State asserts that the hearing on the motion to suppress was a continuation of the postconviction proceedings following this court's remand and was not the beginning of a new criminal proceeding. Citing the supreme court's ruling in *People v. Joyce, 1 Ill. 2d 225, 115 N.E.2d 262 (1953)*, the **[**17]** State maintains that it may appeal the grant of a new trial pursuant to the Act and therefore *Rule 604(a)* had no applicability here.

[*P32] Mr. Harris filed a reply to the State and also addressed the matter in his appellee brief. Mr. Harris maintains that when this court reversed the circuit court's denial of his petition in the prior appeal and remanded the matter for a new suppression hearing, this court granted the relief he sought and "disposed" of the postconviction proceeding. Mr. Harris contends that the suppression hearing was therefore not a continuation of the postconviction proceeding, as the State maintains, but was instead part of his underlying criminal cases. In support of that argument, Mr. Harris points out that at the suppression hearing, the court noted that the State bore the burden of proving that Mr. Harris's custodial statements were voluntary, while under the Act, the defendant bears the burden of establishing a violation of his constitutional rights. Mr. Harris concludes that the State's appeal from the circuit court's order of a new trial was therefore an impermissible interlocutory appeal.

[*P33] In our prior decision, we reversed the circuit court's order denying Mr. Harris's petition **[**18]** for postconviction relief at the third stage of proceedings and remanded for a new suppression hearing. *Harris, 2021 IL App (1st) 182172, ¶ 64*. In his amended petition, Mr. Harris asked the court to "vacate his conviction and

sentence and remand this case for leave to pursue a motion to suppress his confession as involuntary, or in the alternative to hold evidentiary hearings on his petition as necessary to resolve any disputed issues of fact and that it vacate his conviction and sentence and remand the case for a new trial." By denying his petition after conducting a third stage evidentiary hearing, the circuit court denied the relief Mr. Harris sought in his petition. However, when this court reversed that decision, it was implicitly *granting* the relief sought in the petition. That is, it was vacating Mr. Harris's conviction and sentence and remanding the case for leave to pursue the motion to suppress and new trials.

[*P34] The State's position that the new suppression hearing was somehow a continuation of the postconviction proceedings has no basis in the procedures under the Act. The Act provides for a three-stage mechanism in proceedings that do not involve the death penalty.[3] *People v. Hodges, 234 Ill. 2d 1, 10, 912 N.E.2d 1204, 332 Ill. Dec. 318 (2009)*. After the third stage evidentiary hearing, **[**19]** the petition is either denied, and the defendant receives no relief, or the petition is granted the circuit court has discretion as to the relief awarded. *People v. Davis, 369 Ill. App. 3d 384, 389-90, 867 N.E.2d 987, 311 Ill. Dec. 1 (2006)*. This court, in reversing the circuit court's denial, could have remanded the matter to the circuit court to determine the appropriate relief. *Id. at 393-94*. However, it was clear from the evidence presented at the third stage evidentiary hearing that the appropriate relief in this case was to vacate Mr. Harris's convictions and sentences and to remand for a new suppression hearing. Such an action was within our authority on review. *Id. at 394*; see also *People v. Stanley, 266 Ill. App. 3d 307, 312, 641 N.E.2d 1224, 204 Ill. Dec. 605 (1994)* (reversing the circuit court's denial of the defendant's postconviction petition following a third stage evidentiary hearing, vacating the defendant's conviction, and remanding for a new trial).

[*P35] The State's position that the new suppression hearing was a continuation of the postconviction proceedings is also belied by the record. It is axiomatic that once a postconviction proceeding has advanced past the first stage, "the defendant bears the burden of making a substantial showing of a constitutional violation." *People v. Pendleton, 223 Ill. 2d 458, 473, 861 N.E.2d 999, 308 Ill. Dec. 434 (2006)* (citing *People v. Coleman, 206 Ill. 2d 261, 277, 794 N.E.2d 275, 276 Ill. Dec. 380 (2002)*). Here, however, in conducting the new suppression hearing, the circuit court repeatedly **[**20]** recognized that the State bore the burden of establishing the voluntariness of Mr. Harris's statements. See *People v. Slater, 228 Ill. 2d 137, 149, 886 N.E.2d 986, 319 Ill. Dec. 862 (2008)* ("Where a defendant challenges the admissibility of a confession through a motion to suppress, the State bears the burden of proving the confession was voluntary by a preponderance of the evidence."). The State did not dispute this characterization of its burden before the circuit court. Thus, it was clear that the parties and the circuit court understood that Mr. Harris had satisfied his burden under the Act of making a substantial showing of a constitutional violation, the postconviction proceedings had concluded, and a new criminal proceeding, where the State bore the burden of proof, had begun.

[*P36] We find this court's decision in *People v. Almendarez, 2022 IL App (1st) 210029-U (Almendarez II)*, illustrative. In that case, as here, this court in two separate prior appeals reversed the circuit's denial of the defendants' postconviction petitions following third stage evidentiary hearings and remanded for new suppression hearings. *People v. Galvan, 2019 IL App (1st) 170150, ¶ 79, 433 Ill. Dec. 694, 133 N.E.3d 42*; *People v. Almendarez, 2020 IL App (1st) 170028, ¶ 78 (Almendarez I)*. On remand, the trial court denied both defendants' motions to suppress after a hearing and then took the matter " 'off call.' " *Almendarez II, 2022 IL App (1st) 210029-U, ¶ 16*. The defendants appealed, arguing that the court erred in denying their motions **[**21]** to suppress. *Id. ¶ 18*.

[*P37] In finding that we lacked jurisdiction to consider the merits of the appeal, this court stated that when it reversed the circuit court's orders denying the defendants' third stage postconviction petitions, "it logically followed that this court was vacating their convictions, as well as remanding for a new suppression hearing and trial, even[ ] though that relief was not explicitly stated." *Id. ¶ 21*. The court stated that it intended for a new trial to take place regardless of whether the trial court granted or denied the motions to suppress and thus the court taking the matter " 'off call' " after denying the motions was not a final and appealable order. *Id.*

[*P38] The State attempts to distinguish *Almendarez II*, arguing that in the previous appeals involved in that case, this court stated that it was remanding for a new suppression hearing "and, if necessary, a new trial."

[3] Mr. Harris was originally sentenced to death in the Patterson case and the Ford case, but his death sentences were commuted by the Illinois governor.

Galvan, 2019 IL App (1st) 170150, ¶ 79; Almendarez I, 2020 IL App (1st) 170028, ¶ 78. The State points out that in our order remanding this matter for a new suppression hearing, we did not include the same "if necessary, a new trial" language indicating that no new trial was contemplated if the circuit court denied the motion to suppress. However, we find this discrepancy immaterial to our resolution **[**22]** here. This court explained in *Almendarez II* that its use of the phrase "if necessary, a new trial" was "intended to reflect that if the circuit court granted the motions to suppress, the State might abandon the prosecution for lack of admissible evidence. This court did not intend that if the circuit court denied the motions to suppress, that no new trial should take place." Almendarez II, 2022 IL App (1st) 210029-U, ¶ 21.

[*P39] Here, too, by remanding the matter for a new suppression hearing, this court intended that Mr. Harris's convictions would be vacated regardless of the outcome of the suppression hearing. If the motion to suppress were granted, the State could then determine whether to pursue the prosecution in the absence of that evidence. If, however, the motion was denied, a new trial was still required. Thus, the circuit court's order granting a new trial was not necessary as a new trial was already contemplated by this court's order in Harris, 2021 IL App (1st) 182172. Even so, the order granting the new trial was not a final order and was not one of the interlocutory orders the State may appeal pursuant to *Rule 604(a)*. See PEOPLE v. ALLEN, 168 Ill. App. 3d 397, 402, 521 N.E.2d 1172, 118 Ill. Dec. 479 (1987) ("It is true, as defendant contends, that an order by a circuit court granting a defendant a new trial in a criminal case is not one of the grounds **[**23]** enumerated by *Supreme Court Rule 604(a)* [citation] from which the State is authorized to appeal.").

[*P40] Therefore, with the clarification that this court's previous order in Harris, 2021 IL App (1st) 182172, vacated Mr. Harris's convictions, necessitating a new trial, we dismiss this appeal for lack of jurisdiction.

[*P41] III. CONCLUSION

[*P42] For the reasons stated, we dismiss this appeal for lack of jurisdiction.

[*P43] Appeal dismissed.

Dissent by: MITCHELL

Dissent

[*P44] PRESIDING JUSTICE MITCHELL, dissenting:

[*P45] Harris argues that in a prior published opinion issued in March 2021, this court vacated his convictions, remanded for a suppression hearing, and remanded for a new trial. People v. Harris, 2021 IL App (1st) 182172, 460 Ill. Dec. 1, 199 N.E.3d 722. As such, he reasons that our prior opinion disposed of his postconviction petition and that the State's attempt to appeal the circuit court's grant of a new trial is an improper interlocutory appeal. Not so. The proceedings on remand were a continuation of Harris's efforts at postconviction relief, and the State may properly appeal the grant of postconviction relief. See People v. Joyce, 1 Ill. 2d 225, 227, 115 N.E.2d 262 (1953) ("The judgment below, while it does not ultimately dispose of the criminal proceedings against the defendant, is clearly a final disposition of his petition under the act.").

[*P46] There is *no* indication in our 2021 opinion that we ever vacated **[**24]** Harris's convictions or ordered a new trial. The focus of that prior opinion was on the necessity of a new suppression hearing. There was no discussion of vacating convictions or granting a new trial. Our disposition expressly provided that "we reverse the circuit court's dismissal of defendant's petition after an evidentiary hearing and *remand for a new suppression hearing*." (Emphasis added.) Harris, 2021 IL App (1st) 182172, ¶ 64. Our mandate reads, "Reversed and remanded with directions." Id. ¶ 65. Again, there is no mention of a new trial or vacating convictions.

[*P47] This construction finds support not only in the text of the opinion but also in the relief that Harris sought in that appeal. His statement of the issues focused on the suppression hearing, and he framed his chief issue on appeal as follows:

> "Did Petitioner Ralph Harris meet his burden to establish by a preponderance of evidence that when the testimony presented by the State at his pretrial suppression hearing is weighed against the newly discovered evidence of the pattern and practice of torture and physical abuse at Area 2 Police Headquarters and evidence of the involvement in that pattern and practice by Detective Michael McDermott, the outcome of his suppression **[**25]** hearing would likely have been different?"

Further, the only relief Harris sought in his brief was a new suppression hearing:

"A new suppression hearing is warranted in

> Petitioner Harris' cases ***. *** For all of the foregoing reasons, Petitioner-Appellant Ralph Harris respectfully requests that this Court reverse the trial court's ruling denying post-conviction relief, and remand this matter for a new suppression hearing before a different judge."

And he echoed that request for a new suppression hearing in his reply brief:

> "Petitioner-Appellant Ralph Harris respectfully requests that this Court reverse the trial court's denial of post-conviction relief and remand this matter to a different judge for a new suppression hearing, or in the alternative, for a new post-conviction evidentiary hearing."

[*P48] It is axiomatic that an appellate opinion is a binding and conclusive adjudication only as to those specific matters discussed by the appellate court. *Cf.* *Nowak v. St. Rita High School, 197 Ill. 2d 381, 390, 757 N.E.2d 471, 258 Ill. Dec. 782 (2001)*. The suggestion that a reviewing court would undertake to vacate criminal convictions and order a new trial entirely *sub silentio* finds no precedent in our cases. And with good reason. Such a process is manifestly unfair to the State because **[**26]** it prevents an intelligent decision on when to seek leave to appeal. See *Ill. S. Ct. R. 315* (eff. Oct. 1, 2021).

[*P49] For all these reasons, I believe that the proceedings on remand were a continued adjudication of Harris's postconviction petition and that we have jurisdiction to entertain the State's appeal on the merits.

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- RALPH HARRIS, Petitioner-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County, Illinois No. 95 CR 27596; 95 CR 27598; 95 CR 27600 Honorable Dennis J. Porter, Judge Presiding.

CORRECTED BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

JAMES E. CHADD
State Appellate Defender

PATRICIA MYSZA
Deputy Defender

CHARLES W. HOFFMAN
Of Counsel
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT

ORAL ARGUMENT REQUESTED

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I. Petitioner Ralph Harris met his burden to establish by a preponderance of evidence that when the testimony presented by the State at his pretrial suppression hearing is weighed against the newly discovered evidence of the pattern and practice of torture and physical abuse at Area 2 Police Headquarters, and evidence of the involvement in that pattern and practice by former Area 2 Detective Michael McDermott, the outcome of his suppression hearing would likely have been different. 27

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II. The trial court's denial of relief was manifestly erroneous, given the overwhelming evidence presented in support of Petitioner's claims, and the complete dearth of evidence presented by the State in opposition to those claims; and given the court's several erroneous factual findings, none of which were supported by the evidence. **37**

Standard of review. **37**

People v. Johnson, 206 Ill. 2d 348 (2002). 37

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The trial court's findings. **37**

A. The trial court's denial of relief was manifestly erroneous, given the overwhelming evidence presented in support of Petitioner's claims, and the complete dearth of evidence presented by the State in opposition to those claims.. . . . . **38**

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B. The trial court's denial of relief was manifestly erroneous, given the court's reliance on a number of findings in support of its ruling, none of which were supported by the evidence, and some of which were contradicted by the evidence.. . . . . **39**

1. The trial court's finding that Area 2 detectives wouldn't abuse a person in custody in a "heater case" like Petitioner Harris' case, is not supported by the evidence, and is contradicted by the documented history of the Area 2 torture scandal. **39**

People v. Andrew Wilson, 116 Ill.2d 29 (1987).. 40

People v. Jackie Wilson, 2019 IL App (1st) 181486. 40

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2. The trial court's finding that Area 2 detectives wouldn't abuse a custodial suspect after Jon Burge's firing from the Chicago Police Department is not supported by the evidence, and is contradicted by the documented history of the Area 2 torture scandal. **41**

People v. Mata, 217 Ill. 2d 535 (2005). 41

People v. Weathers, 2015 IL App (1st) 133264. 43

People v. Tyler, 2015 IL App (1st) 123470. 43

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3. The trial court's finding that aside from Detective McDermott, no other officer involved in physical abuse and torture at Area 2 was involved in Petitioner Harris' case, is contradicted by the undisputed evidence that Detective Yucaitis was also involved in that abuse and torture, and by the documented history of the "code of silence" within the Chicago Police Department. **43**

People v. Horton, 2019 IL App (1st) 142019-B. 45

Fillmore v. Page, 358 F.3d 496, 507 (7th Cir. 2004). 46

Blair v. City of Pomona, 223 F.3d 1074 (9th Cir. 2000). 45

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People v. Wilson, 116 Ill.2d 290 (1987).. 47

People v. La Frana, 4 Ill. 2d 261 (1954). 48

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People v. Galvan, 2019 IL App (1st) 170150, ¶ 65. 50

III. The trial court's ruling denying post-conviction relief should be reversed, as the court placed an erroneously high burden of proof on Petitioner by using the common definition of "likely," rather than the appropriately lower burden of proof found in the definition of "likely" used to decide analogous legal issues.. 51

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NATURE OF THE CASE

Petitioner-Appellant Ralph Harris appeals from a judgment denying post-conviction relief following a combined third-stage evidentiary hearing in cases 95 CR 27596, 95 CR 27598, and 95 CR 27600. No issue is raised concerning the sufficiency of the post-conviction pleadings.

ISSUES PRESENTED FOR REVIEW

I. Did Petitioner Ralph Harris meet his burden to establish by a preponderance of evidence that when the testimony presented by the State at his pretrial suppression hearing is weighed against the newly discovered evidence of the pattern and practice of torture and physical abuse at Area 2 Police Headquarters and evidence of the involvement in that pattern and practice by Detective Michael McDermott, the outcome of his suppression hearing would likely have been different?

II. Was the trial court's denial of relief manifestly erroneous, given the overwhelming evidence presented in support of Petitioner Harris' claims, and the complete dearth of evidence presented by the State in opposition to those claims; and given the court's several erroneous factual findings, none of which were supported by the evidence, and some of which were contradicted by the evidence?

III. Should the trial court's ruling denying relief be reversed, as the court placed an erroneously high burden of proof on Petitioner Harris by using the common definition of "likely," rather than the appropriately lower burden of proof found in the definition of "likely" used to decide analogous legal issues?

JURISDICTION

Petitioner-Appellant Ralph Harris appeals from the denial of post-conviction relief following a third stage evidentiary hearing. The judgment being appealed was entered on September 21, 2018. (R 9-16) Notice of appeal was timely filed that same date. (C 1044; R 17) Jurisdiction therefore lies in this Court pursuant to Article VI, Section 6, of the Illinois Constitution, and Illinois Supreme Court Rule 651(a).

STATEMENT OF FACTS

The charges, trials and direct appeals in the combined cases

In 1995, Petitioner Ralph Harris was charged in a number of cases with murder, attempt murder, aggravated criminal sexual assault, and armed robbery. The defense filed an omnibus motion to suppress his purported confessions in all of those pending cases, asserting, *inter alia*, that they were the involuntary products of physical coercion. (Sup3 C 80-87) Following a hearing, the court denied the motion. (R 266-411, 421-468, 478-492)[1]

The charges against Mr. Harris in three of his pending cases then went to trial. In 95 CR 27596 (the Ford case), he was convicted of murdering David Ford on August 17, 1992, while attempting to commit an armed robbery. In 95 CR 27598 (the Patterson case), he was convicted of murdering William Patterson and attempting to murder his brother James Patterson, while attempting to commit an armed robbery, also occurring on August 17, 1992. In 95 CR 27600 (the R.T. case), he was convicted of the July 18, 1995 aggravated criminal sexual assault and armed robbery of R.T. *See People v. Harris*, 1-05-0320 (Rule 23 Order of August 12, 2005) (the direct appeal decision in the Ford case); *People v. Harris*, 1-05-0323 (Rule 23 order of August 12, 2005) (the direct appeal decision in the Patterson case); and *People v. Harris*, 1-08-2410 (Rule 23 Order of August 26, 2010) (renumbered as 08 CR 10783) (previous post-conviction appeal in the R.T. case) (All attached as Appendix B)[2]

During the Ford and Patterson trials, Mr. Harris' purported confessions to several murders and related offenses were introduced into evidence against him, and at the R.T. trial his purported confession to the sexual assault of R.T. was introduced into evidence against

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[1] The record on appeal consists of 12 volumes of electronic records, referenced in this brief as C, Sec C, Sup2 C (1), Sup2 C (2), Sup3 C, Sup4 C, Sup5 C, Sup6 C, Sup7 C, R, Sup R, and Sup2 R. Those volumes include the direct appeal record in 95 CR 27598 and the record of the combined post-conviction proceedings which are the subject of this appeal.

[2] This Court may take judicial notice of the records in Mr. Harris' previous appeals in the Ford, Patterson and R.T. cases. *In re Brown*, 71 Ill. 2d 151, 155 (1978) ("(A) court may and should take judicial notice of other proceedings in the same case which is before it and the facts established therein.") See also Ill. Rule of Evid. 201(d) ("A court shall take judicial notice if requested by a party and supplied with the necessary information.")

him. See *People v. Harris*, 1-05-0320, at page 2; *People v. Harris*, 1-05-0323, at pages 5-6; and *People v. Harris*, 1-08-2410, at pages 6-7.[3] (Appendix B)

Mr. Harris was sentenced to death in both the Ford and Patterson cases. Illinois Governor George H. Ryan later commuted those death sentences to life imprisonment without the possibility of parole. (Commutation order of January 10, 2003, attached as Appendix C) In the R.T. case, the trial court imposed sentences totaling 120 years imprisonment. *People v. Harris*, 1-08-2410, at page 1. (Appendix B)

The Post-Conviction Proceedings in the Patterson and Ford Cases

On March 12, 2002, Mr. Harris filed a *pro-se* post-conviction petition in the Patterson case. (C 115) On August 2, 2002, he filed a *pro-se* post-conviction petition in the Ford case. (Sup2 C 1057-1059) Because he was still under sentences of death in both cases at that time, counsel was appointed by the Illinois Supreme Court to assist him in those proceedings.

Appointed counsel subsequently filed amended post-conviction petitions in the Ford and Patterson cases, both of which asserted, *inter alia*, that newly discovered evidence corroborated Mr. Harris' claims that his purported confessions were the product of physical abuse and torture inflicted by former Chicago Area 2 Violent Crimes Detectives Michael McDermott and James Boylan. (Sup2 C 89-143, at 133-135; Sup4 C 5-140, at 118-124)

The State moved to dismiss the amended petitions in the Ford and Patterson cases. (C 154-196; Sup2 C 1874-1935) The trial court granted the State's motions in both cases, with the exception of Mr. Harris' coerced confession claims (C 589-608; C 612-619), which advanced to third stage post-conviction proceedings. (C 608, 619)

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[3] The admission of a physically coerced confession is never harmless error. *People v. Wrice*, 2012 IL 111860, ¶84. In this post-conviction appeal, the issues raised by Petitioner all address whether he is entitled to a new suppression hearing to determine whether his purported confessions were the involuntary product of physical coercion. For that reason, Petitioner has included in the Statement of Facts in this brief only those facts from the Ford, Patterson and R.T. trials that are relevant to the admission of his confessions, as those are all of the facts "necessary to an understanding of the case." Ill. Sup. Ct. Rule 341(h)(6).See also *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1st Dist. 1983) (Finding appellant's brief violative of Rule 341 for, *inter alia*, including in its statement of facts "matters which are neither pertinent nor relevant to any issues properly before this court.")

The Post-Conviction Proceedings in the R.T. case

Mr. Harris, through counsel representing him in the Patterson and Ford post-conviction matters, sought leave to file a successive post-conviction in the R.T. case, asserting the identical coerced confession claim pending in those cases. (Sup3 C 5-57; Sup R 252) The trial court first denied, then allowed the motion. (Sup R 291; Sup2 C 156-163; Sup R 279-280) The court then ordered that a combined evidentiary hearing be held on all three pending post-conviction petitions, as Mr. Harris' coerced confession claims in those petitions involved the same facts, and were governed by the same law. (Sup2 R 5)

The Parties' Evidentiary Objections and In Limine Pleadings

Prior to commencement of the evidentiary hearing, Petitioner Harris and the State exchanged witness and exhibit lists. (C 951-956; Sup6 C 1520-23, 1702-05; Sup R 248) Seeking to limit the scope of the evidentiary hearing, Petitioner Harris filed objections to the State's proposed witnesses and exhibits (Sup7 C 19-26), and both parties filed motions *in limine* (Sup7 C 4-17; C 960-970) and responsive pleadings. (Sup7 C 35-72; C 973-89)

Petitioner Harris' objections to the State's proposed witnesses and exhibits, and his motion *in limine*, were both grounded in this Court's decision in *People v. Whirl*, 2015 IL App (1st) 111483. Mr. Harris argued that based on *Whirl*, the sole issue at the post-conviction evidentiary hearing was whether the Petitioner's newly discovered evidence of the pattern and practice of torture and abuse at Area 2, and Detective McDermott's knowledge of, and participation in, that pattern and practice, when weighed against the evidence that had been presented by the State at the pretrial suppression hearing, made it likely that the outcome of that suppression hearing would have been different. Therefore, Petitioner argued, the State was limited at the post-conviction evidentiary hearing to presenting: (1) the testimony it had presented at the pretrial suppression hearing; and (2) any new or additional witnesses and exhibits that contradict or impeach Petitioner's newly discovered evidence. (Sup R 206-209)

In support of the State's motion *in limine*, the Special Prosecutor (SP) conceded that *Whirl* controlled, but argued that in order for the court to properly apply the *Whirl* test, it

first had to decide if what the Petitioner asserted is "pattern and practice evidence is, in fact, pattern and practice evidence." (Sup R 219) For that reason, the SP argued that all of the evidence admitted at Petitioner's trials should be considered by the court at the post-conviction evidentiary hearing. (Sup R 220) The SP urged the court to delay its ruling on the State's motion *in limine* until after the evidentiary hearing, at which time the court would be in a better position to decide which of Petitioner's exhibits should be excluded as irrelevant. (Sup R 220)

Following arguments on both parties' motions *in limine* (Sup R 207-223), the trial court agreed that *Whirl* controlled, and orally granted Petitioner's motion *in limine* "in general." (Sup R 228) The court held that the post-conviction evidentiary hearing was "confined to what [Petitioner's] new information is, what [the State's] rebuttal evidence is to your new evidence, and then comparing that to the evidence that was offered 20 years ago at the original suppression hearing." (Sup R 223-224) As suggested by the SP, the court withheld ruling on the State's motion *in limine* until the close of the evidentiary hearing.[4]

The Post-Conviction Evidentiary Hearing

When the post-conviction evidentiary hearing began on June 21, 2018 (Sup R 114, *et seq*.), Petitioner first submitted evidence for the limited purpose of establishing that he has consistently and repeatedly complained over the past 25 years that he was physically abused and tortured by Detectives McDermott and Boylan at Area 2 on August 29-30, 1995. That evidence included the following:

Petitioner's Exhibit 1: In his "Amended Motion to Suppress Statements," filed on June 10, 1998, and his contemporaneous oral verification of that motion (Sup3 C 80-87), Mr. Harris alleged, *inter alia*, that the statements sought to be suppressed were obtained as a result of physical coercion inflicted by Detectives McDermott and Boylan, including hitting

[4] After both parties rested at the post-conviction evidentiary hearing, but prior to closing arguments, the court issued a written order granting the State's motion *in limine* in part, and excluded Petitioner's Exhibits 5, 6, 8, 10, 11, 12, 13, 15, 16, 17, and 19. (Sup5 C 4) That order mistakenly referenced "Respondent's" exhibits, rather than "Petitioner's" exhibits, which the court later corrected. (Sup R 27-28)

Mr. Harris with their fists in his stomach, head and neck; hitting him with a phone book; and placing a gun to his head and in his mouth. (Sup3 C 84)

Petitioner's Exhibit 3: In his February 25, 1999, trial testimony in *People v. Harris*, 95 CR 27598 (the Patterson case), Mr. Harris described in detail the physical and mental coercion inflicted on him by McDermott and Boylan at Area 2 Police Headquarters on August 29-30, 1995. (Sup3 C 984-1167)

Petitioner's Exhibit 2: Petitioner claimed in all three of his pending post-conviction petitions, filed on May 14, 2009, December 9, 2011, and November 13, 2014, that his purported confessions were physically coerced by McDermott and Boylan. (Sup3 C 516-537)

Petitioner next submitted the evidence presented by the State at the pre-trial hearing on his amended motion to suppress statements, consisting of the testimony of four Area 2 Detectives: Michael McDermott, James Boylan, John Yucaitis, and John Hamilton. **Petitioner's Exhibit 30** (Sup3 C 1169-1309)

