No. 127241

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>JOHN PRANTE,<br><br>Defendant-Appellee. | ) | Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-20-0074<br><br>There on Appeal from the Circuit Court for the Third Judicial Circuit, Madison County, Illinois, No. 82 CF 381<br><br>The Honorable Neil T. Schroeder, Judge Presiding. |

**REPLY AND CROSS-APPELLEE BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS**

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ORAL ARGUMENT REQUESTED

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## ARGUMENT

The circuit court correctly denied defendant leave to file a successive postconviction petition raising due process and actual innocence claims based on recent scientific findings that cast doubt on the validity and reliability of the expert bitemark testimony presented at defendant's trial. While the People do not dispute for leave-to-file purposes that the testimony of the People's bitemark experts has now been discredited and deemed unreliable, *see* Peo. Br. 25,[1] defendant cannot show that he was prejudiced by that testimony or that he likely would have been acquitted in its absence, given the relatively narrow opinions that the People's experts offered, the competing trial testimony of defendant's own bitemark experts, and the considerable other evidence of his guilt. For those reasons, the appellate court correctly affirmed the circuit court's judgment denying leave with respect to defendant's actual innocence claim, but it erred in remanding for further proceedings on defendant's due process claim, wrongly analyzing that claim as a challenge to the admissibility of bitemark evidence rather than under relevant due process principles.

[1] "Peo. Br." and "Def. Br." refer to the People's opening brief and defendant's response brief and request for cross-relief. "C," "R," and "A" refer to the common law record, report of proceedings, and appendix to the People's opening brief.



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## I. The Appellate Court Erred in Undertaking a *Frye* Analysis.

As the People's opening brief explained, the appellate court incorrectly analyzed defendant's due process claim as though it presented a challenge to the admissibility of bitemark evidence under *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). *See* Peo. Br. 32-36.

Defendant makes little effort to defend the appellate court's approach. *See* Def. Br. 44-46. Notably, he does not dispute that a *Frye* claim is not cognizable in postconviction proceedings. *See* Peo. Br. 34. Nor does he dispute that even if such a claim were cognizable on postconviction review, he would not be entitled to relief because the bitemark analysis that was presented at trial was generally accepted in the scientific community at the time. *See id.* at 34-35. And while defendant suggests that the People raised the issue in the appellate court, *see* Def. Br. 44-45, he ignores the appellate court's acknowledgment that "[n]either party present[ed] any substantive analysis" of "whether bite mark evidence is 'scientific evidence' that is subject to the dictates of *Frye*." A15, ¶ 64. For each of these reasons, the appellate court should not have undertaken its lengthy *Frye* analysis, and this Court, at a minimum, should vacate those portions of the appellate court's opinion. *See People v. Bass*, 2021 IL 125434, ¶ 31 (vacating portions of appellate court opinion that raised and addressed unnecessary issue).

Nor should the appellate court have instructed the circuit court to hold a *Frye* hearing on remand, as it appears to have done. Although the



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appellate court did not describe the "further proceedings" it contemplated on remand, A22, ¶ 99, it suggested elsewhere in its opinion that the circuit court should "subject[ ] bite mark evidence to the rigors of *Frye*," A18, ¶ 77. In light of this language, defendant previously took the position that the appellate court's decision "ordered the circuit court to conduct a hearing pursuant to *Frye*." Answer to Petition for Leave to Appeal at 1. And while it is unclear whether defendant continues to seek a *Frye* hearing on remand, his amici go a step farther and ask this Court "to explicitly declare that 'bite-mark' evidence is inadmissible" under *Frye* without the need for a hearing in the circuit court. Brief for *Amici Curiae* Criminal Law Scholars, Scientists, Statisticians, and the Innocence Network ("Amici Brief") at 12, 28-30. But as explained, *see* Peo. Br. 34-36, because defendant would not be entitled to relief even if bitemark evidence were now deemed inadmissible under *Frye*, the appellate court should not have issued an advisory opinion on the issue or ordered a *Frye* hearing, and this Court should decline to do so as well.

## II. Defendant's Due Process Claim Fails Because He Was Not Prejudiced by the Bitemark Evidence.

Properly analyzed as a due process claim, defendant's challenge to the bitemark evidence fails because he cannot make a sufficient showing of prejudice. The parties agree that to succeed on a claim that the presentation of later-discredited expert testimony violated due process, a defendant must show that the testimony "undermined the fundamental fairness of the entire trial," *Han Tak Lee v. Glunt*, 667 F.3d 397, 403 (3d Cir. 2012) (internal



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quotation marks omitted), and was "a crucial, critical[,] highly significant factor" in the defendant's conviction, *Ege v. Yukins*, 485 F.3d 364, 375 (6th Cir. 2007) (internal quotation marks omitted); *see* Peo. Br. 26; Def. Br. 35. Similarly, the parties agree that to raise this claim in a successive postconviction petition, defendant must show cause for his failure to have raised the claim earlier and that he was prejudiced by the failure, meaning that the alleged error "so infected [his] trial that the resulting conviction . . . violated due process." 725 ILCS 5/122-1(f); *see* Peo. Br. 24; Def. Br. 34.

The parties dispute only whether defendant has made a sufficient showing that he was prejudiced by the bitemark testimony presented at trial to warrant leave to raise a due process challenge to that testimony in a successive postconviction petition. *See* Def. Br. 37 (describing this as "the sole relevant dispute"). As explained in the People's opening brief, *see* Peo. Br. 27-32, defendant cannot show that the bitemark testimony was critical to the jury's verdict, or that it undermined the fundamental fairness of his entire trial, because (1) the People's experts did not purport to identify defendant as the source of the supposed bitemarks on Karla Brown's shoulder,[2] (2) defendant called his own forensic dentists who vigorously disputed that the marks on Karla's shoulder could even be deemed human

[2] Defendant's amici assert that the People's forensic dentists "told the jury that they could accurately identify [defendant] as the source of the purported 'bite-marks' on the victim." Amici Brief at 38. That is a misreading of the record. *See* Peo. Br. 27.



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bitemarks, and (3) there was considerable evidence of defendant's guilt aside from the bitemark evidence.

Defendant's contrary arguments are unavailing. To start, defendant stresses that he need "establish only a *prima facie* case of prejudice at this leave to file stage." Def. Br. 37. While that is true, *see People v. Bailey*, 2017 IL 121450, ¶ 24 (at leave-to-file stage, "court must determine whether defendant has made a *prima facie* showing of cause and prejudice"), it does not mean that defendant bears no burden of persuasion at the leave-to-file stage, *see People v. Smith*, 2014 IL 115946, ¶ 35 (leave to file "should be denied when it is clear . . . [that] the successive petition with supporting documentation is insufficient to justify further proceedings").

Indeed, this Court has repeatedly affirmed denials of leave to file successive postconviction petitions where the trial record rebuts a defendant's allegations of prejudice. *See, e.g.*, *People v. Blalock*, 2022 IL 126682, ¶¶ 48-49 (finding insufficient showing of prejudice to warrant leave to file successive postconviction petition alleging police coercion where defendant's trial testimony contradicted his postconviction allegations); *People v. Lusby*, 2020 IL 124046, ¶¶ 36-52 (affirming denial of leave to file successive postconviction petition raising claim that juvenile's life sentence did not comport with constitutional standards after reviewing trial record for compliance); *Smith*, 2014 IL 115946, ¶¶ 36-37 (affirming denial of leave to file successive



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postconviction petition alleging improper opening statement by prosecutor where trial record rebutted any showing of prejudice).

Based on the affidavits and other materials that defendant filed with his proposed successive petition, the People do not dispute that he has made a prima facie showing that bitemark evidence like that presented at his trial has been discredited and deemed unreliable by the scientific community. *See* Peo. Br. 25 (recognizing that well-pleaded allegations in petition and supporting affidavits must be taken as true at leave-to-file stage). But the presentation of that testimony supports a due process claim only if defendant can also show that the testimony was "a crucial, critical[,] highly significant factor" in his conviction, *Ege*, 485 F.3d at 375 (internal quotation marks omitted), and "undermined the fundamental fairness of the entire trial," *Han Tak Lee*, 667 F.3d at 403 (internal quotation marks omitted). And as the decisions discussed above demonstrate, *see supra* p. 5, that prejudice assessment can be made based on a review of the trial record at the leave-to-file stage, with no need for a court to conduct an evidentiary hearing or otherwise hold further proceedings. Indeed, defendant does not explain how further factual or other record development could possibly impact his ability to demonstrate that the bitemark evidence prejudicially impacted his trial. Thus, contrary to defendant's contention, there is no reason to defer his "burden of persuading the trier-of-fact on the prejudice question" until "later in the post-conviction process." Def. Br. 37.