At that suppression hearing, Michael McDermott testified that he had been an Area 2 detective for 16 years. (Sup3 C 1173) On August 29, 1995, at approximately 1:00 a.m., he, his partner Detective James Boylan, and Detective John Hamilton went to the garden apartment at 3601 W. 79th Street. They knocked on the door and a female voice asked, "who is it?" (Sup3 C 1174) As the door opened, McDermott heard a male voice say, "don't let them in." (Sup3 C 1174) McDermott saw a woman inside, and standing behind her was a man he recognized as defendant Ralph Harris, the individual the police were looking for pursuant to an arrest warrant. (Sup3 C 1174-75)

The detectives ordered Mr. Harris to get on the ground and show his hands. (Sup3 C 1175) When he failed to comply, the detectives "had [their] guns out," and approached Mr. Harris and the woman, who were backing up. (Sup3 C 1176) According to McDermott, the detectives continued "yelling at them," and "at some point in time, we all kind of jumped on him." (Sup3 C 1176) The detectives pushed the woman aside and "fell on top" of Mr. Harris, grabbing his arms and forcing him to the ground. (Sup3 C 1176) Mr. Harris was then handcuffed and taken to Area 2 Police Headquarters by Detective Hamilton. (Sup3 C 1177)

At Area 2, McDermott saw Mr. Harris "off and on," and had contact with him around 9, 10 and 11 o'clock the morning of August 29. (Sup3 C 1177) Before McDermott and Boylan entered the interview room in which Mr. Harris was being held, McDermott spoke with Detective Hamilton, who told McDermott that he had conversations with Mr. Harris throughout the night, which included a conversation about a shooting/robbery that occurred at 191st and Wallace, in which the victim's name was Brown or Bond. After McDermott spoke to Hamilton, he and Boylan entered the interview room. (Sup3 C 1178, 1193, 1204-05)

McDermott and Boylan were alone in the interview room with Mr. Harris. They had a brief conversation which lasted no more than 5 minutes, and then left the room. (Sup3 C 1179) McDermott acknowledged that when he entered the room, he was armed with his gun. (Sup3 C 1194) However, neither he nor Boylan had their guns out. (Sup3 C 1199)

McDermott and Boylan's next conversation with Mr. Harris took place between 9:00 p.m. on August 29 and 1:00 a.m. on August 30, 1995. (Sup3 C 1179-80, 1192) Prior to that conversation, McDermott had spoken with Detective John Yucaitis, who told McDermott that he had received information from Mr. Harris about an approximate address and the last name of an individual who was holding on to a possible murder weapon. (Sup3 C 1180) McDermott then "poked [his] head" into the interview room in which Mr. Harris was being held and asked him to confirm that the address and name McDermott was given by Yucaitis was correct, as McDermott planned to go to that address "right then and there." Mr. Harris said "yes." (Sup3 C 1180-81) After that, McDermott had no further contact "of any substance" with Mr. Harris. (Sup3 C 1181)

McDermott denied Mr. Harris' allegations of abuse, testifying that neither he nor his partner, Detective Boylan, hit Mr. Harris in the stomach with their fists, hit him about the head and neck, placed a gun to his head or in his mouth, or hit him with a phone book. He never witnessed Detective Yucaitis threaten Mr. Harris that he was going to arrest and charge Mr. Harris' girlfriend, Angela Clark, or place Ms. Clark's children with the Department of Children and Family Services (DCFS). (Sup3 C 1182-83)

McDermott added that he and Boylan had previously arrested Mr. Harris in 1991 for

robbing an individual named Rudy Wilson, who had been one of McDermott's Area 2 sergeants, but who was retired at the time of that robbery. Mr. Harris subsequently pled guilty to armed robbery in that case, and was sentenced to seven years in prison. (Sup3 C 1183-85) McDermott testified that although Mr. Harris cooperated with the police in both the 1991 case and the pending 1995 cases, McDermott still considered Mr. Harris to be an "evil . . . bad person" who was "extremely dangerous." (Sup3 C 1195)

On cross-examination, McDermott acknowledged that although Mr. Harris had resisted the officers' attempt to arrest him, and there had been a "scuffle," Mr. Harris hadn't physically assaulted the officers. (Sup3 C 1185-86, 1188) After Mr. Harris' arrest, McDermott transported Angela Clark to Area 2. She was not under arrest and agreed to accompany McDermott there, where she remained for several hours. (Sup3 C 1189-90)

Detective James Boylan testified that he had been an Area 2 Violent Crimes Detective for 12 years. (Sup3 C 1205-06) On August 29, 1995, at approximately 1:00 a.m., he and Detectives McDermott and Hamilton went to the garden apartment at 3601 W. 79th Street. When Boylan knocked on the door, a female inside asked who was there. When they responded "the police," a male inside said "don't open the door." (Sup3 C 1206-07, 1214) At that time, all three detectives had their guns drawn. (Sup3 C 1214)

The door opened, and Boylan saw Mr. Harris standing behind a black woman, later identified as Angie Clark. The three detectives entered the apartment and repeatedly yelled at Mr. Harris to "show his hands," but he refused to comply. The detectives then rushed toward Mr. Harris, tackled him to the ground and after a struggle, handcuffed him. (Sup3 C 1208-10, 1214) Boylan and McDermott transported Ms. Clark to Area 2, while Hamilton transported Mr. Harris to Area 2. (Sup3 C 1210, 1215-16) At no time did Boylan see a weapon in Mr. Harris' hands at the time of his arrest. (Sup3 C 1215)

Later that morning, at approximately 9:00 a.m., Boylan and McDermott spoke with Mr. Harris in an interview room at Area 2 for about five minutes. Before speaking with him, Boylan and McDermott had spoken with Detective Hamilton, who also had just had a conversation with Mr. Harris. Boylan had no further conversations with Mr. Harris. (Sup3

C 1211, 1217) Boylan later had what he described as "incidental contact" with Mr. Harris when Boylan assisted in "running lineups" at Area 2. (Sup3 C 1211-12)

Boylan also denied Mr. Harris' claims of abuse, testifying that neither he nor McDermott hit Mr. Harris or placed a gun to his head or in his mouth, or hit him with a phone book. Boylan never heard Detective Yucaitis threaten Mr. Harris that he would arrest and charge his girlfriend, Angie Clark, or that Yucaitis would have their children placed with DCFS. (Sup3 C 1212-13)

Detective John Yucaitis testified that he had been employed by the Chicago Police Department (CPD) for 34 years, and had been a detective for 30 years. On August 29, 1995, Yucaitis was assigned to Area 2 Violent Crimes. At approximately 6:45 p.m. on that date, he left Area 2 to pick up pizzas to feed people present at Area 2. He returned to Area 2 around 8:30 p.m. and spoke with Detective Glenn. Yucaitis learned from Glenn there was a man present at Area 2 named Brunt, who was cooperating and wanted to tell them about robberies Brunt claimed Mr. Harris had been involved in. (Sup3 C 1226-28)

Around 8:30 p.m., Yucaitis brought pizza to Mr. Harris. (Sup3 C 1229) Yucaitis had previously been apprised by another detective not to talk to Mr. Harris because Harris had invoked his rights and they "didn't want to screw up the case." (Sup3 C 1244) Harris asked Yucaitis, "what is Brunt doing here?" (Sup3 C 1230) Yucaitis stepped out of the interview room and saw Detectives McDermott and Boylan at the water fountain with Brunt. Yucaitis re-entered the interview room and responded to Mr. Harris that he'd been told Harris had invoked his right to an attorney and for that reason, Yucaitis couldn't talk to him. Mr. Harris replied that he wanted to speak with Yucaitis, so Yucaitis advised Mr. Harris of his Miranda rights, which he waived. (Sup3 C 1230-32)

Yucaitis then told Mr. Harris that Brunt said he was going to tell the police about some robberies Mr. Harris was involved in. (Sup3 C 1256) Mr. Harris told Yucaitis that he could tell the police about a murder that took place on Greenwood Ave., and asked Yucaitis to call in Detective Hamilton, which Yucaitis did. Yucaitis and Hamilton then entered the interview room, and Yucaitis remained there while Hamilton had a conversation with Mr.

Harris regarding that murder. (Sup3 C 1232-33)

Felony Review was notified and at approximately 10:00 p.m., Assistant State's Attorney (ASA) Tom Darman arrived at Area 2. (Sup3 C 1233) Yucaitis was present for a conversation between Darman and Mr. Harris that took place around 11:30 p.m. ASA Darman explained to Mr. Harris who he was, advised him of his constitutional rights, and discussed Mr. Harris' previous invocation of his right to counsel, after which Mr. Harris agreed to talk with Darman. They then conversed about the murder that had taken place on Greenwood Ave. (Sup3 C 1233-34)

After ASA Darman left the interview room, Yucaitis asked Mr. Harris where the gun was. Harris stated it was at the home of a friend named Bond or Bonds, at 8421 S. Manistee. Yucaitis passed that information on to either McDermott or Boylan. (Sup3 C 1235-36, 1241)

Later, at approximately 1:05 a.m. on August 30, Yucaitis was present when ASA Darman took a three-page handwritten statement from Mr. Harris. (Sup3 C 1236-37) That statement included the constitutional rights Darman advised Mr. Harris of, and Harris' signature. (Sup3 C 1238) On page 3, Mr. Harris acknowledged that he was given food, sodas and cigarettes while at Area 2; that he was allowed to use the bathroom; that no threats or promises had been made to him; and that he gave the statement freely and voluntarily. (Sup3 C 1238-39) According to Yucaitis, Mr. Harris never complained to him or to ASA Darman in Yucaitis' presence, that McDermott or Boylan hit him with their fists in his stomach, head or neck; or that they placed a gun to his head and in his mouth; or that they hit him with a phone book. (Sup3 C 1239-40)

Yucaitis denied threatening Mr. Harris that he would arrest and charge his girlfriend, Angie Clark, or that he would have their children placed in DCFS. Yucaitis denied knowing who Clark was, or knowing that Clark was at Area 2 on August 29-30, 1995. (Sup3 C 1240)

Detective John Hamilton testified that he had been an Area 2 Violent Crimes Detective for 4 years. On August 29, 1995, Hamilton was working with his partner, Detective Timothy Bagdon. On that date, Ralph Harris was in custody at Area 2, after being arrested pursuant to a warrant for an aggravated criminal sexual assault. (Sup3 C 1259-61)

Hamilton had a number of conversations with Mr. Harris on August 29, 1995. The first conversation was a little after 1:30 a.m. in an interview room at Area 2. Hamilton, in Bagdon's presence, advised Mr. Harris of his Miranda rights. Mr. Harris then made oral admissions regarding three sex offenses the detectives were investigating. (Sup3 C 1260-63) Those conversations took place "on and off" for several hours. (Sup3 C 1262)

Hamilton testified that at 7:30 a.m. on August 29, witnesses began coming to Area 2, and a number of lineups were held that morning and early afternoon. Between 9:00 and 10:00 a.m., during a break in the lineups, Hamilton spoke to Mr. Harris in an interview room about one of the cases in which he had been identified; the armed robbery and shooting of James Brown. During that conversation, Mr. Harris made an oral admission. (Sup3 C 1263-64) Hamilton then related that information to McDermott and Boylan, who were familiar with that case. (Sup3 C 1265)

Hamilton testified that during the course of the investigation on August 29, 1995, the State's Attorney's Office was contacted, and ASA Leslie Quade had a conversation with Mr. Harris at approximately 3:30 p.m., at which Hamilton wasn't present. (Sup3 C 1265) After her conversation with Mr. Harris, Quade informed Hamilton that Mr. Harris requested an attorney, so she ended her conversation with him. Prior to that time, Mr. Harris had not requested an attorney from Hamilton or anyone in Hamilton's presence. (Sup3 C 1266)

At approximately 8:30 p.m. on August 29, Detective Yucaitis told Hamilton that Mr. Harris wanted to speak with him. Hamilton and Yucaitis then entered the interview room in which Mr. Harris was being held. (Sup3 C 1267) Hamilton asked Harris, "what's up?," and Harris responded that he wanted to tell Hamilton about a murder. (Sup3 C 1268) Hamilton immediately stopped Mr. Harris because he was aware that Harris had previously requested an attorney. Mr. Harris confirmed to Hamilton that he told Detective Yucaitis that he wanted to talk with Hamilton. Mr. Harris then gave an oral statement about a murder that took place on Greenwood Ave. (Sup3 C 1268) At that time, neither Hamilton nor Yucaitis documented Mr. Harris' statement. (Sup3 C 1296-97) Hamilton later learned that Mr. Harris' statement about that murder was put in writing. (Sup3 C 1269)

Hamilton testified that he never saw McDermott or Boylan hit Mr. Harris with their fists in his stomach, head or neck. Harris never told Hamilton that any detectives hit him with their fists in the stomach, head and neck. Hamilton never saw McDermott or Boylan place a gun to Mr. Harris' head or in his mouth, or hit him with a phone book. Nor did Mr. Harris tell Hamilton that occurred. (Sup3 C 1272-73) Hamilton never heard Detective Yucaitis threaten Mr. Harris that he would have Angie Clark's children placed with DCFS, nor did Mr. Harris tell Hamilton that occurred. (Sup3 C 1273-74)

On cross-examination, Hamilton described Mr. Harris at the time of his arrest as "resistant" but not "combative." (Sup3 C 1275) When the detectives entered the apartment, Mr. Harris was standing behind the female occupant of the apartment, at which time he was ordered to put his hands up. When Mr. Harris backed away from the detectives, he was forced to the ground and after a struggle, he was handcuffed. (Sup3 C 1276)

Hamilton explained that when he spoke with Mr. Harris at approximately 1:30 a.m. on August 29, Mr. Harris was advised of, and waived his rights. (Sup3 C 1278) During that first conversation, at which Detective Bagdon was also present, and which lasted about half an hour, Mr. Harris made an oral admission regarding the case in which his arrest warrant had been obtained, the [R.T.] case. Hamilton acknowledged that neither he nor Bagdon took any notes of that conversation. (Sup3 C 1279, 1304)

Hamilton and Bagdon left the interview room, but returned moments later. They then asked Mr. Harris about "the next case," in which the victim's name was Robinson. (Sup3 C 1280) Harris made an admission in that case, also. During that conversation, which lasted 15 to 20 minutes, neither Hamilton nor Bagdon took any notes. (Sup3 C 1281) Hamilton then asked Mr. Harris about a case in which the victim's name was R.J. That conversation took about 15 minutes. (Sup3 C 1282) During that conversation, neither Hamilton nor Bagdon took any notes. (Sup3 C 1287) Hamilton explained that he and Bagdon took no notes, wrote no General Progress Reports, nor did any paperwork regarding Mr. Harris' admissions in those three sex cases because Hamilton was already familiar with those cases. According to Hamilton, the information Mr. Harris gave him "matched the original facts of

the cases, so [he] didn't have any problem with remembering them." (Sup3 C 1289)

Between 3:00 and 4:00 a.m, after that third conversation with Mr. Harris, Hamilton and Bagdon left the interview room and tried to locate the victims to bring them in later that morning for lineups. (Sup3 C 1282) At that time, Mr. Harris hadn't said anything about any other cases. (Sup3 C 1283)

Around 7:00 a.m., Hamilton entered the interview room again. (Sup3 C 1285) At that time, Mr. Harris was moved into a room that had one-way glass for the lineups, which Hamilton conducted. (Sup3 C 1290) From the time Hamilton and Bagdon left the interview room between 3:00 and 4:00 a.m., until 7:00 a.m., Hamilton didn't see any other detectives enter that interview room, nor did any detectives tell Hamilton they did so. (Sup3 C 1287)

Hamilton testified that throughout the course of the investigation, Mr. Harris had been brought "chips and pop" and later, pizza. (Sup3 C 1293) He described Mr. Harris as "cooperating" with him during the investigation. (Sup3 C 1290)

After the State rested on the motion, the trial court found that the State had submitted sufficient evidence to require the defense to go forward. (Sup3 C 1307)

When the suppression hearing resumed, the defense presented Patrick Brunt (R 423-436) and Angela Clark. (R 436-467) However, neither testified regarding Mr. Harris' allegations of physical or mental coercion. Mr. Harris himself was not called by defense counsel to testify at the suppression hearing. Nor was any evidence presented by the defense regarding a pattern or practice of physical and mental abuse of persons in custody at Area 2, or of the testifying detectives' involvement in, or knowledge of, such a pattern and practice.

Following closing arguments (R 480-487), the trial court denied the motion to suppress, finding that there were "no threats regarding Angela Clark or any children," that Mr. Harris "was not physically abused in any way," and that his purported incriminating statements "were freely and voluntarily made." (R 491-492)

At the post-conviction evidentiary hearing, Petitioner next presented evidence in support of his assertion that there had been a decades long, hidden pattern and practice of physical abuse and torture committed by Area 2 Detectives under the command of, or trained

by, former Area 2 Lieutenant — and later Area 2 and 3 Commander — Jon Burge. That evidence included the following:

Petitioner's Exhibit 4: The 2006 Report of Special State's Attorneys (SSAs) Egan and Boyle.[5]

SSAs Egan and Boyle's order of appointment required them to "investigate allegations of torture, perjury, obstruction of justice, conspiracy to obstruct justice, and other offenses by police officers under the command of Jon Burge at Area 2 and Area 3 Headquarters in the City of Chicago during the period from 1973 to the present." (emphasis in original) (Sup6 C 6) Their Report concluded that, were it not for the fact that the statute of limitations had run, there were three cases which Egan and Boyle believed "would justify our seeking indictments for mistreatment of prisoners by Chicago police officers," and in which the evidence "would be sufficient to establish guilt beyond a reasonable doubt." (Sup6 C 19) SSAs Egan and Boyle also concluded,

> There are many other cases which lead us to believe or suspect that the claimants were abused, but proof beyond a reasonable doubt is absent.
>
> While not all the officers named by all the claimants were guilty of prisoner abuse, it is our judgment that the commander of the Violent Crimes section of Detective Areas 2 and 3, Jon Burge, was guilty of such abuse. It necessarily follows that a number of those serving under his command recognized that, if their commander could abuse persons with impunity, so could they.
>
> (Sup6 C 19)

Petitioner's Exhibit 9: The Supreme and Appellate Court opinions in *People v. Wrice*. (Sup3 C 1363-1401)

Both this Court and the Illinois Supreme Court have confirmed the admissibility and probative value of the 2006 SSA's Report. *People v. Wrice*, 406 Ill. App. 3d 43, 49-53 (1st Dist. 2010), affirmed as modified and remanded, *People v. Wrice*, 2012 IL 111860, ¶¶41-43. This Court noted that the Report "represents, for the first time, an independent evaluation by the SSA of 148 complaints of torture perpetrated by police officers under the command of Jon Burge at Area 2 & 3 from 1973 to 2006." *Wrice*, 406 Ill. App 3d at 52. (Sup3 C 1372-

[5] Petitioner submitted this 1,515 page exhibit to the trial court on compact disk. It is contained in the e-record of this appeal at Sup6 C 4-1519.

73) This Court further noted that evidence in the Report "of widespread, systematic torture of prisoners at Area 2," corroborated Wrice's claim that "his confession was procured by torture." *Id*., at 53. (Sup3 C 1373)

Petitioner's Exhibit 14: The City of Chicago's "Reparations for Burge Torture Victims" Ordinance and the Chicago City Council's Resolution for Burge Torture Survivors, May 6, 2015. (Sup3 C 430-35)

The City of Chicago has officially acknowledged the existence of the Area 2 and 3 Police torture scandal. In 2015, the Chicago City Council passed reparations legislation and, by way of Resolution, formally apologized for the acts of torture and physical abuse committed by Burge and those detectives working under his command. The City Council's Resolution stated that, "In 2010, Burge was convicted on charges of perjury and obstruction of justice for falsely denying that he and detectives under his command had engaged in torture and abuse and that he was aware of this torture and physical abuse of suspects." (Sup3 C 434) In its Resolution, the City Council also "acknowledge[d] this exceedingly sad and painful chapter in Chicago's history," and "formally express[ed] its profound regret for any and all shameful treatment of our fellow citizens that occurred." (Sup3 C 434)

Petitioner also presented evidence in support of his assertion that former Area 2 Detective Michael McDermott, who worked for several years under Burge's command, was aware of and participated in the long-hidden pattern and practice of the physical abuse and torture of persons in custody at Area 2. That evidence included the following:

Petitioner's Exhibit 29: In the Matter of the Charges Filed Against Commander Jon Burge, Detective Patrick O'Hara and Detective John Yucaitis Before the Police Board of the City of Chicago. (Sup3 C 921-982)

This exhibit established that former Area 2 Commander Jon Burge and former Area 2 Detective John Yucaitis were both disciplined for the incident in which Andrew Wilson was tortured at Area 2 on February 14, 1982. In late 1992, Burge was fired for torturing Wilson. (Sup3 C 965-970, 980) Yucaitis was suspended for 15 months for failing to take any action to stop Burge's torture of Wilson, or to provide or secure medical attention or care for the injured Wilson, or to report Burge's torture of Wilson to his commanding officer or anyone else in the CPD. (Sup3 C 975-79)

This exhibit also corroborated that Detective McDermott served under the command of Jon Burge from 1982 until 1986, when Burge was the supervisor of the Violent Crimes Division at Area 2 (Sup3 C 965-70), and that McDermott was a fellow Area 2 Detective of Yucaitis from 1982 until at least 1995.

Petitioner's Exhibit 21: Alphonso Pinex's Testimony at the Pretrial Suppression Hearing in *People v. Pinex*, 85 C 8139 (March 26, 1986) (Sup3 C 690-766)

Alphonso Pinex testified at his suppression hearing that on June 28, 1985, he was arrested for a murder that had taken place three years earlier. Pinex was transported Area 2, where he was placed in a second floor room. (Sup3 C 696-97, 699, 703, 725) When Pinex was arrested, he was already represented by counsel, who was scheduled to turn him in to the police the following day. (Sup3 C 699-701)

Two detectives, whom Pinex identified as Michael McDermott and Anthony Maslanka, entered the room in which he was detained, and questioned him. (Sup3 C 697-981) Neither detective read him his rights before the questioning began. (Sup3 C 702) Pinex acknowledged, however, that he was already familiar with those rights. (Sup3 C 191-94)

Detective Maslanka told Pinex that Pinex "knew what [he] was here for," and Maslanka didn't want any "bullshit." (Sup3 C 703) Pinex told Maslanka that he wanted his lawyer present before saying anything. Maslanka responded that Pinex didn't have a lawyer, but Pinex insisted that he did, because he was supposed to turn himself in the following day. Maslanka told Pinex he was tired of Pinex lying to him. (Sup3 C 703)

Maslanka then read "some papers" to Pinex and played an audio tape. (Sup3 C 704) After listening to the tape, Pinex told Maslanka that he "didn't care what they were saying," because they were "all lying." (Sup3 C 705) Maslanka then accused Pinex of lying, and repeatedly struck Pinex in the right eye with his fist. (Sup3 C 706, 734-35) Maslanka then grabbed Pinex by the hair, while McDermott struck Pinex in the ribs and face with his fist, and grabbed Pinex's leg so he couldn't move. (Sup3 C 707, 734, 737) Pinex estimated that the beating, during which he remained handcuffed to a ring on the wall, lasted ten to thirteen minutes. (Sup3 C 739-41) During that beating, Pinex defecated in his pants. (Sup3 C 708)

To stop the beating, Pinex "hollered" that he'd do what they wanted, which was to

implicate himself in the murder. (Sup3 C 707) When the beating ended, Pinex gave the detectives a statement. (Sup3 C 709) The first time Pinex saw a State's Attorney about this case was after the detectives had "whooped" him. (Sup3 C 708)

After Pinex signed the statement, he was allowed to meet with his lawyer in the same room in which he'd been beaten. Pinex told her the detectives had beaten him to get him to sign a statement and wouldn't let him see her. (Sup3 C 714-15)

Pinex also testified that as a result of the beating, the vision in his right eye was "blurry," and he could only really see out of his left eye. (Sup3 C 705, 709, 718) He'd received medical treatment for that eye seven or eight times at Cermak Hospital while incarcerated at the Cook County Jail. (Sup3 C 717-18, 758)

Petitioner's Exhibit 26: Excerpt from the 2006 Report of Special State's Attorneys Egan and Boyle on the abuse of Alfonso Pinex by Detectives Michael McDermott and Anthony Maslanka. (Sup3 C 886-906)

After reviewing all of the evidence in Pinex's case, including McDermott's and Maslanka's testimony at the hearing on Pinex's motion to suppress, SSAs Egan and Boyle's 2006 Report concluded that but for the running of the statute of limitations, there was "sufficient evidence to present to a grand jury and seek the indictment of Maslanka & McDermott for aggravated battery, perjury & obstruction of justice." (Sup3 C 904)

The SSA's Report noted that during their testimony at Pinex's suppression hearing, both McDermott and Maslanka denied abusing Pinex and denied any knowledge that Pinex had a lawyer at that time. (Sup3 C 900) The Report found that Pinex did tell McDermott and Maslanka that he had a lawyer and wanted her present before any questioning[6] (Sup3 C 901); that Pinex was truthful when he testified that Maslanka struck him in his eye and that McDermott hit him in his ribs and grabbed his legs so he couldn't move while the detectives continued to beat him until he defecated in his pants (Sup3 C 893, 901-903); and that McDermott and Maslanka provided "willfully false testimony that Pinex did not tell them he had a lawyer and wanted his lawyer present." (Sup3 C 902)

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[6] Pinex's lawyer was Ms. Freddrenna Lyle (Sup3 891), who is now a Circuit Court Judge in the Chancery Division. (www.cookcountycourt.org/JudgesPages/Lyle,FreddrennaM.aspx)

Petitioner's Exhibit 22: Shadeed Mu'min's Testimony in *People v. Mumin*, 85 CR 13285 (May 13, 1987) (Sup3 C 768-822)

Shadeed Mu'min testified at his suppression hearing that on October 30, 1985, he was pulled over by an unmarked police car and arrested on weapons charges when a pistol was found in the back seat of his car. (Sup3 C 770-72) He was transported to Area 2, where he was taken upstairs and placed in a small holding room. (Sup3 C 773-74)

A few minutes later, an officer Mu'min identified as then-Lt. Jon Burge entered the room. Burge handcuffed Mu'min to a ring on the wall, with his hands behind him, leaving Mu'min unable to sit. (Sup3 C 775-76) Burge asked Mumin about a robbery, and when Mu'min responded that he had no knowledge of the robbery, Burge told Mu'min that he would "talk before you leave here." (Sup3 C 777) Burge stepped out of the room for a few minutes and when he returned, he tightened Mu'min's handcuffs, causing pain and cutting off the circulation in Mu'min's wrists. Burge then left the room again. (Sup3 C 777)

About half an hour later, Burge returned and loosened the cuffs. Burge asked if Mu'min was ready to talk. Mu'min again told Burge he didn't know what Burge was talking about. (Sup3 C 777) Burge became angry and pushed Mu'min into the wall. (Sup3 C 778)

A few minutes later, Burge removed the handcuffs and escorted Mu'min from the holding room to his office, which was down the hallway. When they arrived in Burge's office, Burge handcuffed Mu'min to a chair and asked, "Do you know we can bury you in the penitentiary?" (Sup3 C 778-80) Mu'min again responded that he didn't know what Burge was talking about. (Sup3 C 779)

Burge then removed a .44 Magnum revolver from his desk drawer and removed all of the bullets except one. He spun the chamber, placed the gun to Mu'min's head, and pulled the trigger three times. When the gun didn't fire, Burge told Mu'min he was "damned lucky that I didn't kill you." (Sup3 C 780)

Burge then accused Mu'min of telling "a fucking lie." He jumped up from his desk and walked over to a typewriter. He removed the vinyl typewriter cover and told Mu'min, "You'll fucking talk or I'll kill you." (Sup3 C 782) With Mu'min's hands cuffed behind his back, Burge held the cover over Mu'min's head until he passed out. Burge had one hand

holding the back of Mu'min's head and pushed his other hand against Mu'min's face, smothering him. Mu'min was unable to breathe and felt like he was going to die. (Sup3 C 782-84) Mu'min testified that Burge did this in the presence of another detective, whom Mu'min couldn't identify.[7] (Sup3 C 785)

Burge repeated the smothering three times. The third time, Mu'min "hollered." (Sup3 C 785) Burge then removed the typewriter cover, and he and the other detective both laughed. (Sup3 C 785) The entire incident took twenty to thirty minutes. (Sup3 C 786) During the incident, Burge repeatedly called Mu'min "ni**er." (Sup3 C 788)

Burge then told Mu'min, "If you tell somebody, nobody will believe you because there's no marks on you and you better sign the fucking statement when this attorney gets here tomorrow." According to Mu'min, Burge continued, "If you don't, you'll get it even worse than what I did to you now." (Sup3 C 786) Mu'min agreed to sign a statement because he feared for his life and couldn't take any more torture. (Sup3 C 788, 792) The following day, Burge stuck his head in the holding room and told Mu'min, "I see you signed . . . good boy." (Sup3 C 793)

Petitioner's Exhibit 20: Michael McDermott's testimony in *United States v. Burge*, 08 CR 846 (N.D. Ill.), June 14, 2010 (Sup3 C 539-688)

In his immunized testimony for the Government at Burge's federal criminal trial, McDermott stated that he joined the CPD in 1977 as a patrolman. From 1981 until 1999, he served as an Area 2 Violent Crimes Detective under the command of four Lieutenants, one of whom was Jon Burge. (Sup3 C 542-44) McDermott's partners while he was at Area 2 included Tony Maslanka and Jim Boylan. (Sup3 C 547)

McDermott recalled testifying for the State at the hearing on Alfonso Pinex's motion to suppress statements in 1986. At that hearing, McDermott was asked questions about whether or not he'd struck Pinex during the time he spent with Pinex in an interrogation room at Area 2. (Sup3 C 638-39) McDermott acknowledged that when he testified before the federal grand jury that indicted Burge, McDermott told the grand jurors that he hadn't

[7] At Burge's criminal trial, McDermott identified himself as the detective who witnessed the incident between Burge and Mu'min at Area 2. (See Petitioner's Exhibit 20, below.)

been truthful in his testimony at Pinex's suppression hearing. (Sup3 C 646-47) McDermott admitted during his testimony at Burge's trial that he'd struck Pinex in the chest and knocked him down into a chair before beginning his interrogation. (Sup3 C 642) McDermott also acknowledged that he told the grand jurors that the reason he hadn't been truthful about that at Pinex's suppression hearing was "because [Pinex] was a murderer, and [McDermott] didn't want him to get off." (Sup3 C 647)

McDermott also testified at Burge's trial that sometime in the 1980s, he was standing outside Burge's office at Area 2, when he saw a "scuffle" between Burge and a suspect he later learned was Shadeed Mu'min. (Sup3 C 548-50) At that time, he saw Burge "take his gun out and secure it" (Sup3 C 552), and that Burge raised the gun and pointed it at the other side of the room where Mu'min was "at least ten or twelve feet away." (Sup3 C 556)

In his testimony at Burge's trial, McDermott denied that he saw Burge place a gun to Mu'min's head. (Sup3 C 551) However, McDermott acknowledged that in his testimony before the federal grand jury, he swore that Burge did point his gun at Mu'min. (Sup3 C 559) McDermott also acknowledged that he told the grand jurors that when Burge pointed his gun at Mu'min, Burge said "something to the effect about confessing." (Sup3 C 559-60)

McDermott also acknowledged that he told the grand jurors that after Burge pointed his gun at Mu'min, McDermott saw Burge approach Mu'min from behind and put something transparent over his head (Sup3 C 563-64); that McDermott didn't think Mu'min was able to breathe while that object was over his head because "that's the whole idea of doing that." (Sup3 C 569-70) McDermott "guess[ed]" that this was being done by Burge "in order to get a confession." (Sup3 C 570) In his testimony before the federal grand jury, McDermott described the incident as a "one-sided" confrontation; that after Burge placed that object over Mu'min's head, Mu'min might have struggled a bit, but not prior to that point. (Sup3 C 671)

In his testimony at Burge's trial, McDermott acknowledged that as a sworn law enforcement officer he should have done something about Burge's "inappropriate" treatment of Mu'min, but he didn't do so. (Sup3 C 578) Instead, when he was interviewed by the CPD's Office of Professional Standards (OPS) about the Mu'min incident, McDermott "lied

. . . about a couple of things." (Sup3 C 578) One of the things McDermott "probably" lied about to the OPS was whether he'd seen Burge point a gun at Mu'min. The other thing McDermott lied about to the OPS was whether he'd seen Burge place an object over Mu'min's head. (Sup3 C 579)

Petitioner's Exhibit 23: Tony Anderson's Testimony in *People v. Anderson*, 90 CR 11984 (Circuit Court of Cook County) (May 1, 1991) (Sup3 C 823-60)

At the hearing on his motion to suppress, Tony Anderson testified that on April 18, 1990, he was taken into custody by Chicago Police Officers, and transported to 11th and State, where he was placed in an interview room. (Sup3 C 825-27) Several hours later, he was taken to Area 2 and placed in a small room on the second floor. There, Detective McDermott refused his repeated requests to make a telephone call. (Sup3 C 827-29)

Anderson testified that McDermott later asked him about several armed robberies. When Anderson responded that knew nothing about those robberies, McDermott "put a gun to [Anderson's] head," and threatened to "blow [his] damn brains out." (Sup3 C 831-32) No one else was present at that time. (Sup3 C 831)

Petitioner's Exhibit 28: The Torture Inquiry and Relief Commission's disposition in Tony Anderson's case, TIRC claim No. 2011.014-A, and the attached database of abuse allegations against Detective Michael McDermott. (May 20, 2013) (Sup3 C 912-19)

In Tony Anderson's case, the Illinois Torture Inquiry and Relief Commission (TIRC) found sufficient evidence of torture to conclude that his claim was "credible and merits judicial review for appropriate relief." (Sup3 C 913) The TIRC's findings of fact included, in relevant part, that in April 1990, Anderson was arrested on auto theft charges and taken to Area 2 where he was questioned by Detectives Michael McDermott and Anthony Maslanka; that although Jon Burge had been transferred from Area 2 to Area 3 at that point, both McDermott and Maslanka had worked under Burge at Area 2; that during questioning, McDermott held a gun to Anderson's head and threatened to blow his brains out; and that Maslanka jabbed Anderson with a nightstick in his thighs and back, until Anderson was crying and agreed to confess. (Sup3 C 913)

The TIRC also found that McDermott had 13 other complaints of abuse pending against him of which the TIRC was aware. (Sup3 C 914) The TIRC attached to its

disposition order in Anderson's case, a database listing those complaints, which included: Franklin Burchette (threatened with electric prod and beating); Jerry Thompson (kicked, beaten with flashlight to the body and slapped in the face during interrogation); Jeffrey Howard (kicked and slapped during interrogation); Andrew Maxwell (hit, kicked and stomped on the foot); Daniel Vaughn (struck and threatened); David Randle (squeezed testicles and denied medication); Willie Pole (punched in the body and beaten, and allowed others to continue the beating); John Knight (slapped, choked, gun put to his head and trigger pulled, threatened with being killed); Richard Campbell (beaten on the chest and ribs); and Aubrey Dungey (beaten on the trunk of a car, handcuffed to a bench for three days) (Sup3 C 918-19)

Petitioner's Exhibit 27: McDermott's invocation of his Fifth Amendment right against self-incrimination before the Cook County Special Grand Jury. (Sup3 C 907-11)

Detective McDermott appeared pursuant to subpoena before the Cook County Special Grand Jury convened by SSAs Egan and Boyle, who were investigating the Area 2 torture scandal. Rather than testify, he invoked his constitutional right against self-incrimination, and informed SSA Boyle that he would continue to invoke that right regarding any questions Boyle or the grand jurors themselves might ask. (Sup3 C 908-11)

Petitioner's Exhibit 24: Documents establishing Michael McDermott's suspension pending discharge from employment in the Cook County State's Attorney's Office. (Sup3 C 862-70)

Finally, Petitioner submitted evidence establishing that Michael McDermott was suspended pending discharge from his job as an Investigator in the Cook County State's Attorney's Office (CCSAO). (Sup3 C 862-70) Documents from the CCSAO show that effective May 7, 2010, he was suspended pending discharge after being formally charged with violating the CCSAO's Standards of Conduct for: (1) admittedly lying during an interview conducted by an OPS investigator; and (2) admitting that he was not truthful in his testimony in *People v. Pinex*. (Sup3 C 863, 865, 867) Although those charges were "sustained" (Sup3 C 867), McDermott resigned before being discharged. (Sup3 C 869)

After Petitioner rested at the post-conviction evidentiary hearing, the State presented no evidence. The State did, however, submit an "Offer of Proof" (Sup6 C 1525-1700), which

consisted of seven photographs purportedly taken of Petitioner while in custody at Area 2 on August 29-30, 1995 (State's proffered Exhibit A) (Sup6 C 1527-34); the Patterson trial testimony of State witness Cermak Health Services Correctional Medical Technician Patricia Hayes (State's proffered Exhibit B) (Sup6 C 1535-63); the Patterson trial testimony of State witness ASA Leslie Quade (State's proffered Exhibit C) (Sup6 C 1564-1689); and the testimony of State witness Area 2 Detective Frank Luera at sentencing in the Ford case. (State's proffered Exhibit D) (Sup6 C 1690-99)

Following closing arguments (Sup R 28-65), the trial court took the matter under advisement. (Sup R 66). On September 21, 2018, the court announced its ruling. The court first stated that Petitioner had "accurately framed the issue as would the result of the suppression hearing likely be different if the new evidence had been presented at the suppression hearing." (R 10) The court took "likely to be different" to mean the "common law usage of likely," as the court "couldn't find . . . any other test of likely." (R 10)

The court found that Petitioner had established: That there had been a pattern and practice of "physical abuse and torture" at Area 2 Police Headquarters; that Detective McDermott was personally complicit in abuse inflicted by Jon Burge on a custodial suspect; that McDermott actively participated in the abuse of a custodial suspect himself in at least one instance; and that McDermott's assertion of his Fifth Amendment privilege against self-incrimination when questioned before the Special State Grand Jury investigating abuse at Area 2, "would justify certainly calling his testimony into doubt." (R 11)

After making those factual findings, the court explained that those findings don't "get us to the end of the answer here," because the court also had to look at McDermott's role under the "particular facts of this case." (R 11) The court then found that there was a great deal of notoriety about Mr. Harris' case, and that the news media "referred to the defendant as the Chatham rapist before he was caught." (R 11) This made it "a heater case for the police," (R 11) and for that reason the police "don't want anything to mess it up." (R 14) The court specifically noted, "there's also the statement of Yucaitis," who was "told not to talk to the defendant because he was told we don't want to 'screw up the case.'" (R 14)

The court additionally noted that the alleged abuse and torture inflicted on Mr. Harris took place approximately two years after Burge had been fired from the police department, and that aside from Detective McDermott, "no other detective involved in this pattern and practice was involved in this case." (R 11) The court also stated that it "seems impossible to me that if he was beaten as badly as he was, and the next thing he's asking for is a lawyer." (R 14) The court found that Mr. Harris had "one small scratch on the side of his head which is readily explained by the taking down of the defendant at the time of his arrest." (R 15) Finally, the court found that "looking at the timeline," Mr. Harris' confession to the rape of R.T. to Detective Hamilton occurred prior to the time Mr. Harris claimed that he was abused by Detectives McDermott and Boylan. (R 12) For all of those reasons, the court denied post-conviction relief in all three cases. (R 16) This appeal follows.

ARGUMENT

I. Petitioner Ralph Harris met his burden to establish by a preponderance of evidence that when the testimony presented by the State at his pretrial suppression hearing is weighed against the newly discovered evidence of the pattern and practice of torture and physical abuse at Area 2 Police Headquarters and evidence of the involvement in that pattern and practice by former Area 2 Detective Michael McDermott, the outcome of his suppression hearing would likely have been different.

Standard of Review

Normally, the standard of review of the denial of post-conviction relief following an evidentiary hearing is whether the trial court's ruling is manifestly erroneous. *People v. Johnson*, 206 Ill. 2d 348, 357 (2002); *People v. Velasco*, 2018 IL App (1st) 161683, ¶137. However where, as here, the court's ruling is based solely on documentary evidence, a *de novo* standard of review applies. See *People v. Radojcic*, 2013 IL 114197, ¶34-36. As the *Radojcic* Court noted, where no live testimony is presented in the trial court, that court "[does] not occupy a position superior to the appellate court . . . in evaluating the evidence offered." *Id*., at ¶34. See also *People v. Dixon*, 2015 IL App (1st) 133303, ¶20 ("A trial court's findings based on testimonial evidence are entitled to great deference, but its findings based on nontestimonial evidence (exhibits, like surveillance videos, admitted into evidence) are not entitled to any deference.") But regardless of which standard of review is employed (See Issue 2, below), the trial court's order denying post-conviction relief should be reversed, and this case remanded for a new hearing on Petitioner's motion to suppress statements.

Petitioner met his burden of proof

As the parties and the trial court below agreed, Petitioner Harris' entitlement to post-conviction relief on his coerced confession claim is controlled by *People v. Whirl*, 2015 IL App (1st) 111483. (Sup7 C 71; R 10) In *Whirl*, this Court held that a post-conviction petitioner is entitled to a new suppression hearing if his newly discovered evidence of physical abuse and torture, when weighed against the evidence presented by the State at his suppression hearing, would likely have changed the outcome of that suppression hearing.

When the principles of law announced in *Whirl*, and recently reaffirmed by this Court in *People Wilson*, 2019 IL App (1st) 181486, ¶52, and *People v. Galvan*, 2019 IL App (1st) 170150, ¶ 74, are applied to the undisputed newly discovered evidence of former Detective Michael McDermott's active role in the long-hidden pattern and practice of abuse and torture at Area 2, about which he admittedly lied under oath to cover up his own and others' acts of abuse and torture, it is clear that Petitioner Harris is entitled to post-conviction relief.

What did Petitioner's undisputed evidence establish? First, it established that there had been a hidden, decades long, systematic pattern and practice of physical abuse and torture of persons in custody at Area 2 for the purpose of coercing confessions, committed by detectives who were under the command of, or trained by, former Area 2 Lieutenant — and later Area 2 and 3 Commander — Jon Burge.

The 2006 Report of Special State's Attorneys Egan and Boyle concluded that, were it not for the fact that the statute of limitations had run, there were three cases which Egan and Boyle believed "would justify our seeking indictments for mistreatment of prisoners by Chicago police officers," and in which the evidence "would be sufficient to establish guilt beyond a reasonable doubt." (Report at 16) (Sup6 C 19) SSAs Egan and Boyle also concluded that there were "many other cases" in which they believed persons were abused at Areas 2 and 3, but in which "proof beyond a reasonable doubt is absent." *Id*. The SSAs also observed,

> While not all the officers named by all the claimants were guilty of prisoner abuse, it is our judgment that the commander of the Violent Crimes section of Detective Areas 2 and 3, Jon Burge, was guilty of such abuse. It necessarily follows that a number of those serving under his command recognized that, if their commander could abuse persons with impunity, so could they.
>
> (Report at 16) (Sup6 C 19)

Evidence confirming the existence of that pattern and practice of physical abuse and torture at Area 2 also includes this Court's opinion in *People v. Wrice*, 406 Ill. App. 3d 43 (1st Dist. 2010), affirmed as modified and remanded, *People v. Wrice*, 2012 IL 111860, ¶¶41-43, in which this Court specifically noted that the SSA's Report "represents, for the first time, an independent evaluation by the SSA of 148 complaints of torture perpetrated by

police officers under the command of Jon Burge at Area 2 & 3 from 1973 to 2006." *Wrice*, 406 Ill. App 3d at 52. (Petitioner's Exhibit 9) (Sup3 C 1372-73)

That evidence also included the City of Chicago's "Reparations for Burge Torture Victims" Ordinance and the Chicago City Council's Resolution for Burge Torture Survivors. (Petitioner's Exhibit 14) (Sup3 C 430-35) Those documents reflect the City of Chicago's official acknowledgment that Burge and those under his command committed acts of torture, for which the City formally apologized by way of Resolution, and for which the City provided material redress by passing reparations legislation.

Petitioner also presented evidence establishing that former Area 2 Detective Michael McDermott was aware of, and personally participated in, the pattern and practice of physical abuse and torture at Area 2 Police Headquarters. That evidence included the significant fact that McDermott served under the command of disgraced and convicted former Area 2 Commander Jon Burge, the mastermind of the Area 2 torture scandal. (Petitioner's Exhibits 29 and 30) (Sup3 C 965-70, 975-79, 1173)

McDermott's direct involvement in that pattern and practice of abuse and torture was established by evidence that Alphonso Pinex was brutally beaten while in custody at Area 2 by McDermott and his then-partner, Detective Anthony Maslanka; a beating that lasted for at least ten minutes, permanently damaged Pinex's right eye, and didn't stop until Pinex defecated in his pants and agreed to implicate himself in a murder. (Petitioner's Exhibit 21) (Sup3 C 697-707, 734-41)

Petitioner's evidence also established that SSAs Egan and Boyle, after reviewing all of the evidence in Pinex's case, including McDermott's and Maslanka's testimony at the hearing on Pinex's motion to suppress, concluded that but for the running of the statute of limitations, there was "sufficient evidence to present to a grand jury and seek the indictment of Maslanka & McDermott for aggravated battery, perjury & obstruction of justice" for their crimes against Pinex during his interrogation, and for their false testimony at his subsequent trial. (Petitioner's Exhibit 26) (Sup3 C 904) The SSA's Report noted that during their testimony at Pinex's suppression hearing, both McDermott and Maslanka denied abusing

Pinex. (Sup3 C 900) However, the Report concluded that Pinex was truthful when he testified that Maslanka struck him in his eye and that McDermott hit him in his ribs and grabbed his legs so he couldn't move, while the detectives continued to beat him until he defecated in his pants (Sup3 C 893, 901-903); and that McDermott and Maslanka provided "willfully false testimony that Pinex did not tell them he had a lawyer and wanted his lawyer present." (Sup3 C 902)

Petitioner's evidence also established that McDermott admitted under oath to lying about his abuse of Alphonso Pinex. During McDermott's immunized testimony for the Government at Jon Burge's federal criminal trial, he acknowledged that when he earlier testified before the federal grand jury that indicted Burge, he told the grand jurors that he hadn't been truthful in his testimony at Pinex's suppression hearing. (Sup3 C 646-47) McDermott admitted that he'd struck Pinex in the chest and knocked him down into a chair before beginning his interrogation. (Sup3 C 642) McDermott also acknowledged that he told the grand jurors the reason he hadn't been truthful about that in his testimony at Pinex's suppression hearing was "because [Pinex] was a murderer, and [McDermott] didn't want him to get off." (Sup3 C 647) Tellingly, McDermott's admitted rationale for lying under oath at Pinex's suppression hearing was equally applicable to his testimony at Petitioner Harris' suppression hearing; that is, that McDermott admittedly viewed Harris as "evil," and as a "bad person" who is "extremely dangerous." (Petitioner's Exhibit 30) (Sup3 C 1195) Clearly, McDermott had a vested interest in seeing that Petitioner Harris' purported confessions were admitted into evidence at his trials, and that *he* was convicted of all charges, so that *he* "didn't get off." This provided McDermott with a convenient rationale for perjuring himself at Petitioner's suppression hearing.

In further support of McDermott's knowledge of, and participation in, the regime of torture at Area 2, Petitioner presented evidence that McDermott admittedly witnessed Burge torturing Shadeed Mu'min in Burge's office at Area 2 in order to obtain a confession. Yet McDermott admittedly not only failed to report that torture to anyone, but instead, lied about it when later questioned by the OPS. (Petitioner's Exhibit 20 at Sup3 C 548-79, and

Petitioner's Exhibit 22 at Sup3 C 770-93).

Mu'min testified that when Burge finished torturing him — torture that was admittedly witnessed by McDermott — Burge told Mu'min, "If you tell somebody, nobody will believe you because there's no marks on you." (Sup3 C 786) Mu'min's testimony in that regard bears the definite ring of truth, as the lack of serious visible physical injuries to persons who were abused and tortured at Area 2 was the result of methods used by detectives that were specifically "designed to inflict pain and instill fear *while leaving minimal marks*." *United States v. Burge*, 711 F.3d 803, 806 (7th Cir. 2013) See also *People v. Whirl*, 2015 IL App (1st) 111483, ¶104 (After "Burge was no longer at Area 2 . . . (t)he only evidence of change appears to be that the methods became less brutal over time and *more care was taken to avoid causing detectable injuries*.") (emphasis added to both quotes); *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 69 ("(T)here is no requirement that petitioner's allegations be supported by obvious physical injury, and it is hardly surprising that his torturers would avoid leaving a mark.")

Petitioner also presented evidence that, similar to his own allegation that McDermott put a gun to *his* head, Tony Anderson testified at his suppression hearing that McDermott "put a gun to [Anderson's] head," and threatened to "blow [his] damn brains out." (Sup3 C 831-32) Petitioner's evidence also showed that in Anderson's case, the TIRC found sufficient evidence of torture to conclude that his claim was "credible and merits judicial review for appropriate relief." (Sup3 C 913) And finally, in Anderson's case, the TIRC noted that McDermott had 13 other complaints of abuse lodged against him. (Sup3 C 914)

Petitioner's evidence also established that McDermott invoked his Fifth Amendment right against self-incrimination when subpoenaed to testify before the Cook County Special Grand Jury convened by SSAs Egan and Boyle, who were investigating the crimes committed by Burge and his subordinates at Area 2. When McDermott appeared before the grand jury, he took the Fifth, and informed SSA Boyle that he would continue to do so with regard to any questions Boyle or the grand jurors themselves might ask him. (Petitioner's Exhibit 27) (Sup3 C 908-11)

Although the trial court below found that McDermott's invocation of the Fifth Amendment "would justify certainly calling his testimony into doubt" (R 11), it appears that the court gave only lip service to that legal principle, as it ultimately found McDermott's suppression testimony to be entirely credible. However, as this Court so graphically stated in *People v. Wilson*, 2019 IL App (1st) 181468, ¶66, in the context of the Area 2 torture scandal, "the decision of government actors to invoke their fifth amendment privilege against self-incrimination is judicially deafening under the facts of this morbid tale of improper law enforcement." Quoting *People v. Gibson*, 2018 IL App (1st) 162177, ¶85, the *Wilson* Court stressed that "the fifth amendment does not preclude a trier of fact from making an adverse inference that a party's refusal to testify is evidence of guilt," but instead, "the court may treat a party's refusal to testify as evidence of the misconduct alleged." *Wilson*, at ¶66. Unfortunately, and erroneously, the trial court below failed to do so.

Finally, Petitioner's evidence established that McDermott was suspended pending discharge from his job as an investigator in the Cook County State's Attorney's Office for perjuring himself at the hearing on Alfonso Pinex's motion to suppress, and for lying to the OPS about Burge's torture of Shadeed Mu'min. (Petitioner's Exhibit 24) (Sup3 C 862-70) This demonstrates that although McDermott's admitted crimes of perjury and obstruction of justice were beyond the reach of prosecution, the Cook County State's Attorneys Office itself deemed McDermott's crimes to be intolerable.

This Court's opinion in *People v. Whirl*, 2015 IL App (1st) 111483 not only provides the controlling legal principle for Petitioner's case, it is also instructive as to the appropriate outcome. As in the present case, the petitioner in *Whirl* had an evidentiary hearing on whether his confession had been physically coerced. At the conclusion of that hearing, the trial court denied relief. Although the trial court acknowledged that Whirl had consistently claimed that he'd been tortured, that his claims were notably similar to other claims of torture, and that his allegations were consistent with findings of systematic and methodical torture at Area 2 under former Commander Burge, the court found that the allegations of torture regarding other persons in custody presented by Whirl were "too remote." *Whirl*, at

¶70. The trial court ultimately ruled that Whirl had not established that he had been abused or tortured at Area 2, finding that he was simply not credible, as his testimony at the hearing had been impeached on "many issues." *Id.*

On appeal, this Court reversed, holding that in the context of a claim such as Whirl's, *i.e.*, that newly discovered evidence would have likely altered the outcome of a suppression hearing, "the purpose of an evidentiary hearing is not for the trial court to determine the ultimate issue of whether a confession was coerced." *Whirl*, ¶80. Rather, the Court held,

> (T)he issue at this stage of post-conviction proceedings is not whether the confession itself was voluntary, but whether the outcome of the suppression hearing likely would have differed if the officer who denied harming the defendant had been subject to impeachment based on evidence revealing a pattern of abusive tactics employed by that officer in the interrogation of other suspects.
>
> *Whirl*, ¶80.

This Court concluded that "the new evidence presented at the post-conviction hearing, when weighed against the State's original evidence, was conclusive enough that the outcome of the suppression hearing likely would have been different had [the detective involved] been subject to impeachment based on evidence of abusive tactics he employed in the interrogation of other suspects." *Whirl*, ¶110. This Court remanded the case with directions that Whirl's guilty plea be vacated and that he receive a new suppression hearing, and if necessary, a trial. *Id.*, ¶113. The legal and factual similarities between the *Whirl* case and Petitioner Harris's case require the same outcome here; that is, that Petitioner Harris be granted post-conviction relief in the form of a new suppression hearing, and if necessary, new trials in the Patterson, Ford and R.T. cases.

Indeed, Petitioner's evidence in support of post-conviction relief is even stronger than the evidence in Whirl's case, as his case is unique among the many Area 2 torture cases that have been litigated in Illinois courts over the past four decades. Unlike any of those cases, Petitioner Harris presented not only *allegations* that Detective McDermott physically abused other custodial suspects at Area 2. Rather, he presented McDermott's *own sworn admissions* that he physically abused Alphonso Pinex in an interrogation room at Area 2, and then lied about that abuse at Pinex's suppression hearing. (Sup3 C 642, 647) Petitioner presented not

only *allegations* that there was a code of silence about the regime of torture at Area two. Rather, he presented McDermott's *own sworn admissions* that he watched Jon Burge torture Shadeed Mu'min in his office at Area 2 for the purpose of coercing a confession, and that McDermott not only failed report Burge's torture of Mu'min, he lied when he was later interviewed by the OPS about the Mu'min incident. (Sup3 C 548-79) As this Court held in *Whirl*, "Even if the new evidence established only that [a detective] stood by and did nothing while other officers committed acts of torture and abuse, silent acceptance is still relevant to the issue of whether [the detective's] credibility may have been impeached as a result of this evidence." ¶103. See also *People v. Jakes*, 2013 IL App (1st) 113057, ¶ 32, (holding that the silent acceptance by one officer of a crime committed by a fellow officer is relevant to the first officer's credibility).