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Defendant also urges this Court to ignore his own experts' criticism of the People's experts' testimony, asserting that the very presence of competing expert testimony "reinforce[d] the due process violation rather than mitigating it." Def. Br. 40. But an "assessment of the impact of [a challenged expert's] testimony" must be made "in the context of defense counsel's rebuttal experts." *Ege*, 485 F.3d at 376. In *Ege*, the court concluded that the defendant's experts did not ameliorate the "injurious effect" of the prosecution expert's testimony that there was only a 3.5 million-to-1 chance that someone other than the defendant had made the marks on the victim's body, because the defense experts did not "directly refute[ ] [the prosecution expert's] methods in coming to his 3.5 million-to-1 probability determination." *Id.* at 377. Here, in contrast, defendant's forensic dentists disputed the People's experts' conclusions that the marks on Karla's body were human bitemarks at all, *see* R1766 (explaining that there was "very little evidence . . . to even substantiate that we have a bite mark"); R1815 (expressing uncertainty as to whether "there are any bite marks shown"), and opined that the photographs on which the People's experts relied were unsuitable for making bitemark comparisons, *see* R1769 ("one step above useless"); R1815 (not "at all satisfactory for analysis").

Defendant also focuses extensively on the role of the bitemark evidence in the police investigation and the prosecution's charging decision, and on the prominence of that evidence at various stages of the trial. *See* Def. Br. 38-39.



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Other courts considering similar claims have considered the effect of the later-discredited evidence on investigative or charging decisions when conducting prejudice analyses. *See Ege*, 485 F.3d at 377 (noting that "the prosecution was not willing to try [the defendant] until it had [the expert's] bite mark testimony"); *Ex parte Chaney*, 563 S.W.3d 239, 263 (Tex. Crim. App. 2018) (noting prosecutor's closing argument "that it would not have sought an indictment against [the defendant] without the bitemark evidence"). And the People do not dispute that here the bitemark evidence played an important role in the decision to arrest and charge defendant and featured prominently in the People's case at trial. But while those facts may be relevant to the prejudice inquiry, defendant cites no authority for the suggestion that they are dispositive. *See* Def. Br. 39-40, 43. Ultimately, the focus of the prejudice inquiry is not on the fairness of the investigation, but of defendant's trial and resulting conviction. *See Ege*, 485 F.3d at 378 (granting relief on due process claim where "the bite-mark evidence was a crucial, critical[,] highly significant factor[ ] *in the jury's determination of [the defendant's] guilt*" (emphasis added; internal quotation marks and citation omitted)).

In a similar fashion, defendant contends without supporting authority that the existence of "other evidence supporting [his] guilt is irrelevant to the due process analysis." Def. Br. 39. But other courts considering similar due process claims have recognized that independent evidence of a defendant's



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guilt is a factor in the prejudice inquiry. *See Ege*, 485 F.3d at 377 (court "must assess the relative influence of the prosecution's *non*-bite-mark evidence") (emphasis in original); *Han Tak Lee v. Houtzdale SCI*, 798 F.3d 159, 162 (3d Cir. 2015) (recognizing, in case involving discredited fire science testimony, that "relief should be denied if there is ample other evidence of guilt") (internal quotation marks omitted).