These admittedly undisputed facts are a microcosm of the hidden, decades-long regime of torture and abuse of persons in custody under the leadership of Jon Burge and his "midnight crew" of henchmen, who carried on in Burge's footsteps after Burge was transferred to Area 3 and ultimately fired from the CPD. When McDermott obtained immunity from federal prosecution for his testimony against Burge, he gave the federal grand jurors, and later our entire community, the first real "insider's look" at what had long been suspected was happening at Area 2: That Burge, and detectives under his command were abusing and torturing persons in custody, then lying under oath about that abuse and torture at suppression hearings so that the defendants wouldn't have their coerced confessions suppressed; that suspects were threatened with fake "Russian Roulette," or suffocated with typewriter covers placed over their heads so they couldn't breathe, all in an effort to obtain confessions. In just those few admittedly undisputed facts, the crux of the Area 2 torture scandal is revealed: Physical abuse and torture, perjury, and cover-up — all perpetrated by Chicago Police Detectives in an effort to extract coerced confessions, and to keep that coercion secret by any means necessary.

Petitioner's undisputed newly discovered evidence established that former Area 2 Detective Michael McDermott is an admitted abuser and perjurer, who would lie under oath

at a suppression hearing to prevent someone he considered to be a murderer from "getting off." That undisputed evidence established that McDermott, who witnessed Burge himself torturing a suspect, not only failed to report that torture, but later lied about it when interviewed by the OPS, the agency tasked with investigating police misconduct. That undisputed evidence also established that McDermott, when subpoenaed to testify about the Area 2 torture scandal by a grand jury — but *without* immunity from prosecution — refused to testify and instead invoked his right against self-incrimination. Surely, this evidence meets, and even exceeds Petitioner's burden under *Whirl* to show that "the outcome of the suppression hearing likely would have differed *if the officer who denied harming the defendant had been subject to impeachment based on evidence revealing a pattern of abusive tactics employed by that officer in the interrogation of other suspects." Whirl*, ¶80. (emphasis added)

Beyond McDermott's admitted abuse, perjury and coverup in the Pinex and Mu'min cases, Petitioner marshaled even more undisputed evidence in support of his coerced confession claims. However, even if this Court considers only those few, but powerful, undisputed facts about McDermott's misconduct and crimes in Pinex and Mu'min, those facts alone establish that if they are presented at a new suppression hearing on Petitioner's coerced confession claim, the outcome of that hearing likely would be different. See e.g., *People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 62 ("We find that the new evidence of McDermott's perjury probably would change the result of the motion to suppress [the defendant's] statements.") Under *People v. Whirl*, 2015 IL App (1st) 111483, that is all that Petitioner need establish to be entitled to a new suppression hearing.

The prejudice flowing from the admission of Petitioner's coerced confessions at his trials is indisputable and undeniable, as the admission of a physically coerced confession can never be harmless error. *People v. Wrice*, 2012 IL 111860, ¶84. In contrast, the relief requested by Petitioner is quite modest. At this procedural juncture, Petitioner is not asking this Court for a new trial, or even for this Court to suppress his purported confessions. He merely asks this Court to reverse the trial court's ruling and remand this case for a new

suppression hearing at which all of the relevant newly discovered evidence can be considered.

Petitioner also requests that if this case is remanded for a new suppression hearing, it be assigned to a different judge. In his remarks and rulings in this case, both at trial and in post-conviction proceedings, Judge Porter has already made findings on the relative credibility of Petitioner Harris and the testifying detectives; *i.e.*, he's found the detectives to be credible and Petitioner Harris to lack credibility. Such findings, once made, are difficult, if not impossible, for a judge to erase from his or her mind. And, at a new suppression hearing, the same credibility issues will be the determinative factor in whether Petitioner Harris' motion to suppress is granted or denied.

A new suppression hearing, especially one that will involve significant newly discovered evidence that has the potential to change the outcome of that hearing, should, in all fairness, begin with a clean slate and an open mind on the part of the factfinder. See, e.g., *People v. Serrano*, 2016 IL App (1st) 133493, ¶45-46 (Appellate court would assign a different judge to handle petition for post-conviction relief on remand where, pursuant to the discretion conferred by the court's rules, the interests of justice would be best and most efficiently served by the case being assigned to a different judge on remand, which would also prevent prejudice to petitioner.); *People v. McAfee*, 332 Ill. App. 3d 1091, 1097 (3rd Dist. 2002) (finding that remand to a different judge for a new sentencing hearing was warranted "in order to remove any suggestion of unfairness").

Petitioner Ralph Harris respectfully requests that this Court conduct *de novo* review of the evidence presented below, reverse the ruling of the trial court, and remand this cause for a new suppression hearing before a different judge.

II. The trial court's denial of relief was manifestly erroneous, given the overwhelming evidence presented in support of Petitioner Harris' claims, and the complete dearth of evidence presented by the State in opposition to those claims; and given the court's several erroneous factual findings, none of which were supported by the evidence presented at the post-conviction evidentiary hearing.

Standard of review

Assuming this Court declines to apply a *de novo* standard of review as requested above in Issue, I, the Court should nevertheless find that trial court's ruling was manifestly erroneous, given the overwhelming undisputed evidence presented in support of Petitioner's claims as outlined above, and the complete dearth of evidence presented by the State in opposition to those claims. See *People v. Johnson*, 206 Ill. 2d 348, 357 (2002); *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 76. (When a post-conviction petition is denied after an evidentiary hearing, the trial court's ruling is reviewed for manifest error.) Manifest error is "error which is clearly evident, plain, and indisputable." *People v. Galvan*, 2019 IL App (1st) 170150, ¶ 65. (Internal quotation marks omitted) See also *People v. Coleman*, 2013 IL 113307, ¶ 98 ("A decision is manifestly erroneous when the opposite conclusion is clearly evident."). Moreover, the trial court's ruling was heavily based on several erroneous findings, none of which were supported by the evidence presented at the post-conviction evidentiary hearing, and some of which were contradicted by the documented history of the Area 2 torture scandal. For those reasons, the trial court's ruling should be reversed and this case remanded for a new suppression hearing.

The trial court's findings

Based on the undisputed evidence presented by Petitioner, the trial court below found that there had, in fact, been a long-standing pattern and practice of "physical abuse and torture" of persons in custody at Area 2; that former Detective Michael McDermott was personally complicit in abuse inflicted by Jon Burge; that McDermott himself actively participated in the abuse of a custodial suspect in at least one instance; and that McDermott's assertion of his Fifth Amendment right against self-incrimination when questioned before the Special Cook County Grand Jury investigating the abuse at Area 2 "certainly" justified

calling McDermott's testimonial credibility into doubt. (R 11) Notwithstanding those significant findings, the court explained that they don't "get us to the end of the answer here," because the court believed it also had to look at McDermott's role under the particular facts of this case. (R 11) The court then made several additional findings regarding the particular "facts" of this case.

First, the court found that this was a "heater case for the police," and for that reason, the police didn't "want anything to mess it up." (R 11, 14) The court specifically noted Detective Yucaitis' testimony at the suppression hearing that he was "told not to talk to the defendant because he was told we don't want to 'screw up the case.'" (R 14) Second, the court found that the alleged abuse and torture inflicted on Petitioner took place approximately two years after Burge had been fired from the police department, and that aside from Detective McDermott, "no other detective involved in this pattern and practice was involved in this case." (R 11) Third, the court found that Petitioner Harris had suffered only "one small scratch on the side of his head which is readily explained by the taking down of the defendant at the time of his arrest." (R 15) Finally, the court found that "looking at the timeline," Petitioner Harris' confession to the rape of R.T. occurred prior to the time he claimed that he was abused by Detectives McDermott and Boylan. (R 12) Based on those findings, the trial court denied post-conviction relief. (R 16) However, none of those findings were supported by the evidence, and some were actually contradicted by the evidence, rendering the trial court's ultimate ruling manifestly erroneous

A. The trial court's denial of post-conviction relief was manifestly erroneous, given the overwhelming evidence presented in support of Petitioner's claims, and the complete dearth of evidence presented by the State in opposition to those claims.

As Petitioner detailed above in the Statement of Facts, he presented a mountain of undisputed, newly discovered evidence establishing that there had been a hidden, decades long, systematic pattern and practice of the physical abuse and torture of persons in custody at Area 2 for the purpose of coercing confessions, committed by detectives who were under the command of, or trained by, former Area 2 Lieutenant — and later Area 2 and 3 Commander — Jon Burge; and that former Area 2 Detective Michael McDermott, who

served under Burge's command for several years, was aware of, and personally participated in, the pattern and practice of physical abuse and torture at Area 2 Police Headquarters. In sharp contrast, the State presented no evidence at all at the post-conviction hearing below. Therefore, all of the Petitioner's newly discovered evidence stands undisputed, unimpeached and unrebutted. Just as this Court recently found in *People v. Galvan*, 2019 IL App (1st) 170150, the new evidence presented at the post-conviction hearing below, when weighed against the State's original evidence at the hearing on Petitioner's motion to suppress, "was conclusive enough that the outcome of the suppression hearing likely would have been different if Detective [McDermott] had been subject to impeachment based on evidence of abusive tactics he employed in the interrogation of others." *Galvan*, at ¶ 74. And, as in *Galvan*, the trial court's opposite conclusion below was manifestly erroneous. *Id.*

B. The trial court's denial of post-conviction relief was manifestly erroneous, given the court's reliance on a number of findings in support of its ruling, none of which were supported by the evidence, and some of which were contradicted by the evidence.

The trial court made a number of findings about "the particular facts of this case" on which it relied to deny post-conviction relief. However, none of those findings were supported by the evidence, and some were contradicted by the documented history of the Area 2 torture scandal. As a result, the court's ultimate ruling denying post-conviction relief was manifestly erroneous.

1. The trial court's finding that Area 2 detectives wouldn't abuse a custodial suspect in a "heater case" like Petitioner Harris' case, is not supported by the evidence, and in fact, is contradicted by the documented history of the Area 2 torture scandal.

In its ruling denying post-conviction relief, the trial court reasoned, in part, that because there was a great deal of notoriety and media interest in Petitioner Harris' case, that made it "a heater case for the police" (R 11) According to the trial court, this meant that the police didn't want to do anything "to mess it up." (R 14) In support of this finding, the court specifically referenced the suppression hearing testimony of Detective Yucaitis (at Sup3 C 1244), who claimed he had been apprised by another detective not to talk to Mr. Harris because he had already invoked his rights, and they "didn't want to screw up the case." (R

14) Apparently, the trial court believed that Area 2 detectives would never physically abuse or torture a custodial suspect in a "heater case" such as Petitioner' case, because that might "screw up" the case, *i.e.*, make a conviction difficult or impossible.

Petitioner has no quarrel with the trial court's finding that this was a "heater case." However, Petitioner strenuously disagrees with the trial court's conclusion that this fact somehow insulated him from being physically abused or tortured by Area 2 Detectives. Indeed, quite the opposite is true. Because the police are under tremendous pressure to "solve" heater cases, the temptation to use physical coercion and torture to obtain confessions — the most damaging evidence against a criminal defendant — was undoubtedly irresistible to Burge and his henchmen.

For example, what is probably the City of Chicago's most notorious and widely covered "heater case" in the last half-century was the 1982 murders of Chicago Police Officers William Fahey and Richard O'Brien, a case which led to "the biggest manhunt in Chicago history." *People v. Jackie Wilson*, 2019 IL App (1st) 181486, ¶1. In investigating that crime, Area 2 Detectives didn't hesitate to brutally torture and physically abuse brothers Andrew and Jackie Wilson. See *Jackie Wilson*, at ¶13-17, 35-43; *People v. Andrew Wilson*, 116 Ill.2d 29, 33-43 (1987). See also, the Chicago Reader articles about the systemic torture and abuse of persons in custody at Area 2 Chicago Police Headquarters written by investigative journalist John Conroy (starting with the "House of Screams" in January 1990 and ending with "The Persistence of Andrew Wilson" in November 2007).[8]

Indeed, it is likely that Area 2 detectives employed torture and physical abuse to obtain confessions even more readily in "heater cases," given the pressure on the police to "solve" such cases as soon as possible. And the surest way to guarantee a conviction is to provide the State's Attorney's Office with a defendant's confession, voluntary or otherwise. The trial court's conclusion that Area 2 Detectives would refrain from physically abusing or

[8] "Police Torture in Chicago: An archive of articles by John Conroy on Police Torture, Jon Burge and related issues" at: http://www.chicagoreader.com/chicago/police-torture-in-chicago-jon-burge-scandal-articles-by-johnn-conroy/Content?oid=1210030.

torturing custodial suspects in "heater cases," such as Petitioner Harris' case, had no basis in the evidence presented at the post-conviction evidentiary hearing.

2. The trial court's finding that Area 2 Detectives wouldn't abuse a custodial suspect after Jon Burge's firing from the Chicago Police Department is not supported by the evidence, and in fact, is contradicted by the documented history of the Area 2 torture scandal.

In denying post-conviction relief, the trial court also observed that it was unlikely that Petitioner was physically abused at Area 2 in August 1995, because that was "approximately two years after Jon Burge is fired from the police department." The trial court apparently believed that no Chicago Police Detective in his or her right mind would physically abuse or torture a custodial suspect, given the ignominious fate of Burge, who was fired from the CPD in 1993 for torturing Andrew Wilson at Area 2 in 1982. However, as Petitioner's counsel pointed out in rebuttal closing argument, the firing of Jon Burge didn't magically bring an end to the Area 2 torture scandal, or to allegations of physical abuse and torture inflicted by members of the CPD in general. (Sup R 61) In fact, the trial court's speculation about the effect of Burge's firing ignored the uncontradicted evidence presented by Petitioner that a number of individuals complained to the Illinois TIRC that long after Burge's firing from the CPD, *they* had been physically abused by members of the CPD. (Petitioner's Exhibit 28) (Sup3 C 919) Moreover, in addition to those claims listed in Petitioner's Exhibit 28, there have been at least eight additional claims of physical abuse and torture filed with the TIRC based on incidents that took place as recently as 2003, two of which named Detective McDermott as one of the perpetrators.[9]

For example, Abdul Muhammed claimed that in 2000, while he was in custody at Area 2, Detective McDermott boasted that he "kn[ew] how to get [Muhammed] to confess

[9] This court may take judicial notice of these additional claims, all of which are on the TIRC's website, www.illinois.gov/tirc. See Ill. Rule of Evid. 201(b, d). See *People v. Mata*, 217 Ill. 2d 535, 539 (2005) (Reviewing court may take judicial notice of matters that are readily verifiable from sources of indisputable accuracy.); Cf., *People v. Sanchez*, 404 Ill. App. 3d 15, 17 (1st Dist. 2010) ("(T)his court may take judicial notice of the public records of the Illinois Department of Corrections.")

without leaving a mark." Muhammad also claimed that he was "beaten by McDermott with a case file on the head, denied food, forced to urinate on the floor and to defecate into a shirt in his interrogation room because he was denied bathroom use." This prompted McDermott "to push him in the face with his forearm, cutting the inside of his lip." The TIRC found that "Muhammed's partial credibility, coupled with the long history of allegations and court findings against Detective McDermott regarding torture and perjury, is enough to warrant a hearing by the courts." *In re: Claim of Abdul M. Muhammed*, TIRC Claim No. 2014.256-M.

Similarly, James Lenoir claimed that in 2003, he was handcuffed to the wall of an interrogation room, and that the cuffs were so tight they cut off his circulation. Lenoir also claimed that Detective Dave Friel beat him repeatedly with a phone book, and that he was threatened by Detective McDermott that "this can last all night" unless Lenoir signed a written statement. The TIRC found that,

> The history of Detective McDermott indicates not only a history of abuse, but a pattern of deception of investigating officials. Multiple courts or investigative bodies found McDermott to be an unreliable witness, and that he committed perjury on more than one occasion. On several of these occasions, McDermott engaged in this deception in order to conceal his colleagues' abusive practices.
>
> *In re: Claim of James Lenoir*, TIRC Claim No. 2013.145-L.

In addition, the TIRC found that the following claims, all dated well after Burge's firing, contained "sufficient evidence of torture to merit judicial review." See 775 ILCS 40/45(C):

- Scott Mitchell's claim that in 1996, Area 1 Detectives Joseph Danzl (who previously worked with Burge at Area 2) and Glen Turner repeatedly hit Mitchell with a book, punched him in the stomach and chest hard enough to make him cry, and threatened to lock up Mitchell's mother which would result in DCFS taking her other children. *In re: Claim of Scott Mitchell*, TIRC Claim No. 2011.034-M.
- Jamie Hauad's claim that in 1997, Area 5 Detective Daniel Engel and other officers held his feet in an office-grade paper cutter and threatened to cut off his toes if he didn't sign a handwritten statement. Hauad also claimed he was slapped, hit and painfully handcuffed. *In re: Claim of Jamie Hauad*, TIRC Claim No. 2011.025-H.
- Darrell Fair's claim that in 1998, at Area 2, he was kicked in the leg by a detective wearing cowboy boots, and threatened with being shot while the detective rested his hand on his service weapon. *In re: Claim of Darrell Fair*, TIRC Claim No. 2011.018-F.

- Raymond Lee's claim that in 2000, he confessed to first degree murder, home invasion and burglary after being beaten and tortured by Area 2 Detectives Michael Cummings, Phillip Graziano, Eileen Heffernan and Daniel Judge. *In re: Claim of Raymond Lee*, TIRC Claim No. 2013.167-L.

- John Mitchell's claim that in 2000, he confessed to murder, arson, home invasion and residential burglary after being beaten and tortured by Area 2 Detective Michael Cummings; that Cummings and his fellow detectives physically struck and kicked Mitchell while he was handcuffed during an interrogation. *In re: Claim of John Mitchell*, TIRC Claim No. 2013.156-M.

- Marcellous Pittman's claim that in 2001, he was tortured into confessing to the attempted murder of a Chicago Police Officer after he was repeatedly punched, slapped, beaten and placed in a chokehold by Detectives James O'Brien and John Halloran. *In re: Claim of Marcellous Pittman*, TIRC No. 2014.209-P.

See also, *People v. Weathers*, 2015 IL App (1st) 133264, in which this Court held that the petitioner's assertion that his confession was physically coerced by Detectives James O'Brien and John Halloran in 2002 was sufficient to meet the "cause and prejudice" required to allow the filing of his successive post-conviction petition; *People v. Tyler*, 2015 IL App (1st) 123470, in which this Court held that the petitioner's assertion that his confession was physically coerced by Detective William Moser in 1994 was sufficient to advance his claim to third-stage post-conviction proceedings.

Thus, contrary to the trial court's unfounded speculation, the culture of systematic physical abuse and torture of persons in custody to coerce confessions, instituted by former Area 2 Commander Jon Burge, implemented by detectives under his command, and continued by detectives both in Area 2 and other Chicago Police Area Headquarters, continued long after Burge himself was fired.

3. The trial court's finding that aside from Detective McDermott, no other detective involved in physical abuse and torture at Area 2 was involved in Petitioner's case, is contradicted by the undisputed evidence that Detective Yucaitis was also involved in that abuse and torture, and by the documented history of the "code of silence" within the Chicago Police Department.

In announcing its findings, the trial court included among the factors influencing its decision to deny post-conviction relief was that, aside from Detective McDermott, "no other detective involved in this pattern and practice was involved in this case." (R 11) That finding however, was contradicted by the Petitioner's undisputed evidence that Area 2 Detective John Yucaitis was also involved in the pattern and practice of physical abuse and

torture at Area 2. That evidence revealed that in November 1992, only a little more than two years prior to Petitioner's claimed abuse and torture, Yucaitis was suspended from the CPD for 15 months for failing to take any action to stop Jon Burge's torture of Andrew Wilson, to provide or secure medical attention or care for the injured Wilson, or to report Burge's torture of Wilson to his commanding officer or anyone else in the CPD. (Petitioner's Exhibit 29) (Sup3 C 975-79)

The trial court's failure to either recall or to credit that uncontradicted evidence was especially prejudicial, as the court relied on Yucaitis' credibility in denying post-conviction relief. In support of its observation that Area 2 Detectives would never physically abuse or torture a person involved in a "heater case" for fear of "mess[ing] it up," the court specifically referenced Yucaitis' suppression hearing testimony that he was told not to talk to Petitioner Harris after Harris requested counsel "because he was told we don't want to screw up the case." (R. 14) As Petitioner's evidence shows, however, the trial court's speculation about "heater cases" being off-limits to torture specifically relied on the testimony of Yucaitis, a detective who had been involved in covering up the torture of Andrew Wilson in one of the biggest heater cases in the history of the Area 2 torture scandal.

Similarly, in closing argument at the post-conviction evidentiary hearing, the SP emphasized that McDermott's partner at the time, Detective James Boylan, had no documented history of abusing persons in custody at Area 2, and that Boylan corroborated McDermott's denials that he abused Petitioner Harris in any way. The SP stated,

> [Petitioner] refers to Detective Boylan, but let's not lose sight of the fact that Detective Boylan swore before your Honor in 1998 that he never witnessed any of what petitioner says happened, specifically he refutes the assertion by petitioner that McDermott coerced him – coerced petitioner in the presence of Detective Boylan and he swore to that back in 1998. Nothing has been brought in any shape or form to impeach that testimony.
>
> (Sup R 50)

The SP continued,

> I've already said, your Honor, that you have the testimony of McDermott's colleague on the day. He was with McDermott throughout from the point of arrest of Mr. Harris through to Mr. Harris' partner [sic] then being brought back to the police station. That's Detective Boylan. He has an unblemished career. And you will note the complete dearth of new evidence so described,

> a total absence of new evidence in respect of any sort of impeachment of Detective Boylan.
>
> (Sup R 54-55)

In response, Petitioner's counsel told the trial court,

> The State also mentions Detective Boylan, that we didn't bring in any new evidence regarding Detective Boylan. Well, Judge, common sense, if you come to the conclusion that Michael McDermott is a perjurer and a liar and his testimony was untrue at the hearing, then it logically follows that Detective Boylan's testimony was untrue and I'll just say three words and let it go at that, *code of silence*.
>
> (Sup R 58) (emphasis added)

The trial court, though, relied heavily on Boylan's corroboration of McDermott to deny post-conviction relief: "Boylan says that nothing happened. As does McDermott. So Boylan corroborates McDermott there." (R 13) "So looking at is McDermott corroborated? Yes, he is. Corroborated by the facts, he's corroborated by the other officers." (R 15) "So for those reasons, the corroboration of McDermott, as to 95 CR 27598 and 95 CR 27596, your petition is denied." (R. 16) But in so doing, the court failed to acknowledge Petitioner's evidence of the CPD's "code of silence," although neither the State nor the Court disputed its existence. In fact, Petitioner's evidence demonstrated that Detective McDermott himself had invoked the code of silence after witnessing Burge torture Shadeed Mu'min in his office at Area 2 for the purpose of coercing a confession. (Sup3 C 548-79)

Moreover, as the recent investigation of the CPD by the Department of Justice Civil Rights Division and the United States Attorney's Office specifically found, exposure of police misconduct is seriously "frustrated by police officers' code of silence." https://www.justice.gov/opa/file/925846/download. (Report at page 8).[10] The Report specifically noted that,

> One way to cover up police misconduct is when officers affirmatively lie about it or intentionally omit material facts. The Mayor has acknowledged

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[10] This Court has previously taken judicial notice of the DOJ Report. See *People v. Horton*, 2019 IL App (1st) 142019-B, ¶ 70. See also *Blair v. City of Pomona*, 223 F.3d 1074, 1081 (9th Cir. 2000) (Court of Appeals would take judicial notice of an independent commission report concerning "code of silence" in police departments)

> that a "code of silence" exists within CPD, and his opinion is shared by current officers and former high-level CPD officials interviewed during our investigation. Indeed, in an interview made public in December 2016, the President of the police officer's union admitted to such a code of silence within CPD, saying "there's a code of silence everywhere, everybody has it . . . so why would the [Chicago Police] be any different."
>
> (Report at page 75)

As the Seventh Circuit emphasized in *Fillmore v. Page*, 358 F.3d 496, 507 (7th Cir. 2004), "No one wants to reward reliance on the legendary code of silence among law enforcement officers." Yet, by rejecting Petitioner's claim that McDermott perjured himself at the pretrial suppression hearing simply because Boylan backed up McDermott's denials, the trial court below did exactly that.

4. The trial court's finding that the injury inflicted by the police on Petitioner Harris' left temple occurred at the time of his arrest, and not during his detention at Area 2, is not supported by the evidence.

There is no dispute that Petitioner Harris suffered a physical injury to his left temple while in police custody on August 29-30, 1995. He alleged in his amended motion to suppress statements that either Detective McDermott or Boylan placed a gun to his head and in his mouth while he was in an interview room at Area 2. (Sup3 C 84) In its Memorandum in Support of its Motion to Dismiss in the Patterson case, the State acknowledged that a photograph taken of Petitioner at Area 2 showed that he had a scratch or bruise on the left side of his head. (Sup4 C 1542) And in its Motion to Dismiss in the Ford case, the State asserted that "(t)he quantifiable evidence of injury to Ralph Harris during his involvement with Chicago Police Detectives was admitted at trial and, stated simply, amounts to a barely visible scratch mark akin to a rug burn." (Sup2 C 1929) During these post-conviction proceedings, the parties agreed that the photograph referenced by the State had been admitted into evidence without objection at the Ford trial as People's Exhibit 29, and at the Patterson trial as People's Exhibit 64. (Sup2 C 1930; Sup R 151-52) In fact, the State submitted that same photograph as part of its "Offer of Proof" at the post-conviction evidentiary hearing. (Sup6 C 1528) That photograph, to which Petitioner explicitly posed no objection at the post-conviction evidentiary hearing (Sup R 151-52), shows an oval shaped scratch that corroborates Petitioner's claim that a gun barrel was jammed to the side of his head.

Therefore, the issue before the trial court was not *whether* Petitioner suffered a physical injury while in police custody. Rather, the issue was *when* that injury occurred; during a struggle with detectives at the time of his arrest, or at Area 2 as a result of the physical abuse inflicted by Detectives McDermott and Boylan? In denying post-conviction relief, the trial court found that the injury was "readily explained by the taking down of the defendant at the time of his arrest." (R 15) The trial court's finding, however, is not supported by the evidence.

Although there was testimony at the suppression hearing that there was a "scuffle" or "struggle" between the detectives and Mr. Harris at the time of his arrest (Sup3 C 1188, 1210, 1276), there was no testimony that any of the detectives punched him in the head during the scuffle, or that he hit his head on any hard object. While the detectives testified that they had their guns drawn prior to arresting Mr. Harris, there was no testimony that any of the detectives jammed their guns against the side of his head during that scuffle.

Nor could the trial court below reasonably infer from the evidence that the injury to Mr. Harris' left temple must have occurred at the time of his arrest. Such a finding may only be made where the State provides "clear and convincing" evidence of the time and manner of a custodial suspect's physical injury. *See People v. Wilson*, 116 Ill.2d 29, 40 (1987) (Once a defendant establishes that he has been injured while in police custody, a heightened burden of proof is imposed on the State to show by clear and convincing evidence that the injuries were not inflicted as a means of producing the confession.) But, given the lack of any testimony that Petitioner Harris was punched him in the head during the scuffle at the time of his arrest, or that he hit his head on any hard object during that scuffle, or that one of the detectives jammed his gun into Petitioner's left temple at the time of his arrest, the record of the post-conviction evidentiary hearing below is woefully insufficient for the State to have met its burden to establish by clear and convincing evidence that Petitioner Harris suffered that injury to his left temple at the time of his arrest, and not at the hands of McDermott and Boylan at Area 2. *See People v. Woods*, 184 Ill. 2d 130, 148-150 (1998) (State failed to meet its burden to establish that an abrasion to the defendant's forehead and a mark under his left

eye were not inflicted while the defendant was in police custody, as a means of producing a confession); *People v. Traylor*, 331 Ill. App. 3d 464, 468 (3rd Dist. 2002) (State failed to meet its burden to establish that bruising to defendant's nose did not occur while the defendant was in police custody, as a means of producing a confession)

More than 60 years ago, the Illinois Supreme Court emphasized in *People v. La Frana*, 4 Ill. 2d 261, 267 (1954),

> (W)here it is conceded, or clearly established, that the defendant received injuries while in police custody, and the only issue is how and why they were inflicted, we have held that *something more than a mere denial by the police of coercion is required*. Under such circumstances the burden of establishing that the injuries were not administered in order to obtain the confession, can be met only by clear and convincing testimony as to the manner of their occurrence. (emphasis added)

There was, however, no clear and convincing testimony presented by the State at the suppression hearing, or at the post-conviction evidentiary hearing, that Petitioner Harris suffered the injury to his left temple at the time of his arrest. On the contrary, at the suppression hearing the State relied *solely* on the "mere denials" by McDermott and Boylan that they had abused Petitioner in any way while he was in custody at Area 2; denials that the Illinois Supreme Court held in *LaFrana* were insufficient in such circumstances.

5. The trial court's finding that Petitioner confessed to Detective Hamilton that he raped R.T. before the time he claimed to have been abused by McDermott and Boylan is not supported by the evidence.

In addition to all of the reasons set forth above, the trial court expressed an additional reason for denying post-conviction relief in the R.T. case. That is, the court concluded that "looking at the timeline," Petitioner Harris' confession to Detective Hamilton that he raped R.T. was made prior to the time he claims he was abused by McDermott and Boylan. (R 12, 16) That finding, however, is not supported by the evidence presented at the suppression hearing or at the post-conviction evidentiary hearing.

In the first place, there was no definitive "timeline" testified to by the detectives at Petitioner Harris' suppression hearing. It's true that Detective Hamilton testified that he and Detective Bagdon had several conversations with Petitioner beginning shortly after 1:30 a.m. on August 29, 1995, and that during those conversations Petitioner made oral admissions

regarding three sex offenses. However, Hamilton also acknowledged that those conversations took place "on and off" for several hours. (Sup3 C 1260-63)

Moreover, Hamilton acknowledged that neither he nor Bagdon took any notes during those conversations with Petitioner (Sup3 C 1279, 1281, 1287, 1304), nor did they write any General Progress Reports, or fill out any paperwork regarding Mr. Harris' purported admissions in those three cases, making it impossible to determine at what time Petitioner actually made any admissions in the R.T. case. Given the lack of any written memorialization, how could Hamilton accurately recall the timing and content of Petitioner's purported confessions three years later, in his testimony at the suppression hearing? Surely the lack of any written memorialization of the timing and content of Petitioner's purported confession in the R.T. case detracts from both the credibility and the reliability of Hamilton's testimony. But even if Hamilton's memory was accurate, the fact that his conversations with Petitioner took place on and off for several hours clearly allowed McDermott and Boylan to enter the interrogation room and abuse Petitioner while Hamilton and Bagdon were out of that room. This is especially likely as the evidence at the suppression hearing shows that both McDermott and Boylan were present at Area 2 when Petitioner Harris arrived there, or very shortly thereafter, as they both testified that after they participated in Petitioner's arrest, they immediately returned to Area 2 with Angela Clark. (Petitioner's Exhibit 30) (Sup3 C 1191, 1215-16) Moreover, both McDermott and Boylan testified at the suppression hearing that they were alone with Petitioner on August 29-30, 1995, in that same interrogation room, on at least two occasions. (Petitioner's Exhibit 30) (Sup3 C 1177-80, 1202-03, 1210)

It may be that Petitioner confessed in the R.T. case before he was physically abused by McDermott and Boylan. But it is far more likely that he he confessed *after* suffering that abuse at the hands of McDermott and Boylan. After all, the very purpose of such abuse is to extract a confession. However, the answer to that question can only be justly determined after a new suppression hearing, at which all of the relevant newly discovered evidence can be considered. For only that way can the factfinder make fair and accurate conclusions about the credibility and reliability of the testimony of the four Area 2 detectives who testified at

the original suppression hearing, two of whom we now know — McDermott and Yucaitis — were actively involved in the abuse and torture of custodial suspects during the Area 2 torture scandal. The trial court's finding below, which was based on an entirely speculative, non-existent "timeline," was, therefore, manifestly erroneous. *People v. Galvan*, 2019 IL App (1st) 170150, ¶ 65.

Because the trial court's ruling below was largely based on findings that were either unsupported by the evidence or contradicted by the evidence, that ruling was manifestly erroneous. As a result, the trial court's ruling should be reversed and this case remanded for a new suppression hearing. Finally, for the reasons stated in Issue I, above, Petitioner also requests that if this case is remanded for a new suppression hearing, that it be assigned to a different judge.

III. The trial court's ruling denying post-conviction relief should be reversed, as the court placed an erroneously high burden of proof on Petitioner Harris by using the common definition of "likely," rather than the appropriately lower burden of proof in the definition of "likely" used to decide analogous legal issues.

In announcing its ruling, the trial court first recognized that under the controlling precedent of *People v. Whirl*, 2015 IL App (1st) 111483, the issue was, "would the result of the suppression hearing likely be different if the new evidence had been presented at the suppression hearing." (R 10) The court took "likely be different" to mean the "common law usage of likely," as the court "couldn't find . . . any other test of likely." (R 10)[11]

Ultimately, the trial court found that under that definition of "likely," Petitioner Harris failed to meet his burden of proof. (R 16) However, the trial court's finding was improper because the definition of "likely" used by the court imposed an erroneously high burden of proof on Petitioner, prejudicially distorting the key legal issue in this case.

As noted in Issue I, above, the *Whirl* decision provided no definition of "likely" in determining a petitioner's burden to establish that "the outcome of the suppression hearing likely would have differed if the officer who denied harming the defendant had been subject to impeachment based on evidence revealing a pattern of abusive tactics employed by that officer in the interrogation of other suspects." *Whirl*, ¶80. But in the absence of such a definition, the trial court erred by using the common definition of likely, as that placed an improperly high burden on Petitioner. Moreover, the court was incorrect in claiming it could find no other legal definition of "likely," as Petitioner's counsel had provided the court with just such a legal definition, supported by caselaw.

The common meaning of "likely," as defined in the Merriam-Webster Dictionary, is "having a high probability of occurring or being true: very probable." (www.merriam-webster.com/dictionary/likely) However, as Petitioner's counsel pointed out in closing argument at the post-conviction evidentiary hearing, that meaning is at odds with the meaning of "likely" used by courts in deciding the analogous legal burden in cases

[11] Petitioner's research has revealed no "common law" definition of likely, and assumes the trial court simply meant the "common" definition of that word.

involving the issue of ineffective assistance of counsel. (Sup R 42-44)

Petitioner's counsel noted that in deciding ineffective assistance of counsel issues under the standard announced in *Strickland v. Washington*, 466 U.S. 668, 694 (1984) (*i.e,* "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different"), Illinois courts of review have frequently used the terms "reasonable probability . . . would have been different" and "likely would have been different" interchangeably. See, e.g., *People v. Long*, 208 Ill. App. 3d 627, 640 (1st Dist. 1990) ("The defendant must first establish that defense counsel was actually incompetent in his duties, and then demonstrate that counsel's deficient performance prejudiced the defendant in a manner that denied him a fair trial, and that, absent the alleged errors, the outcome of the trial *would likely have been different*."); *People v. Williams*, 332 Ill. App. 3d 254, 263 (1st Dist. 2002) (" . . . but for counsel's errors the outcome of the trial *likely would have been different*."); *People v. Felder*, 224 Ill. App. 3d 744, 763 (1st Dist. 1992) (" . . . were it not for that incompetence the outcome of the trial *would likely have been different*."); *People v. Anderson*, 325 Ill. App. 3d 87, 89 (3rd Dist. 2001) (" . . . but for counsel's errors the outcome of the trial *likely would have been different*."); *In re A.J.*, 323 Ill. App. 3d 607, 611 (3rd Dist. 2001) (" . . . but for counsel's errors, the outcome of the trial *likely would have been different*.") (emphasis added to all quotations). See also *Hill v. Lockhart*, 474 U.S. 52, 59 (1985), in which the Supreme Court, in deciding an ineffective assistance of counsel issue one year *after* announcing the "reasonable probability" standard in *Strickland*, wrote,

> For example, where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error 'prejudiced' the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea . . . [which] will depend in large part on a prediction whether the evidence *likely would have changed the outcome of a trial*.") (emphasis added)

Since "reasonable probability" and "likely" are legally interchangeable terms, what is the burden on a defendant to establish a "reasonable probability" under *Strickland*? We know from well-established caselaw that it is a far lower burden than the common meaning

employed by the trial court below, *i.e.*, "having a high probability of occurring or being true." For example, this Court defines a "reasonable probability" as being "'significantly less than 50 percent' as long as [a different outcome] would be reasonable." *People v. Goods*, 2016 IL App (1st) 140511, ¶46; *People v. Lucious*, 2016 IL App (1st) 141127, ¶45 (same) (both quoting *People v. McCarter*, 385 Ill.App.3d 919, 935 (1st Dist. 2008). See also *Stephenson v. Wilson*, 629 F.3d 732, 737–38 (7th Cir. 2011) ("Stephenson must demonstrate a reasonable probability that, but for his counsel's deficient performance, the outcome of the trial might have been different . . . Stephenson need not show that a different outcome was more likely than not; he need only show that the likelihood of a different outcome *was better than negligible*.") (emphasis added)

The trial court below, however, simply ignored Petitioner's argument that it should apply the legal definition of "likely" used by this Court, and other courts, in deciding ineffective assistance of counsel issues. Instead, the trial court imposed an erroneously high burden on Petitioner on the decisive issue in this case. For that reason, the trial court's ruling denying post-conviction relief was fatally flawed.

Where, as here, a party argues on appeal that the trial court imposed an improper burden, review is *de novo*. See *Illinois School District Agency v. St. Charles Community Unit School. Dist. 303*, 2012 IL App (1st) 100088, ¶ 51 ("We elect to apply a *de novo* standard of review to the District's initial contention that its burden was unfairly enhanced by the circuit court's interpretation of the CGL contract between the parties.") See also *1350 Lake Shore Associates v. Healey*, 223 Ill. 2d 607, 627 (2006) ("Questions regarding the burden of proof are questions of law and are reviewed *de novo*.")

Normally, errors in a factfinder's consideration of the burden of proof require reversal and remand for new proceedings in which the error occurred. See, e.g., *People v. Reddick*, 123 Ill. 2d 184 (1988) (Error in jury instructions on burden of proof for voluntary manslaughter required that defendant's murder conviction be reversed, and case remanded for new trial); *People v. Fierer*, 124 Ill. 2d 176 (1988) (Error arising from trial court's failure to properly instruct on State's burden of proof in connection with "guilty but mentally ill"

verdict required reversal of defendant's murder conviction and remand for new trial). Here, the error occurred in the factfinder's erroneous consideration of the burden of proof during a post-conviction evidentiary hearing. However, under the particular circumstances of this litigation, if this Court finds that the trial court erred by applying an erroneously high burden of proof, this cause need not be remanded for a new post-conviction evidentiary hearing. Rather, it should be remanded for the requested relief of a new suppression hearing.

As Petitioner argued above in Issue I, where, as here, the trial court's ruling was based solely on documentary evidence, a *de novo* standard of review applies. *People v. Radojcic*, 2013 IL 114197, ¶34-36; *People v. Dixon*, 2015 IL App (1st) 133303, ¶20. And, as Petitioner argues in this issue, where a party argues on appeal that the trial court imposed an improper burden, review is also *de novo*. This Court can therefore review on its merits, *de novo*, the issue of whether Petitioner Harris met his burden of proof under *People v. Whirl*, 2015 IL App (1st) 111483. This Court's authority to do so, combined with principles of judicial economy, counsel in favor of reversing the trial court's denial of post-conviction relief and remanding this cause for a new suppression hearing, before a different judge.

CONCLUSION

A new suppression hearing is warranted in Petitioner Harris' cases not only because he met his burden at the post-conviction evidentiary hearing, but because there is a deep and indelible stain of injustice on the Cook County judicial system a result of the Area 2 torture scandal, a stain that can only be lessened by providing a full and fair day in court for all of the survivors of that scandal, including Petitioner Ralph Harris. If the people of Cook County are to have any faith in the fairness of that system, they must be confident that every case is decided with the benefit of all the relevant evidence, including newly discovered evidence that had been suppressed for decades, and unavailable to those survivors at the time of their trials. For all of the foregoing reasons, Petitioner-Appellant Ralph Harris respectfully requests that this Court reverse the trial court's ruling denying post-conviction relief, and remand this matter for a new suppression hearing before a different judge.

Respectfully submitted,

PATRICIA MYSZA
Deputy Defender

CHARLES W. HOFFMAN
Of Counsel
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.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 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, is 55 pages.

/s/ Charles W. Hoffman
CHARLES W. HOFFMAN
Counsel for Petitioner-Appellant

No. 1-18-2172

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- RALPH HARRIS, Petitioner-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County, Illinois No. 95 CR 27596; 95 CR 27598; 95 CR 27600 Honorable Dennis J. Porter, Judge Presiding.

NOTICE AND PROOF OF SERVICE

TO: Michael O'Rourke, Special State's Attorney, 55 W. Wacker Dr., Suite 1400, Chicago, IL 60601, morouke@oroukeandmoody.com

Mr. Ralph Harris, Register No. B35933, Pontiac Correctional Center, P.O. Box 99, Pontiac, IL 61764

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 May 7, 2020, the Brief and Argument was filed with the Clerk of the Appellate Court 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 is being mailed to the appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 6 copies of the Brief and Argument to the Clerk of the above Court.

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APPELLATE COURT 1ST DISTRICT

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

People of the State of Illinois,	)	Appeal from Order Dated May 31, 2022
	)	
Appellant,	)	Circuit Court Case Nos. 95-CR-27596,
	)	95-CR-27598, and 95-CR-27600
v.	)	
	)	Honorable J. Michael R. Clancy Presiding
	)	
Ralph Harris,	)	of the Circuit Court of Cook County,
	)	Illinois County Department, Criminal
Appellee.	)	Division
	)	
	)	

BRIEF AND ARGUMENT FOR APPELLEE

Leonid Feller, P.C.
QUINN EMANUEL URQUHART & SULLIVAN
191 N. Upper Wacker Dr., Suite 2700
Chicago, IL 60606
Telephone: (312) 705-7400
Facsimile: (312) 705-7401
leonidfeller@quinnemanuel.com

Attorney for Appellee Ralph Harris

ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

For 28 years, Ralph Harris has been imprisoned based on a series of coerced confessions secured through torture. Mr. Harris consistently has recounted his abuse since his arrest, long before Jon Burge's and his subordinates' pattern and practice of torture in Area 2 came to light. In 2021, this Court reversed the circuit court's 2018 denial of Mr. Harris's motion to suppress and held that evidence of torture committed by Michael McDermott (one of the detectives who interrogated Mr. Harris) and others "was conclusive enough that the outcome of [Mr. Harris's] suppression hearing likely would have been different if McDermott had been subject to impeachment based on the new evidence." *People v Harris*, 2021 Il App (1st) 182172, ¶ 60. The Court remanded for a new suppression hearing. Following this new hearing, the circuit court granted Mr. Harris's motion for new trials because his original defense "was significantly and unfairly prejudiced by the lack of information and knowledge of past misconduct attributed to a number of the detectives involved in the interrogation of Mr. Harris." (R 13948).

The Special State's Attorney ("SSA") now appeals the circuit court's order granting Mr. Harris new trials. The appeal is both procedurally and substantively defective. Procedurally, no interlocutory appeal of the grant of a new trial in a criminal case is permitted under Ill. Sup. Ct. R. 604(a)(1). In addition, by failing to object to the circuit court's order granting new trials, and by failing to put forward any of the arguments it advances here in the trial court, the SSA has procedurally defaulted on the arguments now raised for the first time in its appeal.

Substantively, the SSA's appeal also fails on the merits as to each and every ground raised. This Court's remand order vested jurisdiction in the circuit court to order new trials and granting such relief did not exceed the scope of this Court's mandate. Further, contrary

to the SSA's assertions, the circuit court applied the proper standard in ordering new trials. And ultimately, this Court may affirm the circuit court's grant of new trials on any ground supported by the record. Here, the circuit court should have granted not only Mr. Harris's motion for new trials, it should have granted his motion to suppress.

To the extent this Court reaches the latter issue, this Court should correct the circuit court's error by affirming the circuit court's grant of new trials on the basis that Mr. Harris's motion to suppress should have been granted. The circuit court committed multiple errors in denying the motion to suppress: (i) the circuit court adopted a negative inference from McDermott's failure to testify (*i.e.*, finding that McDermott would have testified to abusing Mr. Harris) but also reached the irreconcilable conclusion that Mr. Harris's confessions were not coerced; (ii) the circuit court found that the SSA established by clear and convincing evidence that Mr. Harris was not injured in custody, when the SSA presented no evidence whatsoever explaining how Mr. Harris's bloody facial injury occurred; and (iii) the circuit court admitted the prior testimony of a deceased detective, Yucaitis, even though the trial court acknowledged that Mr. Harris did not previously have an adequate opportunity to cross-examine that detective. For all these reasons, this Court should affirm the circuit court's judgment ordering new trials and, if it reaches the issue, reverse the circuit court's denial of Mr. Harris's motion to suppress.

ISSUES PRESENTED FOR REVIEW

1. Whether this Court has jurisdiction to hear this appeal pursuant to Ill. Sup. Ct. R. 604(a)(1) where the grant of new trials is not one of the permissible grounds for interlocutory appeal enumerated in the rule?
2. Whether the SSA has waived the issues presented in this appeal by failing to raise them before the circuit court?

3. Whether the circuit court had jurisdiction to order new trials where this Court's mandate imposed no limit on the circuit court's jurisdiction?
4. Whether Mr. Harris waived his motion for new trials where he has consistently sought such relief?
5. Whether the circuit court's detailed analysis applied the proper standards in granting new trials?
6. Whether the circuit court erred in denying Mr. Harris's motion to suppress, an independent basis for ordering new trials?

JURISDICTION

As discussed in detail in Part I, *infra,* in a criminal case, the SSA may pursue an interlocutory appeal only from an order that results in dismissing a charge, arresting a judgment, quashing a warrant, or suppressing evidence. Ill. Sup. Ct. R. 604(a)(1). Because the grant of a new trial is not a permissible basis for an interlocutory appeal in a criminal case under Rule 604(a)(1), this Court is without jurisdiction to hear this case.

PROCEDURAL BACKGROUND

Mr. Harris was arrested in August 1995, in connection with an allegation of sexual assault. (R 12347, 12479-80, 12577); *People v Harris*, 2021 IL App (1st) 182172, ¶ 17. Following his interrogation and torture, which lasted two full days, Mr. Harris purportedly confessed to having committed multiple other crimes, including a series of robberies and murders. He was subsequently tried, convicted, and sentenced in three cases—95 CR 27596, 95 CR 27598, and 95 CR 27600. *Harris*, 2021 IL App (1st) 182172, ¶ 26.

Before the first trial, on June 10, 1998, Mr. Harris filed an omnibus motion seeking to suppress his coerced confessions in each case. (C 936-39). At the pre-trial suppression hearing, the State called Detectives McDermott, Boylan, Hamilton, and Yucaitis to testify.

Harris, 2021 IL App (1st) 182172, ¶¶ 7-23. Each denied abusing, or witnessing any abuse of, Mr. Harris. *Id.* The circuit courtdenied Mr. Harris's motion to suppress. *Id.* ¶ 25. The confessions were part of the State's case-in-chief at each trial. (C 195-96); (R 3177).

Based on the public disclosure of a pattern and practice of torture at Area 2 uncovered years after his convictions, Mr. Harris filed a post-conviction petition for a new suppression hearing, raising the same issues he first put forward in 1998. *Harris*, 2021 IL App (1st) 182172, ¶ 26. A hearing was held on June 21, 2018. *Id.* ¶ 28. The same judge who presided over Mr. Harris's trials denied Mr. Harris's renewed motion. *Id.* ¶¶ 41-46.

In 2021, this Court reversed the circuit court's 2018 denial of Mr. Harris's motion to suppress, holding that evidence of torture "was conclusive enough that the outcome of [Mr. Harris's] suppression hearing likely would have been different if McDermott had been subject to impeachment based on the new evidence." *Id.* ¶ 60. Accordingly, this Court remanded for a new suppression hearing, this time before a different judge. *Id.* at ¶ 64.

Following a lengthy hearing spanning over nine months, the circuit court (Hon. Michael J. Clancy) concluded that Mr. Harris had not established that his confessions were coerced and denied Mr. Harris's motion to suppress. The circuit court did find, however, that Mr. Harris's defense "was significantly and unfairly prejudiced by the lack of information and knowledge of past misconduct attributed to a number of the detectives involved in the interrogation of Mr. Harris," and that "[p]rior complaints of physical abuse and coercion against the accused officers are relevant in deciding whether abuse occurred in this case." (R 13948). The circuit court, therefore, granted Mr. Harris's longstanding

request for new trials. (R 13948, 13953). The SSA then filed the instant appeal.[1]

STATEMENT OF FACTS

The following recitation is a summary of the factual record developed during Mr. Harris's suppression hearing before Judge Clancy. The descriptions—often inconsistent and unbelievable—set forth in subsections A and B, *infra*, are drawn ***exclusively*** from the testimony of the SSA's witnesses. Subsection C provides Mr. Harris's candid account of events. Subsection D describes the pattern and practice of torture at Area 2, including confirmed accounts of torture by McDermott, Boylan, and Yucaitis.

A. The Arrest

On August 28, 1995, an arrest warrant was issued for Mr. Harris based ***solely*** on allegations involving the sexual assault of Rhonda Thompson. (R 12347, 12479-80, 12577). Mr. Harris was arrested in the early morning of August 29, 1995, at the Chicago apartment of Angela Clark, Mr. Harris's fiancée. (R 12285-89, 12471-72). Multiple officers were involved in securing the perimeter and three officers entered the apartment to execute the arrest: Detectives Michael McDermott, James Boylan, and John Hamilton. (R 12285-86, 12356, 12471-73, 12555-56).

McDermott and Boylan were already familiar with Mr. Harris from a 1991 arrest related to the armed robbery of an Area 2 sergeant, Rutherford Wilson. (R 12287). As a result of that incident, McDermott previously had testified that "as a person I think [Mr. Harris is] evil, you know. He's a bad person. . . . I think he is extremely dangerous." *Harris*,

[1] The caption of the SSA's brief refers to Mr. Harris as "Petitioner" and to the People of the State of Illinois as "Respondent." These descriptions are incorrect. The suppression hearing held before Judge Clancy was not part of any post-conviction proceeding, as described in Part I, *infra*. Mr. Harris's caption correctly refers to the People simply as "Appellant" and to himself as "Appellee."

2021 WL 861370, at ¶ 14. Boylan testified that Mr. Harris's case was "maybe the most" important case he had ever investigated as a detective. (R 12343-44).

Ms. Clark opened the door and let McDermott, Boylan, and Hamilton into the apartment. Mr. Harris was unarmed and wearing boxer shorts. (R 11439-40, R 12557-58). Hamilton testified that Mr. Harris was not combative or aggressive. (R 12559). Nevertheless, the detectives had their guns drawn and proceeded to wrestle Mr. Harris to the ground. (R 12347, 12475).

At this juncture, the SSA grossly mischaracterizes the record, claiming that "[d]uring the struggle, one officer's gun scratched petitioner in the left temple." Br. at 20. In fact, the officers' testimony diverged on whether a gun was even held to Mr. Harris's head during the arrest but ***every officer who testified agreed that Mr. Harris was <u>not</u> injured during the arrest***. Boylan testified a gun was ***never*** held to Mr. Harris's head:

> Q. And in the course of being handcuffed, did one of the officers hold a gun to [Mr. Harris's] head?
>
> A. No.
>
> Q. No one held a gun to his head?
>
> A. No.
>
> Q. Absolutely positive?
>
> A. We pointed guns at him as we approached him. But it's not like we were holding it to his head like execution style, if that's what you're saying.
>
> Q. ***There was no firearm that made contact with the side of his head during the arrest, correct?***
>
> A. ***Not that I saw.***
>
> Q. ***And did you see any injury to Mr. Harris' face during the arrest?***
>
> A. ***No.***

(R 12347-48) (emphasis added).[2]

Hamilton, in contrast, testified that he believed that he did see a gun to Mr. Harris's head—although he could not say who held it, notwithstanding that McDermott and Boylan were the only other officers in the room. (R 12563-64). As relevant here, Hamilton admitted there was no injury to Harris at the time of the arrest:

> Q. You never noticed the injury to –
>
> A. At the scene of the arrest, no, absolutely not. I did not.
>
> Q. Is there some later time when you noticed the injury before looking at the picture today?
>
> A. Oh, no. I knew the injury was there back then, but not at the scene, not at the initial incident, no.
>
> Q. ***Mr. Harris is arrested. You don't notice any injury to him at that time?***
>
> A. ***No***.

(R 12564-65). Ms. Clark also testified that she did not see any injury to Mr. Harris:

> Q. During the night when the police were in your apartment you never observed Mr. Harris suffering from any injuries, correct?
>
> A. No, I didn't.

(R 12769). Detective Linda Drozdek, who was present at the scene outside the apartment, also did not see any injury when Mr. Harris was brought out. (R 13281).

The other witnesses called by the SSA testified that if Mr. Harris had been injured during his arrest, that injury would have been documented and he would have received treatment. (R 12693 (Hayes), 12728, 12742 (Crump)). ***Contrary to the SSA's false***

[2] All emphasis added unless otherwise noted.

statement to this Court, no witness whatsoever testified that an officer's gun caused an injury, or even left a mark, on Mr. Harris's face during his arrest.

Following his arrest, Mr. Harris was transported to Area 2 headquarters, where he arrived around 1:30 a.m. on August 29, 1995. (R 12568).

B. The State's Inconsistent and Inexplicable Recitation of Events on August 29 and 30, 1995

1. Undocumented Sexual Assault Confessions and Unexplained Armed Robbery Lineups

According to Hamilton, upon being brought to Area 2, Mr. Harris promptly confessed to the sexual assaults of Rhonda Thompson, Donna Robinson, and Rita Jackson, crimes which occurred on different dates in July 1995. (R 12573-74). Remarkably, Hamilton made no effort to document any of these supposed confessions, never taking a single note nor asking Mr. Harris to sign any statement. (R 12574-75). Nor did Hamilton ask the on-duty ASA to take a statement from Mr. Harris. (R 12582-83). Hamilton's odd explanation for these failures was that he already was aware of the events described in the confessions, and so did not need to document them:

> Q. Okay. Why did you [not] either take notes or have him sign a statement that you wrote, that wouldn't slow down the process, would it?
>
> A. No, but we are familiar with the sexual assault cases. They were the fresh cases. We knew the circumstances of it. . . .
>
> * * *
>
> Q. [B]ut the point of having a suspect sign a statement isn't just for your personal knowledge, right, it's for the prosecution?
>
> A. No, it's for the prosecution, correct.

(R 12578-80). After obtaining Mr. Harris's supposed sexual assault admissions, Hamilton

was absent for the remainder of the night. He was asleep between 3:00 a.m. and 7:00 a.m. (R 12581). He then left Area 2 to go home and shower. (R 12581, 12595, 12618).[3]

Around 7:30 a.m., witnesses to various armed robbery investigations began to arrive to participate in 10-15 separate lineups in which Mr. Harris was placed. (R 12583-86). These armed robberies were unrelated to the sexual assaults of Rhonda Thompson, Donna Robinson, or Rita Jackson. (R 12551, 12585). At the time of his arrest, Mr. Harris was ***not*** being investigated in connection with any of these incidents, as both Boylan and Hamilton testified. (R 12585 ("[A]t that point this was purely a sexual assault investigation, correct? Correct.") (Hamilton), 12356 ("Were you investigating Mr. Harris for anything else at that time? No.") (Boylan)). None of the SSA's witnesses could explain what information led officers to summon armed robbery witnesses to Area 2 on the morning of August 29, 1995, six hours after Mr. Harris's arrest.

Around 9:00 a.m., Boylan and McDermott were alone with Mr. Harris in an interrogation room. Boylan testified:

> Q. Was there another point in time after 2:00 a.m. on August 29th that you [Detective Boylan] and Detective McDermott went to go see Mr. Harris?
>
> A. Yes.
>
> Q . That was at approximately 9:00 a.m.?
>
> A. Or 10:00, I think. Somewhere around there.
>
> Q. 9:00 or 10:00, even?
>
> A. Yeah.

[3] In his ruling, Judge Clancy stated that Hamilton purportedly was present for 40 of the 48 hours that Mr. Harris was interrogated. (R 13949). This is simply incorrect based on Hamilton's own testimony, admitting that he was absent for long periods of time on both days of the interrogation. (R 12581, 12595, 12618, 12627).

* * *

Q. And you went to go see Mr. Harris again, even though he had specifically said he did not want to talk to you or Detective McDermott, correct?

A. Correct.

Q. …[T]here was no one but you and -- 9:00 or 10:00 a.m., ***there was no one but you and McDermott there, correct****?*

A. ***That's correct****.*

(R 12363)[4] Around 10:00 a.m.—*i.e.*, after he was alone with Boylan and McDermott—Mr. Harris supposedly gave a confession to Hamilton implicating himself in the armed robbery of James Brown. (R 12586). Once again, Hamilton took no notes and did not attempt to obtain a written statement. (R 12590). Hamilton testified that he did not take any notes even though he "had no knowledge of [the Brown robbery]." *Id.*

2. Mr. Harris Invokes His Fifth Amendment Rights

Notwithstanding that Mr. Harris already had been in custody for more than 14 hours, and supposedly had admitted to three sexual assaults and an armed robbery, the first effort by the on-call assistant State's attorney, Leslie Quade, to speak with Mr. Harris took place at or about 3:20 p.m. on August 29, 1995. (R 13057, 12616). After being advised of his *Miranda* rights by ASA Quade, Mr. Harris immediately invoked his right to remain silent and requested an attorney. (R 12575-76, 12592, 13057-59).

[4] Boylan initially testified that he and McDermott were never alone with Mr. Harris on the morning of August 29, 1995, but then contradicted himself: "Q. During the early morning hours of August 29th, did you ever go into a room with detective -- that interview room with Detective McDermott and talk to Ralph Harris? A. No. … Q. Now, after the defendant was taken from the apartment by Detective Hamilton, when was the next time you spoke with defendant? A. I don't remember that I did speak with him." (R 12291); *compare* (R 12303) ("Q. After the defendant was taken from the apartment by Detective Hamilton, did you speak with the defendant the following morning? A. Yes.").

3. The Serendipitous Pizza Encounter

The SSA's telling of Mr. Harris's subsequent purported confessions, following his clear invocation of *Miranda* rights mere hours earlier, is an incredible story involving pizza, an open interrogation room door, and another suspect purportedly walking by in the few seconds that door happened to be open.

The SSA's narrative begins with Yucaitis, whose shift ended around 5:00 p.m. on August 29, 1995. (R 313). Instead of leaving for the day, Yucaitis supposedly decided to buy pizza for everyone in the precinct (including detainees). *Id*. Yucaitis supposedly stayed at the precinct for nearly two hours after his shift ended, then drove to Fox's Pizza, which was 6.5 miles from where Area 2 was located in 1995, approximately a 14-minute drive. (R 1473); *see also* (R 13861-62).

As described in Part B(6), *infra*, the SSA's version of events depends inexorably on Yucaitis delivering pizza to Mr. Harris at or around 6:00 p.m. It is at 6:00 p.m., ASA Quade testified unequivocally, that Mr. Harris purportedly saw another prisoner, Patrick Brunt, through an open interrogation room door while Yucaitis was delivering pizza to Mr. Harris, causing Mr. Harris to reinitiate questioning. *See id*. If either the pizza or Patrick Brunt (or both) were not present at 6:00 p.m., the SSA's narrative collapses.

Yucaitis, who died in March 2001, gave contradictory testimony throughout Mr. Harris's prior proceedings regarding when he returned with the pizza; ***none*** come close to getting the pizza to Mr. Harris at 6:00 p.m. In June 1998, Yucaitis testified that he left to get pizza at 6:45 p.m. and returned at 8:30 or 8:45 p.m.—offering no explanation for why this pizza run would take two hours. (R 313, 315). In February 1999, Yucaitis testified that he left to get pizza at around 6:30 and returned sometime after 8:00, maybe 8:30 p.m. (R 1473). In September 1999, Yucaitis testified that he left to get pizza at around 6:30 p.m.

and returned sometime after 7:00 p.m.—in as little as a half hour. (R 10220). Thus, depending on which version is to be believed, Yucaitis left to get pizza between 6:30 and 6:45 p.m. and returned with the pizza sometime between 7:00 and 8:45 p.m. on August 29, 1995, at least an hour (or as many as three hours) too late for the SSA's version of events.

While Yucaitis was supposedly out getting pizza, Boylan was attempting to apprehend Patrick Brunt. (R 12366-67). The SSA presented no evidence regarding what led detectives to seek out and arrest Brunt; none of the sexual assault or the armed robbery line-ups held that morning involved any crime implicating Brunt. But the critical point is that Boylan testified unequivocally at the suppression hearing that he apprehended Brunt and returned to Area 2 at about 7:30 p.m. *Id*. During the 1998 suppression hearing, Boylan testified that he arrested Brunt at 8:00 p.m. (R 306). Either way, it was at least 90 minutes after 6:00 p.m., the critical juncture necessary to make the SSA's narrative work.

According to Yucaitis, as he was delivering pizza to Mr. Harris, Mr. Harris saw Brunt through the open door of the interrogation room. (R 315-16). Yucaitis claimed that Mr. Harris then said, "What is Brunt doing here?" *Id.* According to Yucaitis, Mr. Harris then spontaneously said "Hear me out. I want to talk to you." *Id.*

Yucaitis testified that he then asked Hamilton to come into the interrogation room. (R 318). According to Hamilton, Mr. Harris then spontaneously confessed to being involved in the 1995 shooting of James Williamson. (R 12625). Again, Hamilton took no notes and did not ask Mr. Harris to sign a statement. (R 12626).

At 10:00 p.m. on August 29, 1995, Hamilton left Area 2 to go home, and he returned at 7:00 a.m. the next day. (R 12627).[5]

[5] *See* note 3, *supra*.

4. McDermott Is Alone With Mr. Harris

During his testimony at the 1998 suppression hearing, McDermott admitted that he was alone with Mr. Harris between midnight and 1 a.m. on August 30, 1995:

> Q. Some time after that did you have another conversation or contact with the defendant, Ralph Harris?
>
> A. Yes.
>
> Q. When was that?
>
> A. Approximately twelve midnight, maybe one o'clock in the morning, so thirteen, fourteen hours later.
>
> Q. That would be on August 30th, of 1995?
>
> A. Correct.
>
> * * *
>
> Q. He was in an interview room at that point?
>
> A. Same one I believe, yes.
>
> Q. ***Was anyone else in the room when you stuck your head in****?*
>
> A. ***I don't recall. No. I don't think so. No.***

(R 265-67).

5. The Alleged Williamson Confession

After being alone with McDermott, Mr. Harris purportedly admitted to ASA Thomas Darman to being involved in the shooting of James Williamson. (R 12830, 12836-37). ASA Darman testified that he never would have interrogated Mr. Harris but for his belief that Mr. Harris had reinitiated questioning with Yucaitis. (R 12873). Ultimately, Mr. Harris was never charged in the Williamson shooting. (R 12885-86).

6. The Purported Bramlett, Hodges, and Ford Confessions

On the morning of August 30, 1995, Mr. Harris was placed in a series of lineups arising from armed robberies and murders that had occurred in 1992. The only explanation that any witness provided for connecting Mr. Harris to the 1992 crimes was that "older detectives" somehow believed Mr. Harris may have been involved. (R 12637-39).

At 10:30 a.m. on August 30, 1995, according to Hamilton, Mr. Harris supposedly confessed to three murders. (R 12510-14). For the first time, Hamilton took notes of what Mr. Harris purportedly told him. Hamilton's notes contain broad generalities, with no identification of any victim, any date, or any location for any of the alleged crimes. In the first statement, Hamilton wrote the following:

> "Greg + I parked around corner maroon 98, I had the gun + V grabbed at gun I shot him 2 or 3 times (not sure how many hits) Greg went in victims pockets. Ran alley to corner made left to car fled. I wouldn't have hurt him if he didn't grabb [sic] at my gun."

(DSA002513).[6] A second statement at 10:45 a.m. reads:

> "V walked from car across grass from a car. Had a .380 auto, told V – this is a stickup don't make me hurt you. V grabbed my hand and I shot him in the belly + ran to car maroon 98 (Greg 33) plate Pat Brunt was driving parked around corner saw police as I was leaving."

(DSA002514). A third statement from 11:00 a.m. reads:

> "Saw V in dark park ave blue I think, w/ hammers + vogues followed him thought he was a drug dealer. V - parked car got out I met on grass "this is a stick up" pointed gun V grabbed me in bear hug so I shot him, I kept shooting till he let go. Shot him 5 or 6 times he was tough, cause after all

[6] The Special State's Attorney's brief states that "[t]he Clerk of the Circuit Court did not include the parties' exhibits in the Record on Appeal. The People are in the process of supplementing the record with those exhibits." Br. at 19, n. 3. Notwithstanding the passage of more than a month, such supplementation has not occurred at the time of this filing. For the Court's convenience and completeness of the record, Mr. Harris has provided the exhibits introduced at the suppression hearing and cited herein as Defendant's Separate Appendix ("DSA").

> those shots he still ran. When he let me go I ran to get away from that crazy mother fucker. Ran around the corner to car Maroon 98 (Greg 33) Patrick Brunt was waiting in the car we drove away."

(DSA002515).

ASA Quade returned to interview Mr. Harris at 11:30 a.m. on August 30, 1995. (R 13062). Like ASA Darman, ASA Quade testified that she would not have attempted to speak with Mr. Harris following his invocation of rights but for her belief that Mr. Harris supposedly had reinitiated questioning with Yucaitis the night before. (R 13188-89).

Like Hamilton's notes, Quade's felony review notes contain almost no details concerning the alleged murders, with no identification of any victim, date, or location. One set of notes at 12:00 p.m., with regard to the Patterson murder, states simply that Mr. Harris "can't remember if he committed this offense[.]" (DSA002446).

At 2:15 p.m., Quade wrote: "D stated D + Co-D saw V to rob. D got out of car + said this is a stick-up. D pointed gun at V. V grabbed D's hand + gun. D ran, to get into waiting car + fled." (DSA002445).

At 4:05 p.m., Quade wrote: "D states that he was with Powell that the [sic] saw V in car in alley looking like he was pulling into garage V opened door + walked up to [] door on V's garage. V opened door. D pointed gun at V. V grabbed gun D shot V. D ran Co-D took V's wallet but no money in it." *Id.*

At 6:00 p.m., Quade wrote: "D stated he + Co-D were driving around. Co-D followed V's car. V parked car Co-D parked his car D got out of car approached D to rob him. D pointed gun at V. V lunged at D. D put V in a bear hug. D shot V 3-6 times. D ran

without taking anything." (DSA002446).[7]

In addition to her felony review notes, ASA Quade wrote out three long-form multi-page statements for Mr. Harris to sign, one each concerning the Bramlett, Hodges, and Ford murders. (R 13065). It is these three statements that were introduced at Mr. Harris's subsequent trials. ASA Quade acknowledged on cross-examination at this suppression hearing that many of the statements' details—names of victims, locations, dates and times—all came from detectives at Area 2, ***not*** from Mr. Harris. (R 13201-04).

> Q. ***The specific detail about the name of the murdered victim, when and where it occurred, none of that came for Mr. Harris, correct****?*
>
> A. ***I don't believe so****.*

(R 13203). In contrast, at Mr. Harris's trials, ASA Quade had testified falsely that all of the handwritten statements that she had recorded were taken "from the defendant" and that the statements were "a summary of what the defendant told me." (R 2086, 2089).

ASA Quade also admitted, again contrary to her trial testimony, that she copied and pasted from one statement to another information regarding Mr. Harris's treatment in custody. (R 13205-7).[8] ASA Quade could provide no explanation for the biographical details in the statements—*e.g.,* that Mr. Harris supposedly received a GED from Chicago

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[7] Mr. Harris's purported statements documented in ASA Quade's felony review notes were ***not*** produced in connection with Mr. Harris's original suppression hearings or three trials. Indeed, they were not even disclosed or produced in advance of ASA Quade's testimony at the most recent suppression hearing and were disclosed to defense counsel only after the circuit court overruled the SSA's frivolous privilege objection. (R 13124-31). The failure to produce ASA Quade's felony review note was one basis for Mr. Harris's motion for new trials based on *Brady* and *Giglio* violations. (C 3771-76).

[8] ASA Quade falsely claimed at trial that before each statement, she had re-Mirandized Mr. Harris and asked him a series of questions about his background, his arrest and detention at Area 2, and how he had been treated by police officers. (R 6468-69, 6472-73, 6508-10).

Vocational High School when, in fact, he only completed eighth grade at Parkside Academy—that are verifiably false. (R 13212-14).

Critically, as discussed in Part B(3), *supra*, each of the three statements taken by Ms. Quade sets forth the precise time when Mr. Harris supposedly saw Patrick Brunt at Area 2 on August 29, 1995, purportedly leading Mr. Harris to re-initiate questioning: **6:00 p.m.** ASA Quade testified unequivocally that the time was correct, describing a clock near Mr. Harris's interrogation room that he would have been able to see to correctly identify the time. (R 13218-23). ASA Quade acknowledged that Hamilton was with her during the bulk of her questioning and also could have corrected any error regarding the time. (R 13209). ASA Quade could provide no explanation for the factual impossibility of Mr. Harris purportedly seeing Brunt at 6 p.m. on August 29, when neither Brunt nor any pizza was delivered to Area 2 until later that evening. (R 13227-28). ASA Quade also could not explain why seeing Brunt would cause Mr. Harris to confess, given Mr. Harris's purported statements describe Brunt as a getaway driver in two of the murders, Bramlett and Ford, and the Hodges murder did not involve Brunt at all. (R 13229-33)[9].

7. Mr. Harris's Booking

Mr. Harris's medical intake was performed by Patricia Hayes. Ms. Hayes testified that she is not a nurse and has no training in evaluating either physical or psychological torture. (R 12712-13). Further, Ms. Hayes testified that she never asked Mr. Harris if he

[9] In her suppression hearing testimony, Ms. Quade claimed that Mr. Harris made various other inculpatory statements, including that he wanted to be a celebrity and that he preferred to be known as the "Chatham killer" rather than the "Chatham rapist." (R 13095). Inexplicably, ASA Quade did not document any of these alleged statements in her felony review notes, the statements she directed Mr. Harris to sign, or her subsequent report to her supervisor. (R 13100, 13103-05).

had been subjected to any form of torture. *Id*. Ms. Hayes also could not say whether she spent more than five minutes examining Mr. Harris. (R 12715). Mr. Crump, a detention aide, also testified that he only performed a "very quick check" of Mr. Harris. (R 12728, 12737-38).

C. The Torture and Abuse Suffered By Mr. Harris

The following facts are drawn from Mr. Harris's trial testimony, which was admitted at the suppression hearing (DSA000032). This Court previously considered Mr. Harris's trial testimony in its remand order.

After being brought to Area 2 on August 29, 1995, Mr. Harris was taken to an interrogation room and handcuffed to a loop in the wall. (R 6843). McDermott and Boylan were the first to interrogate him. (R 6844). Referring to the armed robbery of Sergeant Wilson four years earlier, McDermott said "[h]ow you doing, Ralphy boy? You thought we forgot about you? You thought [we] forgot about what you did to Rudy?" (R 6844-45). McDermott then grabbed Mr. Harris by the throat, choked him, and pushed him against the wall. (R 6846). McDermott punched Mr. Harris in the stomach and threatened "to send me to the penitentiary forever." (R 6846-47).

McDermott and Boylan returned to the interrogation room later that morning. Mr. Harris explained, "I was smacked. I was choked. I was hit in the stomach. They were telling me that I was going to cooperate and they knew I knew something about [certain] murders and that they were going to get me by all means. 'Whatever it took we are going to send . . . [me] [to] the penitentiary forever.'" (R 6850-51).

That afternoon, after Mr. Harris invoked his Fifth Amendment rights, Hamilton then entered the interview room and told Mr. Harris, "I don't really know what's going on, but [McDermott and Boylan], they want you. And it's nothing I can do for you unless you

cooperate with me and do what they want you to do. I can't help you. They're going to lock Angela [Mr. Harris's fiancée] up . . ." (R 6851-54).

McDermott and Boylan then returned to the interview room and Mr. Harris testified that they "grabbed my arm and took my wrist," causing an "agonizing" pain. (R 6855). McDermott put "his hands around my throat pushing me back and my arm is handcuffed and he choked me until I was gagging and I almost, my knees just felt weak and then he let me go." (R 6855-56). Next, McDermott "punched me . . . between the rib cavity and the stomach area which knocked the wind out of me … [H]e grabbed me again and put me up against the wall and told me I was going to do what they wanted me to do." *Id*.

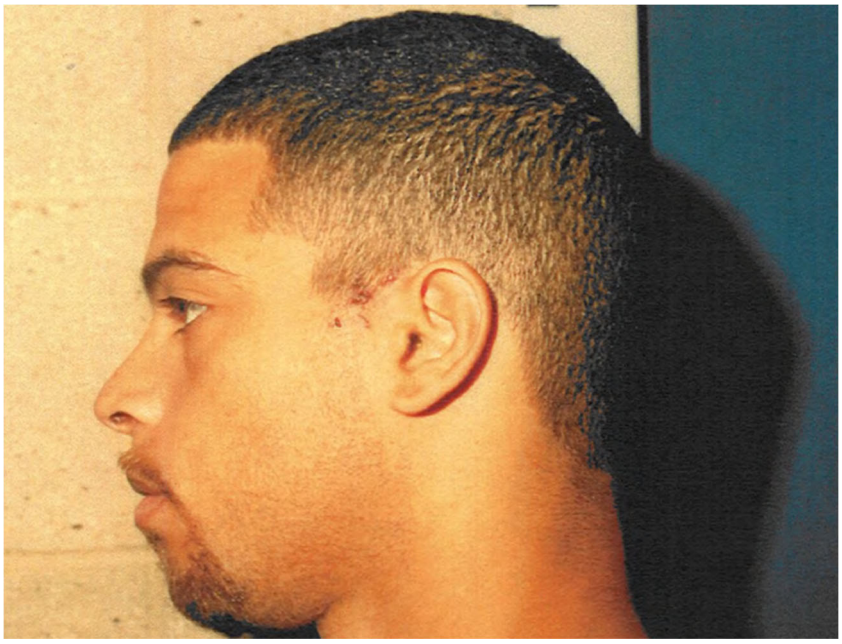
Later, McDermott and Boylan returned. McDermott pulled out a gun and said "[y]ou know this .45 will take your head clean off in this room." (R6859). McDermott pointed the gun at Mr. Harris's head and asked Boylan "so you think that we can kill him?" *Id.* McDermott pulled out a pocketknife, opened it, and said to Boylan "[w]ell, we can say he had the knife on him and then I could shoot him and then you think we will get away [with] it?" *Id.* Boylan responded that they would. (R 6859-60). McDermott then "grabbed me by my throat and put the gun to my – to the side of my head and told me 'I am going to kill you.'" (R 6860). McDermott forced Mr. Harris's mouth open, put the gun in his mouth, and threatened to kill Mr. Harris. *Id*.

Throughout his abuse, Mr. Harris did not know where his fiancée, Angela Clark, was being held. (R 6848). Hamilton told Mr. Harris that Angela would be "lock[ed] up" if he did not cooperate. (R 6849). Mr. Harris recalled being "scared," because "they are threatening to lock up Angie, which she hadn't did anything. This is the woman I am about to marry … and I love her." (R 6851).

That evening, Yucaitis entered the interrogation room and told Mr. Harris that he should not allow Angela Clark to go to jail with him. (R 6863-64). Yucaitis slapped Mr. Harris in the back of the head and said "[y]ou are going to get her locked up. Now if my wife is in jail, I would do anything to keep her out of this. So you are just a piece of shit because you are going to sit here and let her go to jail." *Id.*

Ultimately, Mr. Harris began to tell the detectives whatever they wanted to hear. He signed his name to blank pieces of paper provided by Hamilton—*i.e.*, Hamilton's "notes" of the Bramlett, Hodges, and Ford murders (DSA002517-19)—and later, the statements written out by ASAs Darman and Quade. Mr. Harris explained: "I was scared, and I just didn't want to be hit any more, didn't want Angela to go to jail. I was just – I had been there for [an] extremely long time, and I was just going through mental abuse and physical abuse until I was just so distraught, until I just didn't want any more problems from anybody. Just wanted everything to stop." (R 6871).

A photograph documents blood and bruising on the side of Mr. Harris's head:



(DSA001661). The Defendant's expert witness, Dr. Steven Miles, evaluated this photograph. Dr. Miles testified that, based on his evaluation, there were two separate injuries on the side of Mr. Harris's head. (R 12991-92). These injuries, Dr. Miles explained, were consistent with trauma and were ***not*** caused by a gun being held to Mr. Harris's head during his arrest. (R 12992-93).

Dr. Miles is a Professor Emeritus of Medicine at the University of Minnesota. (R 12966-67). He has published multiple books and at least 30 articles on torture. (R 12970). He has studied psychological torture and sham executions and, as part of his practice, has treated many torture victims. (R 12971-74). He has been certified as an expert and testified in litigation related to the abuse of 9/11 detainees at Guantanamo Bay. (R 12972). Based on his considerable experience, Dr. Miles was qualified by the circuit court as an expert in the "area of torture, particularly in the area of medical observation and evaluation." (R 12981).

Dr. Miles testified that stealth torture is a "subset of torture" that consisted "both of psychological techniques" and "physical techniques that did not leave scars or bruises." (R 12973). Examples of stealth torture include threats, degradation, sham executions, prolonged isolation, depravation of the sense of time, and other physical beatings that are less likely to leave a scar or a bruise. (R 12973-74).

Dr. Miles offered his expert opinion that Mr. Harris's interrogation at Area 2 was consistent with stealth torture. (R 12983-84, 12995). Dr. Miles testified that Mr. Harris's "allegations and chronology strongly suggest sleep deprivation, stress positions, and disorientation of time." (R 12984). Dr. Miles added that Mr. Harris was subject to psychological torture with the "threats to lock up his fiancé" as well as the "threat of

execution … where a gun was placed in his mouth." (R 12993-94). Dr. Miles also opined that Patricia Hayes's medical examination did not screen for psychological torture and missed signs of physical torture exhibited by the lesion on the left temple. (R 12985-86).

D. Pattern and Practice of Torture at Area 2

The most compelling evidence of the truth of Mr. Harris's allegations of torture is (i) that those allegations ***predate*** any public knowledge of the abuse committed by Jon Burge and his subordinates; and (ii) the extraordinary similarity of the abuse perpetrated against Mr. Harris to other documented incidents of torture by McDermott, Boylan, and Yucaitis—three of the four detectives who interrogated Mr. Harris.

1. Historical Misconduct at Area 2

For over a decade, Commander Jon Burge was in charge of Area 2, presiding "over an interrogation regime … designed to inflict pain and instill fear while leaving minimal marks." *U.S. v. Burge*, 711 F.3d 803, 806 (7th Cir. 2013). Spanning decades, this systemic behavior amounted to "an astounding pattern or plan … to torture certain suspects … into confessing to crimes[.]" (C 1958). Over one hundred individuals have detailed their abuse by Burge and officers under his command, and scores of verdicts have been overturned. (*See, e.g.*, C 1990-2024).

The pattern and practice of torture at Area 2 involved many other detectives besides Burge, and that torture continued long after he departed Area 2. (C 2408-70). Between 2002 and 2006, a Cook County Special Prosecutor investigated allegations of torture at Area 2, concluding that "a number of those serving under [Burge's] command recognized that, if their commander could abuse persons with impunity, so could they." (DSA000098). Another investigation by the Office of Professional Standards examined 50 instances of torture between 1973 and 1984 and found that in only 18 instances was Burge the

perpetrator, with other detectives carrying out the torture in a majority of cases. (C 1715).

2. Specific Misconduct by McDermott, Boylan, and Yucaitis

(a) Misconduct by McDermott

At least 18 individuals have made separate allegations of torture and abuse against McDermott. Federal and state courts alike have found that McDermott committed acts of torture and provided false testimony regarding his actions:

- In 1984, McDermott deprived Franklin Burchette of sleep, threatening to beat him and torture him with an electric prod. (C 2406).
- In 1985, McDermott beat Alphonso Pinex until he lost control of his bowels, an allegation that the Special Prosecutor found to be sufficiently supported "to establish guilt beyond a reasonable doubt." (C 2199-201); (DSA000098).
- Also in 1985, McDermott watched while Burge suffocated Shadeed Mu'min with a typewriter cover and threatened him with a loaded pistol. (C 2271-74, 2406).
- In 1986, McDermott beat Jerry Thompson, slapping him across the face, kicking him, and striking his body with a flashlight. (C 2406).
- Also in 1986, McDermott beat Andrew Maxwell, hitting and kicking him and stomping on his foot. *Id.*
- In 1987, McDermott beat Daniel Vaughn, striking him and threatening him with further violence. *Id.*
- In 1990, McDermott put a gun to Tony Anderson's head and threatened "to blow [his] brains out." (C 2334-35, 2341).
- In 1991, McDermott tortured David Randle by squeezing his testicles, and denied Randle his medication as well as food and drink. (C 2407).
- In 1992, McDermott took part in a search of the home of Cersenia Blackburn. McDermott kicked Mrs. Blackburn's son in the groin and beat him with a flashlight while she watched. (DSA002066).
- In 1993, as described in testimony to the circuit court by the victim, McDermott and Boylan pushed Joseph Carroll into a radiator, slapped Carroll, and stood on his leg. (R 13445-46).

- In 1994, McDermott participated in the torture of Willie Pole, kicking and hitting Pole and watching as others continued with the beating. (C 2407).

- In 1996, McDermott repeatedly punched Ebony Reynolds in the ribs and face, slapped him in the face, and threatened to beat his pregnant girlfriend, Michelle Clopton, until she lost her baby. Clopton, who was held by McDermott at the same time, alleged that McDermott grabbed her hair and twisted her head, pushing and kicking her as he threatened her with the death penalty. (DSA001712-13, DSA001549-50).

- In 1996, McDermott beat Jon Knight, slapping and choking him, holding a gun to his head and pulling the trigger, and threatening to kill him. (C 2407.)

- In 1998, McDermott beat Richard Campbell, striking him in the chest and ribs and depriving him of food and sleep. *Id*.

- Also in 1998, McDermott interrogated Rickey Robinson, threatening to drive him to an alley and shoot him. *Id.*

- In 1999, McDermott tortured Aubree Dungey, beating him on the trunk of a car, handcuffing Dungey to a bench, and left him for three days without water or a bathroom, feeding Dungey only once. *Id.*

- In 1999, McDermott held Abdul Muhammad in a cell without food or a bathroom, and boasted he could get him to confess without leaving a mark. (DSA001371-72).

- In 2003, near the end of his career, McDermott left James Lenoir naked in an interrogation room and held him down while another detective struck him with a phone book repeatedly, denied his request for an attorney, and threatened to plant guns on him. (DSA002145, DSA002205-6).

McDermott has been questioned about these incidents on numerous occasions, and he repeatedly has been found to have perjured himself and given false testimony to cover up his wrongdoing. *U.S. v. Burge*, Case No. 04-cr-846, Dkt. No. 438 at 5 (N.D. Ill. Jan. 17, 2014); (DSA000372, DSA001384-86, DSA001562-64). In immunized testimony at Jon Burge's trial, McDermott himself admitted to having lied at the suppression hearing for Alfonso Pinex "because [Pinex] was a murderer, and I didn't want him to get off." (C 2144). A Special State's Attorney investigation into the Pinex matter found that there was sufficient evidence to indict McDermott for perjury and obstruction of justice. (C 2377-

94). Faced with potential charges for perjury in non-immunized testimony, McDermott repeatedly has invoked his Fifth Amendment rights and refused to testify. (C 2397-99). In this case, the SSA ***admitted*** that McDermott "had not been entirely truthful" during his testimony at Pinex's suppression hearing. (C 2363). The SSA chose not to call McDermott to the stand.

(b) Misconduct by Boylan

Like McDermott, Boylan's career is rife with incidents of abuse. Among others, Boylan aided McDermott in the torture of Ebony Reynolds, Michelle Clopton, Joseph Carroll, and Cersenia Blackburn.

In 1993, Boylan stood on Carroll's ankles and slapped him across the face while McDermott forced Carroll's face into a hot radiator. (R 13445-46). After investigation by the Office of Professional Standards, the Carroll complaint against Boylan was sustained. (DSA001735). The failure to disclose this complaint (and others) to Mr. Harris prior to trial was another basis for his *Brady* and *Giglio* motion for a new trial. (C 3771-73).

In 1996, Boylan "punche[d] Mr. Reynolds in the ribs and face, slap[ped] him in the face, hit[] him with a flashlight causing a chipped tooth, and threaten[ed] to 'knock the baby out of' Ms. Clopton and deprive [Reynolds] of ever seeing his unborn child[.]" (DSA001712). A TIRC review of complaints against Boylan in that investigation found that there were "24 complaints filed against [Boylan,]" including numerous incidents with "violent or racist components[,]" a history of behavior that TIRC found to be "lengthy, consistent, and substantiated[.]" (DSA001728, DSA001732)

Boylan abused other suspects, including Michael Simpson. In 1994, Boylan slapped his head into a wall, punched him in the stomach, grabbed him by the throat, and verbally abused him. (DSA002013-14).

Boylan also has a history of alcoholism and violence towards others. Boylan was suspended for 15 days in 1992 for an off-duty incident in which, while intoxicated, he pursued another vehicle in his car and then followed the passengers on foot, firing three shots at them. (DSA001823-24, DSA001831). In 1995, Boylan had another off-duty incident in which he cut off William Coddens in traffic, drawing a gun, placing it to Coddens's forehead, and saying "I'll shoot you, you son of a bitch." (DSA002113).

(c) Misconduct by Yucaitis

Yucaitis also had multiple allegations of torture made against him, with incidents going as far back as the 1970s—in 1973, Yucaitis stood by and watched as electric shocks were inflicted upon Anthony Earl Holmes. (R 13352-63). In 1987, Yucaitis punched Daniel Vaughn in the mouth during an interrogation. (DSA002358-59, DSA002364-71).

In 1991, allegations of torture against Yucaitis in the case of Andrew Wilson were sustained after an investigation by the Office of Professional Standards, which later recommended that Yucaitis be dismissed from the Department for his role in the mistreatment of Wilson. (C 1806-1878, 2025-35). Yucaitis "repeatedly administered electrical stimulation to Mr. Wilson's body in order to create pain" and engaged in "an unjustified physical altercation during which Mr. Wilson was handcuffed and incapable of providing any resistance." (C 2027). Yucaitis was suspended for 15 months. (C 2408-2470).

3. The Live Testimony of Joseph Carroll and Anthony Holmes

(a) The Torture of Joseph Carroll

Joseph Carroll testified that he was arrested on the evening of January 27, 1993—only two years prior to Mr. Harris's arrest. (R 13438). Mr. Carroll was a 16-year-old student at Morgan Park High School. (R 13440). He was at a public park playing

basketball when someone was shot and killed. (R 13440-41). Mr. Carroll was arrested at a friend's house near the park late that evening. *Id.*

At the police station, McDermott and Boylan interrogated Mr. Carroll. (R 13443-44). McDermott and Boylan handcuffed Mr. Carroll to a chair. (R 13443). They slapped him so hard that he was knocked over in the chair that he was handcuffed to. (R 13445). While he was on the ground, either McDermott or Boylan stood on Mr. Carroll's ankle, applying pressure. (R 13445-46). McDermott or Boylan then pushed Mr. Carroll's face against a heating vent on the floor. *Id.* The interrogation went on all night. *Id.* He was taken out of the room for lineups but McDermott and Boylan did not let him sleep. (R 13446-47).

After Mr. Carroll was released, he told his mother what had happened to him. (R 13448-49). She filed a complaint. *Id.* As part of the complaint process, Mr. Carroll picked out McDermott and Boylan from a photo book. (R 13450).

Mr. Carroll was never charged. (R 13447-48). In fact, he has no relevant criminal history whatsoever. (R 13484). He did not pursue any civil claims arising from his abuse and has no motive to fabricate any of the events he described. (R 13453).

(b) The Torture of Anthony Holmes

In 1972, Anthony Holmes was 26-years-old and lived on the South Side of Chicago with his wife and four children. (R 13350-51). On May 29, 1973, Chicago Police Officers—including Yucaitis and Burge—burst into his home, brandishing guns. (R 13351-52). Burge used a racial slur—calling Mr. Holmes a "n[*****]" and put a gun to his head. *Id.* He was then handcuffed. (R 13353-54).

At the police station, Yucaitis and Burge took Mr. Holmes into an interrogation room. *Id.* Mr. Holmes's arms were handcuffed behind his back and his legs were cuffed

together. (R 13353-54, 13356). Burge struck Mr. Holmes with the back of his hand, knocking him—still handcuffed—to the floor. (R 13355).

When Mr. Holmes still did not confess, Burge returned with a "black box" that "had two long wires on the front and one plug-in in the back" and a "crank on the side of it." (R 13356.) While Yucaitis looked on, Burge plugged the device into the wall, and attached the wires to Mr. Holmes's handcuffs and ankle cuffs. *Id.* Burge then said "N[*****], I got something for . . . y[ou]." (R 13357). He brought out two gray plastic garbage bags from a desk in the room. *Id.* Burge then put the bags over Mr. Holmes's head. *Id.* Yucaitis or Burge turned on the "black box" machine, sending electricity through Mr. Holmes's body, causing a continuous electric shock. (R 13358-59).

Eventually, unable to endure further torture, Mr. Holmes agreed to say "whatever [they] want[ed] [him] to confess." (R 13362). Yucaitis brought Mr. Holmes a prewritten statement to sign. *Id.* Yucaitis threatened to bring Mr. Holmes back upstairs and torture him more if he asked for an attorney. (R 13363). In response to the torture and threats, Mr. Holmes signed the statement. *Id.*

STANDARD OF REVIEW

A circuit court's grant of a new trial is reviewed for an abuse of discretion. *People v. Gibson*, 304 Ill. App. 3d 923, 930 (1999). A two-part standard of review applies to a circuit court's denial of a motion to suppress: the circuit court's factual findings are reviewed against the manifest weight of the evidence, and the ultimate ruling on the motion to suppress is reviewed *de novo*. *People v. Freeman*, 2021 IL App (1st) 200053, ¶ 7, 196 N.E. 3d 542, 543–44 (2021); *People v. Davis*, 2021 IL App (3d) 180146, ¶ 58, *appeal denied,* 184 N.E. 3d 990 (2022).

ARGUMENT

I. AN ORDER GRANTING A NEW TRIAL IS NOT AN APPEALABLE INTERLOCUTORY ORDER

The permissible grounds for interlocutory appeal by the State in criminal cases are strictly limited. "In criminal cases the State may appeal ***only*** from an order or judgment the substantive effect of which results in dismissing a charge …; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence." Ill. Sup. Ct. R. 604(a)(1) (emphasis added).

The circuit court's order granting Mr. Harris a new trial, from which the SSA now seeks to appeal, plainly does not fit into any of these categories. The new trial order does not "result[] in dismissing [any] charge" against Mr. Harris; he must still face trial for each and every crime with which he has been charged. *Id*. The new trial order does not "arrest[] judgment because of a[ny] defective" pleading. *Id*. The order does not "quash[] an arrest or search warrant" or "suppress[] evidence." *Id.* And it is not a pretrial release order. *Id.* As this Court held in *People v. Allen*, 168 Ill. App. 3d 397 (1987), "an order by a circuit court granting a defendant a new trial in a criminal case is not one of the grounds enumerated by Supreme Court Rule 604(a)."

Since an appeal from a new trial order is not authorized under Rule 604(a)(1), the appeal should be dismissed for lack of jurisdiction. *See In re K.E.F.,* 235 Ill. 2d 530, 540–41, 922 N.E.2d 322, 328 (2009) ("we conclude that the circuit court's order is not appealable under Rule 604(a)(1) and this cause must be dismissed for lack of jurisdiction."); *People v. Pettis*, 2019 IL App (4th) 180328-U, ¶ 44 ("The State failed to meet the requirements to appeal under Rule 604(a)(1), and we dismiss the appeal for lack of jurisdiction."); *People v. Truitt*, 175 Ill. 2d 148, 153, 676 N.E.2d 665, 667 (1997)

("Because the interlocutory order here … is not claimed to fall within any of the other provisions of our Rule 604(a)(1), the State has no right to appeal the order to this or any court of review."), *abrogated on other grounds by People v. Miller*, 202 Ill. 2d 328, 781 N.E.2d 300 (2002); *People v. Crossley*, 2011 IL App (1st) 091893, ¶ 10, 962 N.E.2d 20, 23.

The SSA offers a futile excuse for its defective appeal, arguing that the circuit court purportedly granted Mr. Harris's motion for a new trial as part of a post-conviction proceeding. Br. ¶ 15 ("the instant case . . . [is] an appeal from a final order by the trial court granting a new trial as a result of proceedings on his petition for postconviction relief"). In support, the SSA relies on *People v. Joyce*, 1 Ill. 2d 225 (1953) and *People v. Andretich*, 244 Ill. App. 3d 558 (1993). In those cases, the court held that it had jurisdiction to hear a direct State appeal from relief granted on a ***post-conviction*** petition because it was a "final judgment on the ***civil*** matter" and, therefore, "unaffected by Rule 604(a), which on its face applies to criminal proceedings." *Andretich*, 244 Ill. App. 3d at 560.

Here, unlike the distinct procedural posture in *Joyce* and *Andretich*, both of which involved ***civil proceedings*** arising from post-conviction habeas petitions, this Court remanded Mr. Harris's case for a new suppression hearing in Mr. Harris's underlying ***criminal cases***, not for any kind of post-conviction proceeding. *Harris*, 2021 IL App (1st) 182172, ¶ 64. Indeed, this is obvious from the caption of this appeal, which cites the criminal case numbers in Mr. Harris's underlying criminal cases, ***not*** the civil case numbers in his completed post-conviction habeas proceedings.

More broadly, a new suppression hearing necessarily puts Mr. Harris in the same position he would have been in prior to trial had his motion to suppress not been

erroneously denied, *i.e.,* a pre-trial posture in his criminal case, not a post-conviction posture in a civil case. *See People v. Almendarez,* 2022 IL App (1st) 210029-U, ¶ 22 ("While the parties have briefed the issue of whether the [circuit] court properly denied the motion to suppress, we cannot comment on the outcome of the new suppression hearing at this time, as Illinois Supreme Court Rule 604(a)(1) does not permit a defendant to appeal from an order of a trial court denying a motion to suppress evidence until after conviction.").

In sum, because the grant of a new trial from which the SSA seeks to appeal is not among the permissible bases for appeal under Rule 604(a)(1), the appeal should be dismissed for lack of jurisdiction.

II. THE SSA NEVER PRESENTED ITS ARGUMENTS TO THE CIRCUIT COURT AND IS FORECLOSED FROM DOING SO FOR THE FIRST TIME ON APPEAL

The SSA has never raised ***any*** of the arguments it presents to this Court before Judge Clancy—not before filing its notice of appeal, and not at any other time. This is confirmed by a review of the hearings that followed Judge Clancy's new trial order, which was entered on May 31, 2022. The SSA filed its notice of appeal on June 28, 2022. There were no hearings before Judge Clancy between the circuit court's ruling on May 31, 2022 and the filing of the SSA's notice of appeal on June 28, 2022. A hearing was scheduled for June 27, 2022, but the SSA failed to appear, and a writ to bring Mr. Harris to the courtroom was not properly executed. (C 3922). Necessarily, since there were no proceedings between the date of the Court's ruling and the filing of the SSA's notice of appeal, the SSA ***never*** objected to Judge Clancy's order granting Mr. Harris a new trial or raised ***any*** of the arguments brought in this appeal for Judge Clancy's consideration prior to filing its notice of appeal.

Nor did the SSA do so at any subsequent hearing. At the next substantive hearing, on August 10, 2022, Judge Clancy formally vacated Mr. Harris's convictions and remanded him to the Cook County Department of Corrections. (DSA002517). Judge Clancy also heard and denied Mr. Harris's motion for bond, and ordered the SSA to elect the first case on which they wanted to retry Mr. Harris. (DSA002517, DSA002538, DSA002541). At the August 10, 2022 hearing, counsel for Mr. Harris—not the SSA—informed the circuit court that an appeal had been filed by the SSA, and the parties debated whether it was an improper interlocutory appeal. (DSA002522-23). But again, the SSA made no mention of any substantive issue it seeks to raise before this Court. *Id.*

At the next hearing, on August 23, 2022, the SSA "mov[ed] to release the impounded evidence [from Mr. Harris's three trials]…. We have been ordered to make an election on criminal cases by September 21st. So we need the evidence." (DSA002544).

During the following hearing, on September 21, 2022, the SSA indicated that it was preparing for retrial, noting that "we are electing on 95 CR 27600 [Rhonda Thompson]" as the first case for retrial. (DSA002552). The SSA further indicated that it was preparing to analyze the evidence and had "also submitted an order for forensic testing[.]" (DSA002555). And the SSA promised (falsely as it turned out) that it would begin to provide discovery to counsel for Mr. Harris by the next court appearance on October 26, 2022. (DSA002561) (stating that SSA would "begin discovery on that day … I will certainly have some."). Even after Judge Clancy observed that "this case has now been put back in pretrial mode[,]" the SSA made no statement indicating any objection to Judge Clancy's new trial ruling. (DSA002560).

On October 13, 2022, the SSA filed a motion in this Court to stay further

proceedings in the circuit court. (SA 325.) The SSA never raised the issue of a stay before the circuit court itself. And at the subsequent October 26, 2022 hearing before Judge Clancy, the SSA merely requested a January status conference. (DSA002569).

Finally, at a hearing on January 26, 2023, the SSA again promised to make discovery disclosures to undersigned counsel (which still has not happened). (DSA002576). The circuit court sat another status hearing for April 12, 2023. (DSA002580).

"An issue must be raised … in the trial court … to be preserved for appeal." *E.g., People v. Pace*, 225 Ill. App. 3d 415, 432 (1992) (*citing People v. Enoch*, 122 Ill. 2d 176, 186 (1988)); *see also People v. Turner*, 2012 IL App (2d) 100819, at ¶ 26 (holding that where the State failed to first raise an argument in the circuit court, it procedurally defaulted and could not raise the issue on appeal); *People v. Corrie*, 294 Ill. App. 3d 496, 508 (1998) (holding that defendant procedurally defaulted on claim that lower court mis-applied sentencing rules by "failing to raise those issues … in the trial court.")

Here, the SSA should have raised its objections to the circuit court's new trial order with the circuit court. *See, e.g., People v. Marker*, 233 Ill. 2d 158, 172 (2009) ("the intent [] in criminal as well as civil matters [is] the circuit court be given the opportunity to reconsider" both "final appealable judgments" and "interlocutory judgments[.]").

The SSA ignored this practice and, in doing so, failed to preserve any of the arguments it raises to this Court for appeal. *E.g.*, *Turner*, 2012 IL App (2d) 100819, at ¶ 26; *People v. Mendiola*, 2014 IL App (4th) 130542, at ¶ 31 (holding where state failed to object to interlocutory order in circuit court, it could not raise it on appeal).

People v. Mink, 141 Ill. 2d 163, 172 (1990), although the mirror image of the

procedural posture here, is instructive. There, the circuit court granted a new trial to a criminal defendant, and the State filed a motion to reconsider. In responding to the motion to reconsider, the defendant failed to raise any argument that reconsideration was barred by double jeopardy; nor did the defendant raise this argument in his own motion to reconsider after the circuit court reversed the new trial order. *Id.* Instead, the defendant waited until appeal to raise those arguments and was found to have procedurally defaulted. *Id.* Here, as in *Mink*, the SSA should have raised its arguments before the circuit court. By failing to do so, it finds itself in the same position as the defendant in *Mink*, having procedurally defaulted on the arguments that it now seeks to raise for the first time.

III. THE CIRCUIT COURT HAD JURISDICTION TO ORDER NEW TRIALS REGARDLESS OF ITS RULING ON THE MOTION TO SUPPRESS

The SSA argues that the circuit court did not have jurisdiction to order new trials because it acted beyond the scope of this Court's mandate. The SSA is wrong: (i) first, this Court's remand order for a new suppression hearing returned jurisdiction to the circuit court; (ii) second, ordering new trials at the conclusion of the suppression hearing was not inconsistent with this Court's remand order; and (iii) third, the circuit court's denial of the motion to suppress did not preclude an order granting new trials.

By reversing and remanding the circuit court's denial of Mr. Harris's motion to suppress, this Court returned jurisdiction to the circuit court. *See PSL Realty Co. v. Granite Inv. Co.,* 86 Ill. 2d 291, 304 (1981) ("The mandate of a court of review is the transmittal of the judgment of that court to the circuit court, and revests the circuit court with jurisdiction"); *People v. Gonzalez*, 407 Ill. App. 3d 1026, 1037-38 (2011) (holding that the trial court had jurisdiction to review new claims on remand)*; see also Klein v. McNabola,* 2016 IL App (1st) 141615-U, ¶ 40 ("The mandate from the appellate court revested the

circuit court with general jurisdiction.").

Illinois circuit courts have original jurisdiction over all justiciable controversies and power to grant all relief necessary to resolve those controversies. *Cohen v. McDonald's Corp.,* 347 Ill. App. 3d 627, 632 (2004) ("Illinois circuit courts are courts of general jurisdiction having original jurisdiction over all justiciable controversies"); *Midway Tobacco Co. v. Mahin,* 42 Ill. App. 3d 797, 807 (1976) (holding that the circuit court "retains jurisdiction for the purpose of providing all relief necessary to lay the controversy to rest"). Likewise, after appeal, when a reviewing court remands a case for a new trial or hearing, the case is reinstated and the mandate "revests the circuit court with jurisdiction." Ill. Sup. Ct. R. 369; *PSL Realty Co.,* 86 Ill. 2d at 304 (holding that the mandate from the reviewing court "revests the circuit court with jurisdiction").

While the circuit court may not take actions that exceed the scope of its mandate, "matters which are implied [by the mandate or the opinion] may be considered embraced by the mandate." *PSL Realty Co.,* 86 Ill. 2d at 308; *John Burns Const. Co. v. Interlake, Inc.,* 125 Ill. App. 3d 26, 29 (1984) (holding that trial court properly adjudicated all matters implied and embraced by the reviewing court's mandate). Contrary to the SSA's unreasonably narrow interpretation, this Court's mandate to "reverse and remand the cause for a new suppression hearing" endowed the circuit court with the power to grant new trials at the conclusion of the suppression hearing because it is a matter implied by the mandate. *See, e.g., People v. Almendarez,* 2020 IL App (1st) 170028, ¶ 78 (recognizing that a new trial may be a necessary outcome after a new suppression hearing). This Court need not, and generally does not, specify in its remand order every conceivable order that a trial court is allowed to enter upon remand. *See Ertl v. City of De Kalb,* 2013 IL App (2d) 110199,

¶ 21 ("[I]t is not required that a reviewing court state specific directions in an order reversing a judgment and remanding a cause.").

For example, in *People v. Gonzalez*, 407 Ill. App. 3d 1026, 1037-38 (2011), the appellate court found that the trial court had jurisdiction to order the defendant to amend his postconviction petition to present a new claim at the evidentiary hearing, even though the mandate simply remanded the case without explicitly granting the trial court any power to review new claims. The appellate court reasoned that the mandate did not dictate the scope of the evidentiary hearing and, thus, the trial court's order was not inconsistent with the mandate. *Id.* Similarly, here, while this Court's mandate does not explicitly address the power to grant new trials, it does not dictate the proceedings after the motion to suppress hearing. By conducting the suppression hearing and granting new trials at the conclusion of the hearing, the circuit court did not conduct the proceedings in a manner inconsistent with the mandate for a new suppression hearing. *See People ex rel. Dept. of Transp. v. Firstar Illinois,* 365 Ill. App. 3d 936, 940 (2006) (holding that the trial court "could proceed in *any manner* not inconsistent with [the mandate]").

People ex rel. Daley v. Schreier, 92 Ill. 2d 271, 276 (1982), cited by the SSA, does not support its argument. That case involved a very limited remand order the sole purpose of which was for the trial court "to resentence defendants in accordance with the law" due to a change in the law. *Id.* The trial court later exceeded the scope of the mandate by granting the defendants new trials. Contrary to the SSA's suggestion, it is not the law that a trial court cannot order a new trial unless such relief is explicitly articulated in the remand order; rather, the law requires that a trial court act in a manner not inconsistent with the reviewing court's mandate. *See Firstar Illinois,* 365 Ill. App. 3d at 940.

The SSA also contends that the circuit court could only grant new trials if it granted the motion to suppress. First, as a general matter, denying a motion to suppress does not preclude a new trial. *See People v. Ramos,* 295 Ill. App. 3d 522, 527 (1998) (denying motion to suppress evidence while remanding the case for a new trial). To support its argument, the SSA cites to several cases in which the reviewing court specifically instructed the trial court to grant new trials ***only*** if it granted a motion to suppress. *See* Br. at 41-42. This Court, however, opted against including such a specific instruction in its mandate. (C 2914). When the reviewing court does not include specific directions, the trial court should "determine what further proceedings would be consistent with the opinion." *Fleming v. Moswin,* 2012 IL App (1st) 103475-B, ¶ 28. Here, it was well within the circuit court's discretion to determine that new trials were warranted.

IV. MR. HARRIS REPEATEDLY REQUESTED NEW TRIALS, INCLUDING DURING THE MOST RECENT MOTION TO SUPPRESS PROCEEDING, AND NEVER ABANDONED ANY CLAIMS

The SSA next argues that Mr. Harris is not entitled to new trials because he purportedly abandoned his ineffective assistance of counsel claim and did not seek a new trial. Br. 36-42. These arguments are both meritless and demonstrably false. Mr. Harris never abandoned any claims, and consistently has pursued his right to a new trial, including during the most recent evidentiary hearings on his motion to suppress.

Mr. Harris never abandoned any ineffective assistance of counsel claim. "[W]aiver of a constitutional right is valid only if it is clearly established that there was an intentional relinquishment or abandonment of a known right. . . . [S]uch waivers must not only be voluntary, but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *People v. Daniels*, 2020 IL App (1st) 171738, ¶ 18 (2020) (quoting *People v. McClanahan*, 191 Ill. 2d 127, 137 (2000)). Mr.

Harris originally made ineffective assistance claims at his first opportunity to do so—now over two decades ago. (C 159-61). Counsel for Mr. Harris raised and preserved ineffective assistance issues during the most recent suppression hearing. (R 13559); *see also* (R 10204). Unable to dispute these facts, the SSA relies instead on a nebulous, uncited allegation: "[a]t some point, however, petitioner abandoned the ineffective assistance of counsel claim . . . ." Br. 22. Mr. Harris did no such thing.[10]

But even if Mr. Harris somehow *had* abandoned (he did not) an ineffective assistance claim, that claim has no relevance to the bases on which the circuit court granted Mr. Harris new trials. Mr. Harris consistently has sought relief—including new trials—on the basis that he was tortured by Chicago Police Department personnel during their investigations. *See, e.g.*, (R 250-55, 257, 540-55, 2095-96, 9937-9954); (C 3776). The prayer for relief in Mr. Harris's post-hearing brief makes this exceedingly clear:

> WHEREFORE, Defendant Ralph Harris respectfully requests that this Court suppress his coerced statements and ***order new trials on each of the charges against him***

(C 3776). This torture claim is a wholly sufficient and independent basis for new trials.

Further, as a result of *Brady* and *Giglio* violations uncovered for the first time during the most recent suppression hearing—including the failure to disclose prior torture

[10] Given these facts, the cases cited by the SSA (Br. 43–45) are inapposite. The SSA first cites *People v. Munson* for the proposition that a defendant "abandons" post-conviction claims by failing to pursue them on direct appeal. Br. 43 (citing 206 Ill. 2d 104, 113 (2002)). *Munson* has no bearing on this case because, as discussed above, Mr. Harris pressed his torture and ineffective assistance allegations at his first opportunity, and even reasserted them during the latest suppression hearing. The SSA's other cases (Br. 43-44) are similarly unavailing and factually distinguishable. *People v. Jones*, 213 Ill. 2d 498, 307-08 (2004) (petitioner did not raise issue in post-conviction proceedings and there was no new evidence or other fundamental fairness issue); *People v. Dixon,* 2022 IL App (1st) 200162, ¶ 31 (relying on *Munson* and inapplicable for the same reasons).

complaints against the detectives at issue and a host of new evidence adduced from ASA Quade—Mr. Harris sought new trials ***independent of any claim of torture***. (C 3771-76) (discussing *Brady* and *Giglio* violations and arguing that the only remedy is that Mr. Harris's convictions be vacated and he receive new trials).

Accordingly, the SSA's argument that the Court ruled *sua sponte* is unfounded, and the SSA's authorities on that point are not persuasive. *See* Br. at 44 (citing *People v. Kraybill*, 2021 IL App (1st) 190621, ¶ 26; *People v. Givens*, 237 Ill. 2d 311, 323-24 (2010), *People v. Mares*, 2018 IL App (2d) 150565, ¶ 13).

Finally, the SSA appears to argue that it was prejudiced because it purportedly had no opportunity to distinguish the standards for new trial relief and suppression. Br. at 45. But it was on full notice that Mr. Harris sought both new trials and the suppression of coerced statements and new trials. (C 3776). Had the SSA wished to argue regarding the burden of proof for a new trial independent of the motion to suppress being granted (*see* Br. at 45), it could have and should have briefed that issue in the trial court in response to Mr. Harris's brief. Having failed to do so, it cannot now raise the issue for the first time on appeal.

V. THE CIRCUIT COURT'S ANALYSIS FOR A NEW TRIAL WAS PROPER

The SSA also claims that the circuit court's analysis was improper because the court purportedly did not use "magic words" in connection with ordering a new trial. The SSA is wrong for two reasons. First, the SSA seeks to apply the wrong standard for a new trial based on *Brady* and *Giglio* violations. Second, even as to newly discovered evidence, the circuit court's ruling demonstrates that it applied the proper standard. Third, even if admissibility of new evidence was a proper consideration, Mr. Harris demonstrated that the new evidence he presented ***would*** be admissible at re-trial. (R 13950).

A. The SSA Misapplies the Standard for a New Trial Based on *Brady* and *Giglio* Violations

Where the prosecution has committed a discovery violation under Supreme Court Rule 412(c) by failing to disclose material evidence "which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce his punishment therefor," the court should grant a new trial "if the defendant is prejudiced by the discovery violation and the trial court failed to eliminate the prejudice." *People v. Blackman,* 359 Ill. App. 3d 1013, 1018 (2005) (granting new trial based on violation of Supreme Court Rule 412(c)); *see also People v. Lasley*, 158 Ill. App. 3d 614, 623 (1987) ("[W]here false testimony affecting the credibility of a key prosecution witness 'in any reasonable likelihood' may have influenced the jury's finding of guilt, defendant's conviction must be reversed and a new trial ordered.") (*quoting Giglio v. United States*, 405 U.S. 150, 154, (1972)). Material evidence under Rule 412(c) includes "evidence relating to the credibility of [the State's] key witnesses[.]" *People v. Williams*, 329 Ill. App. 3d 846, 858 (2002) (citing *Giglio v. United States*, 405 U.S. 150 (1972)).

The circuit court's ruling closely tracks this standard, making clear that the State's failure to disclose evidence to Mr. Harris that was available to the State required a new trial. (R 13948 (holding that Mr. Harris's defense "was significantly and unfairly prejudiced by the lack of information and knowledge of past misconduct attributed to a number of the detectives involved in the interrogation of Mr. Harris")). The circuit court properly granted Mr. Harris new trials under this standard. *E.g.*, *Blackman,* 359 Ill. App. 3d at 1018 (granting new trial based on Rule 412(a)(I), (c)); *Lasley*, 158 Ill. App. 3d at 623 (granting new trial based on *Giglio*).

B. The Circuit Court Applied The Proper New Trial Standard Even As To Newly Discovered Evidence

To grant a new trial based on newly discovered evidence, a court must find that the new evidence is sufficiently conclusive such that it will "probably change the result on retrial[.]" *People v. Washington*, 256 Ill. App. 3d 445, 447 (1993); *see also People v. Ortiz,* 385 Ill. App. 3d 1, 12 (2008) (reversing circuit court and granting new trial where "the result on retrial probably would change" due to new evidence).

Seizing on the absence of the word "probably," the SSA parses one sentence of the circuit court's ruling in arguing that the court failed to make a requisite finding:

> Put more succinctly, the fact that the defendant did not prevail with the original jury who were presented with limited or no information regarding other additional alleged improper conduct by some of the interrogating detectives as well as the fact that this court has just found the defendant's testimony incredible does not undermine the possibility that the additional information now known of alleged misconduct during custodial interrogation regarding various detectives involved in the interrogation of Mr. Harris and disclosed posttrial to the parties may result in a different outcome if a new trial is granted.

(R 13952). The SSA focuses on the phrase "may result in a different outcome" in isolation, hoping that, with all context removed, it might be construed as falling short of the new trial standard. In support of its position that a court must follow the new trial standard with word-for-word precision, the SSA cites a single case, *People v. Evans*, 209 Ill. 2d 194, 220 (2004). That case, however, dealt with a *Strickland* ineffective assistance of counsel claim, and had nothing to do with a circuit court's application of the new trial standard.

An appellate court need not subject a circuit court's ruling to an exacting test for word-for-word conformity with the standard. Rather, applying the abuse of discretion standard, it is sufficient to determine that the record demonstrates that the lower court was aware of the proper standard and relied upon it in making the ruling in question based on an investigation of the facts and the law. *See People v. Washington*, 256 Ill. App. 3d 445,

448-50 (1993) (affirming grant of new trial where circuit court found new evidence might change the outcome on retrial, rather than explicitly stating the evidence would "probably change the result"); *Elling v. State Farm Mut. Auto. Ins. Co.*, 291 Ill. App. 3d 311, 317-18 (1997) (finding no abuse of discretion where "the record shows that trial court was well aware" of the legal test in question "upon which it relied"); *People v. Amor*, 2020 IL App (2d) 190475, ¶ 24 (affirming trial court's application of legal standard where it determined that the trial court "exercised its discretion after investigating the facts and law"); *see also Payne v. Hall*, 2013 IL App (1st) 113519, at ¶17 (declining to reverse lower court's application of legal standard where "[w]e cannot say the ruling was arbitrary, fanciful, or unreasonable or that no reasonable person would take the view adopted by the trial court.").

Here, a plain and common sense review of the circuit court's ruling beyond a single sentence taken out of context shows that the circuit court made numerous findings about the overwhelming nature of the new evidence, findings that were more than sufficient to conclude that the evidence would probably lead to a different result on retrial. *Elling,* 291 Ill. App. 3d at 317-18 (1997) (finding no abuse of discretion where "the record shows that trial court was well aware" of the legal test in question "upon which it relied."); *Amor*, 2020 IL App (2d) 190475 at ¶ 24 (affirming trial court's application of legal standard where trial court "exercised its discretion after investigating the facts and law").

C. The Evidence Relied Upon By the Circuit Court In Granting New Trials Will Be Admissible Upon Re-Trial

The SSA alternatively argues that the circuit court's order is flawed in "fail[ing] to address what evidence could be admitted at trial or even what evidence was new and not known to the trier of fact at the time." Br. at 47. The SSA offers no authority—nor is there any—for the proposition that a circuit court must perform an admissibility analysis for each

piece of new evidence before granting a new trial. But even if this was required, the new evidence at issue here easily passes the test. The bulk of Mr. Harris's exhibits were admitted at his 2018 suppression hearing and referred to by this Court, and a trial court can and should take judicial notice of documents admitted at prior proceedings. *See In re Aniylah B.*, 61 N.E.3d 216, 218 (Ill. App. Ct. 2016) (affirming trial court decision to take "judicial notice of the transcript and exhibits admitted at a prior proceeding"); *Inland Bank & Tr. v. Grafin, Inc.*, 2012 IL App (1st) 110917-U ¶ 8 (finding that the "court may take judicial notice of court documents containing those facts—including court records in the proceedings below, the parties' briefs below, and written decisions of other courts and administrative tribunals"); *Muller v. Zollar*, 642 N.E.2d 860, 862 (Ill. App. Ct. 1994) ("Judicial notice is proper where the document in question is part of the public record").

Further, the documentary evidence Mr. Harris presented included reports of incidents of torture and abuse committed by Boylan, McDermott, and Yucaitis. These documents are public records within the meaning of Ill. R. Evid. 803(8), and they are business records within the meaning of Ill. R. Evid. 803(6). *E.g.*, *Spina v. Forest Pres.*, 2001 U.S. Dist. LEXIS 19146, at *36-38 (N.D. Ill. Nov. 22, 2001) (finding reports by government investigators admissible under public records exception to hearsay); *Wheeler v. Sims*, 951 F.2d 796, 805 (7th Cir. 1992) (finding investigation reports to be admissible records of regularly conducted activity).

Mr. Harris also presented the direct testimony of Joseph Carroll, Anthony Holmes, and Dr. Stephen Miles. Carroll and Holmes described their own personal experience of torture and abuse at the hands of the very same detectives involved in this case. That is not hearsay. Dr. Miles gave expert testimony that Mr. Harris was subject to torture and abuse.

Expert testimony that refers to out-of-court statements is not hearsay when offered "to explain the basis of the expert's opinion." *In re Detention of Hunter*, 2013 IL App (4th) 120299, ¶ 32 (holding that expert testimony referring to out of court statements is not hearsay where offered "to explain the basis of the expert's opinion[.]").

The SSA next asserts that evidence of other acts of torture committed by the detectives involved in Mr. Harris's interrogation would not be admissible as it is too "remote and uncertain" and "general in nature[.]" Br. at 48. The SSA ignores the numerous identical features of the torture reported by prior victims of McDermott, Boylan, and Yucaitis, and the torture reported by Mr. Harris, similarities which were described in exacting detail in a nine-page chart in Mr. Harris's post-hearing brief. (C 3736-44). The cases cited by the SSA do not support its position.[11] To the contrary, Illinois courts have held that a "series of incidents spanning several years can be relevant to establishing a claim of a pattern and practice of torture" and "[e]ven incidents that are remote in time can become relevant … if the party presenting the evidence can present evidence of other incidents that occurred in the interim." *People v. Patterson*, 735 N.E.2d 616, 642-45 (Ill.

[11] *People v. Nelson*, 235 Ill. 2d 386, 420 (2009) dealt with a defendant seeking to impeach an officer with evidence of a single civil suit to suggest that the pending suit "gave the detectives a financial interest in minimizing what defendant calls the suggestive, emotional nature of their interrogation of him[.]" *People v. Porter-Boens*, 2013 IL App (1st) 111074 undermines the SSA's position – there the court ***did*** admit allegations of similar conduct for a three-year period, merely excluding certain incidents further removed in time. *Id.* at ¶ 19. And the court specifically noted that "[p]rior allegations of misconduct by a police officer may be admissible to prove intent, plan, motive, or a course of conduct of the officer … or to impeach an officer as a witness based on bias, interest, or motive to testify falsely. *Id.* at ¶11 (citing *People v. Cannon*, 293 Ill. App. 3d 634, 640 (1997); *People v. Nelson*, 235 Ill. 2d 386, 421 (2009)). Lastly, the SSA cites *People v. Jackson*, 2021 IL 124818 (2021), where a defendant sought to introduce evidence of a prior complaint relating to detectives, but there were "no allegations in the complaint specific to either [of the detectives.]" Here, Mr. Harris has presented evidence of dozens of different incidents specific to *the same detectives* and involving *the same forms of torture*.

2000). In short, "evidence of other acts of brutality could be used to prove a course of conduct on the part of the officers involved and could be used to impeach these officers' credibility." *People v. Reyes*, 860 N.E.2d 488, 505 (Ill. App. Ct. 2006).

VI. THE COURT MAY AFFIRM ON ANY GROUND SUPPORTED BY THE RECORD, INCLUDING THE CIRCUIT COURT'S ERROR IN FAILING TO SUPPRESS THE CONFESSIONS

This Court may affirm the circuit court "for any reason or ground appearing in the record regardless of whether the particular reasons given by the [circuit] court, or its specific findings, are correct or sound." *Akemann v. Quinn*, 2014 IL App (4th) 130867, ¶ 21, 17 N.E.3d 223, 227 (2014) (citing *BDO Seidman, LLP v. Harris*, 379 Ill. App. 3d 918, 923, 319 Ill. Dec. 199, 885 N.E.2d 470, 475 (2008)). Put another way, "a lower court decision may be affirmed on any ground of record, nor is there any reason why the appellate court should be required to address only the legal rationale relied upon by the circuit court." *People v. Johnson*, 208 Ill. 2d 118, 138 (2003). Here, the circuit court erred in failing to grant Mr. Harris's motion to suppress. Accordingly, if this Court does not otherwise affirm Judge Clancy's ruling, it should reach the issue of whether the circuit court erred in denying Mr. Harris's motion to suppress, and if the Court finds error, new trials should be granted.

A. Although the Circuit Court Adopted A Negative Inference From Detective McDermott's Failure To Testify, It Ignored The Necessary Outcome Dictated By That Inference

In its prior opinion, this Court held that "the outcome of the suppression hearing [on June 10, 1998] likely would have been different if McDermott had been subject to impeachment based on the new evidence." *People v Harris*, 2021 Il App (1st) 182172, ¶¶ 59-60. Remarkably, the SSA declined to call McDermott, even though he was available and within the subpoena power of the circuit court. On this basis, Mr. Harris sought, and the circuit court granted, a negative inference:

> McDermott -- and I haven't read through his transcript at the previous trials -- may have denied it previously but he has not come to court at this hearing, he has not come to court at this motion, he has not made any denials of the allegations against him. I find this silence to be deafening.
>
> I draw a negative inference and conclusion from Detective McDermott's failure to testify at this hearing.

(R 13923). Despite adopting the negative inference, however, the circuit court concluded that Mr. Harris's confessions were not coerced. Those two findings cannot be reconciled.

By drawing a negative inference from McDermott's failure to testify, the circuit court was left with but one possible conclusion—that had he testified, McDermott would have ***admitted*** to torturing Mr. Harris. *See People v. Wilson*, 2019 IL App (1st) 181486, ¶¶ 66-69 (detectives' refusal to testify evidence of misconduct); *People v. Gibson*, 2018 IL App (1st) 162177, ¶¶ 101-105 (same). That is the entire purpose and effect of a negative inference—had the witness testified, his testimony would be adverse to the party that failed to call him to the stand. *Id.*; *see also People v. Strong,* 21 Ill. 2d 320, 325 (1961) (failure to call an informer gives rise to an inference against the state); *Johnson v. Owens-Corning Fiberglas Corp.*, 233 Ill. App. 3d 425, 437 (1992) ("Where a witness who has knowledge of the facts and is accessible to a party is not called by a party, a presumption arises that his testimony would be adverse to that party."). The circuit court's ultimate conclusion that Mr. Harris's statements were not coerced is simply incompatible with the negative inference that McDermott tortured Mr. Harris while he was held for interrogation.

B. The Circuit Court Impermissibly Engaged In Speculation Regarding the Source of the Injury to Mr. Harris's Temple

Illinois law mandates that "when it is evident that a defendant has been injured while in police custody, ***the State must show, by clear and convincing evidence, that the injuries were not inflicted as a means of producing the confession***." *People v. Wilson*,

506 N.E.2d 571, 575 (Ill. 1987) (emphasis added); *People v. Richardson*, 917 N.E.2d 501, 514 (Ill. 2009); *People v. Banks*, 549 N.E.2d 766, 770 (Ill. App. Ct. 1989).

There is no credible dispute that Mr. Harris was injured while in police custody at Area 2. A photograph introduced by the State (DSA001661) shows a bloody injury to Mr. Harris's left temple. During his testimony, Boylan described the cuts and bruising to Mr. Harris's face as "a "scuff, a scratch injury." (R 12378). Hamilton likewise acknowledged the injury, describing "dry blood or … a series of scratches on his cheek." (R 12568). Every witness that testified agreed that the injury should have been reported and received medical attention. (R 12723 (Hayes), 12739 (Crump), 12566 (Hamilton)).

During the course of the suppression hearing, the SSA attempted to argue that Mr. Harris ***may*** have suffered the injury when a handgun purportedly was held to his head at the time of his arrest. But no evidence whatsoever was presented in support of this contention. Boylan and Hamilton contradicted each other as to whether a gun was even held to Mr. Harris's head during the arrest—Boylan said no, Hamilton said yes. (R 12347-48) (Boylan), 12561 (Hamilton)). But Boylan and Hamilton ***agreed*** that no injury to Mr. Harris's temple (or anywhere else) occurred when he was arrested. (R 12347) (Boylan), 12565 (Hamilton)). Mr. Harris's fiancée, Angela Clark, likewise testified that she did not see any injury. (R 12769). And Dr. Miles testified that "[t]his injury is clearly caused by trauma," "the lesion is too large for a gun," "there's an abrasion from the top of the ear . . . [a]nd then in addition to that, there is a contusion bruise," and it is "inconsistent with simply a pressure scrape by the barrel of a gun." (R 12993).

Notwithstanding all this, the circuit court speculated that "[t]he resulting abrasion or scratch to Mr. Harris' left temple clearly ***could*** have occurred during this physically

violent arrest." (R 13904). Thus, far from finding any basis on which the SSA met its burden to prove ***by clear and convincing evidence*** the manner in which Mr. Harris's injury occurred, the circuit court engaged in "mere speculation [which] cannot be permitted to perform duty for probative facts." *Hannah v. Midwest Ctr. for Disability Evaluation, Inc.*, 181 Ill. App. 3d 67, 74 (1989) (citing *Consolino v. Thompson*, 127 Ill. App. 3d 31, 34 (1984)). Put another way, because no reasonable jurist could find that the SSA met its burden of demonstrating, ***by clear and convincing evidence***, that Mr. Harris's injury was not caused during a coerced interrogation, his motion to suppress should have been granted. *See e.g.*, *Wilson*, 506 N.E.2d at 576; *Banks*, 549 N.E.2d at 770.

C. Detective Yucaitis's Prior Testimony Should Not Have Been Admitted

The circuit court's decision to admit Detective Yucaitis's prior testimony was error. In deciding whether to admit a deceased person's prior testimony, courts should consider: "(1) materiality; (2) probative value; (3) trustworthiness of the statement; (4) interests of justice; and (5) prior opportunity for cross-examination." *People v. Starks*, 966 N.E.2d 347, 352 (Ill. App. Ct. 2012) (citing *People v. Melchor*, 875 N.E.2d 1261, 1267 (Ill. App. Ct. 2007)). Here, the circuit court acknowledged that Mr. Harris did not previously have an adequate opportunity to cross-examine Yucaitis regarding the pattern and practice of torture at Area 2, including his participation in that torture. (R 13531 ("[S]ince Detective Yucaitis is not alive, you are foreclosed from asking him about what occurred regarding Wilson[,] … what happened with Anthony Holmes, and you are foreclosed from asking him about Vaughn. So I get that there is some areas of cross-examination that were not gone over in 1998 when the first Motion to Suppress Statement was heard.")).

The unreliability of Yucaitis's prior testimony also has been recognized both by this Court and other courts. In its prior opinion, this Court stated: "[A] detective involved

in defendant's case, Yucaitis, was suspended for failing to stop an incident of torture . . . . The fact that other officers may have stood by doing nothing, while McDermott committed acts of abuse, is relevant to the issue of McDermott's and the other detectives' credibility." *Harris*, 2021 Il App (1st) 182172, ¶¶ 55-56. And other courts have previously ruled Yucaitis's prior testimony inadmissible after finding it to be untrustworthy. *U.S. v. Burge*, No. 08 CR 846, 2011 WL 13471, at *6 (N.D. Ill. Jan. 3, 2011), *aff'd*, 711 F.3d 803 (7th Cir. 2013) ("The court properly excluded … Yucaitis's testimony from the Wilson trials because both detectives had a motivation to lie about the facts relating to Wilson's allegations in his civil trials").

In admitting Yucaitis's prior testimony despite the fact that Mr. Harris plainly did not have an adequate opportunity for cross-examination, the circuit court reasoned that the testimony could be impeached through other evidence. (R 13531-32). Respectfully, the circuit court appears to have invented this standard from whole cloth. There is no authority whatsoever, in Illinois or anywhere else, holding that it is permissible to admit prior testimony of a deceased witness because cross-examination topics previously unavailable to the defendant could be introduced through other evidence.

Yucaitis's prior testimony was the SSA's ***only*** direct evidence of Mr. Harris's supposed re-initiation after Mr. Harris invoked his Fifth Amendment rights. ASAs Darman and Quade both testified that they never would have questioned Mr. Harris but for Yucaitis's representation to them that Mr. Harris had re-initiated questioning. (R12873, 13191). Thus, if Yucaitis's prior testimony was excluded, as it should have been, the SSA would have had no witness who could provide direct evidence regarding the purported re-initiation. The motion to suppress therefore should have been granted.

CONCLUSION

For all these reasons, this Court should affirm the circuit court's new trial order and, if it reaches the issue, reverse the circuit court's denial of Mr. Harris's motion to suppress.

Date: February 16, 2023

Respectfully Submitted,

/s/ Leonid Feller

Leonid Feller, P.C.
QUINN EMANUEL URQUHART & SULLIVAN
191 N. Upper Wacker Dr., Suite 2700
Chicago, IL 60606
Telephone: (312) 705-7400
Facsimile: (312) 705-7401
leonidfeller@quinnemanuel.com

Attorney for Appellee Ralph Harris

CERTIFICATE OF COMPLIANCE

Appellee's attorney hereby certifies that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding the appendix and this page, is 50 pages.

By: */s/ Leonid Feller*
Leonid Feller

No. 22-1033 (cons. with 22-1034 and 22-1035)

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

People of the State of Illinois, Appellant, v. Ralph Harris, Appellee.	)))))))))))	Appeal from Order Dated May 31, 2022 Circuit Court Case Nos. 95-CR-27596, 95-CR-27598, and 95-CR-27600 Honorable J. Michael R. Clancy Presiding of the Circuit Court of Cook County, Illinois County Department, Criminal Division

NOTICE OF FILING

TO: Myles P. O'Rourke
Special State's Attorney
Office of the Special State's Attorney
10 S. LaSalle Street, Suite 2510
Chicago, Illinois 60601
(312) 849-2020
mporourke@orourkellp.com

Alan J. Spellberg
Assistant Special State's Attorney
Law Office of Alan J. Spellberg
1241 Forest Ave.
Highland Park, IL 60035
(847) 266-7139
Alan.Spellberg@outlook.com

PLEASE TAKE NOTICE that on February 16, 2023, the foregoing Notice and Brief and Argument for Appellee was filed with the Clerk of this Appellate Court of Illinois, First District, using the court's electronic filing system, Odyssey eFileIL.

/s/ Leonid Feller
Leonid Feller

No. 22-1033 (cons. with 22-1034 and 22-1035)

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

People of the State of Illinois,	)	Appeal from Order Dated May 31, 2022
	)	
Appellant,	)	Circuit Court Case Nos. 95-CR-27596, 95-CR-27598, and 95-CR-27600
	)	
v.	)	
	)	Honorable J. Michael R. Clancy Presiding
	)	
Ralph Harris,	)	of the Circuit Court of Cook County, Illinois County Department, Criminal Division
	)	
Appellee.	)	
	)	
	)	

CERTIFICATE OF SERVICE

TO: Myles P. O'Rourke
Special State's Attorney
Office of the Special State's Attorney
10 S. LaSalle Street, Suite 2510
Chicago, Illinois 60601
(312) 849-2020
mporourke@orourkellp.com

Alan J. Spellberg
Assistant Special State's Attorney
Law Office of Alan J. Spellberg
1241 Forest Ave.
Highland Park, IL 60035
(847) 266-7139
Alan.Spellberg@outlook.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I further certify that on February 16, 2023, I caused the foregoing Brief and Argument for Appellee to be served on above mentioned counsel at the email addresses listed above using the court's electronic filing system, Odyssey eFileIL.

/s/ Leonid Feller
Leonid Feller

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Det. John Hamilton	R12468	R12538	R12677	R12678

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Witness	Direct	Cross	Redirect	Recross
Patricia Hayes	R12691	R12711	R12722	R12723
Reginald Crump	R12724	R12730	R12741	R12744
Angela Alexander	R12749	R12761	R12772	
B.G.	R12779			

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Witness	Direct	Cross	Redirect	Recross
ASA Thomas Darman	R12820	R12849	R12885	R12885
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Dr. Steven Miles	R12966	R12976		

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Leslie Quade Kennedy	R13050	R13096	R13243	R13260
Linda Deozdek	R13266	R13279	R13288	R13289

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Witness	Direct	Cross	Redirect	Recross
Anthony Holmes	R13348	R13374	R13415	R13434
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 24, 2024, the foregoing **Brief and Appendix of Respondent-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email address:

Leonid Feller
Rajat Khanna
Quinn Emanuel Urquhart & Sullivan, LLP
191 N. Wacker Drive, Suite 2700
Chicago, Illinois 60606
LeonidFeller@quinnemanuel.com
RajatKhanna@quinnemanuel.com

Counsel for Petitioner-Appellee

Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

/s/ Michael L. Cebula

MICHAEL L. CEBULA
Assistant Attorney General