Defendant also questions the strength of the non-bitemark evidence, but his arguments are unpersuasive. He dismisses John Scroggins's testimony that after meeting Karla the night before she was killed, defendant expressed considerable sexual interest in her and irritation that she had not invited him to the party at her house, *see* R1172-74, 1178-80, 1186, because Scroggins did not report these details when first questioned by the police, *see* Def. Br. 40. But Scroggins's account is corroborated by statements that defendant made to a detective just two weeks after the murder, in which defendant described having been at Paul Main's house the night before the murder and witnessing the party at Karla's house next door. *See* R1506. As the detective recounted at trial, defendant stated that he thought Karla was beautiful and had hoped that she would invite him and Main to the party. *Id.* Although defendant's statements to the detective were more restrained than those recounted by Scroggins, they corroborate Scroggins's testimony that defendant became infatuated with Karla and was angered by what he



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perceived as her rejection of him, thus supporting the inference that defendant had a motive to kill Karla.

Defendant also discounts the evidence that he told several people in the hours and days after the murder about details of the crime scene that only the killer would know and made other statements implying guilt. He asserts that Harold Pollard's testimony — that on the night of the murder defendant reported that Karla had been killed and stated that her "body was found curled up on the floor with its hands tied behind its back," R1481 — is not probative of defendant's guilt because Karla's body was found "bent over a lard can," not "curled up on the floor." Def. Br. 41 (internal quotation marks omitted). But that minor difference in wording does not negate the strong incriminating value of Pollard's testimony, especially considering the detail that Karla's hands had been tied behind her back. And defendant altogether ignores the separate testimony from Vicki White and Spencer Bond that, several days later, defendant told them that Karla's body had been found in the basement of her house "in a curled up position," R1291, "stuck in a pail of water," R1313, and "tied up," R1315. Defendant similarly overlooks the incriminating value of his statements to White and Bond that "he had to get his story straight" and "get out of the state," R1293, and his statement several years later to his then-girlfriend Susan Lutz that he had once killed a woman, R1472.



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Defendant's efforts to poke holes in the testimony of Edna Vancil and Edna and Eric Moses, *see* Def. Br. 41-43, which together established defendant's opportunity to have committed the murder, likewise miss the mark. Vancil testified that defendant arrived at Main's house on the day of the murder between 9:30 and 10 a.m. and sat on the front porch with Main until about 11 a.m. before disappearing from the porch until about noon, R1087-90, a period of time that coincided with Karla's estimated time of death, *see* R1248. Edna and Eric Moses testified that the same day — around 10:45 a.m., according to Eric, *see* R1069 — they saw Karla standing in her driveway arguing with a man who then followed her back to her house. R1068-72, 1079-82. Defendant suggests that he could not have been the man arguing with Karla in her driveway at 10:45 a.m. because Vancil testified that he remained on Main's front porch until 11 a.m. *See* Def. Br. 41. But neither Eric Moses nor Edna Vancil purported to recount exact times. *See* R1077 (testimony of Eric Moses) ("Q: You recall this happening. You seen these people in the driveway at 10:45 in the morning, is that correct? A: Yeah, around there."); R1089 (testimony of Edna Vancil) ("Q: How long were they on the front porch? A: Well, they was there until about eleven o'clock, and they disappeared from eleven o'clock until almost twelve o'clock.").

And defendant's quibbles with Vancil's and the Moses's timeline are beside the point because defendant admitted at trial and in a recorded



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statement to Bond that he was on Main's front porch for most of the day, from as early as 10 a.m., but that he may have left the porch several times during the day. R1405, 1412, 1893-95, 1975-76. He also admitted at trial that he had seen Karla in her front yard that afternoon and correctly described the shirt she was wearing when Edna and Eric Moses saw her. R1958. And he told Bond in their recorded conversation that he may have spoken with Karla in her driveway that day. R1406, 1417. Simply put, defendant's own statements and trial testimony support the inference that he was the man that Edna and Eric Moses saw arguing with Karla in her driveway, and then following her back to her house, shortly before she was murdered.

Finally, defendant does not deny that he offered shifting accounts of his whereabouts at the time of the murder, initially telling police that he was at Main's house only briefly that morning, *see* R1102-03, 1507, before eventually admitting that he was there most of the day, including at the time Karla was likely murdered, *see* R1405, 1893-94. Defendant suggests that his later inculpatory accounts are false memories that were somehow "[ ]tainted by the bitemark evidence," Def. Br. 43, but he offers no support for this theory. He also argues that his "proximity to the crime and changing and unreliable account are far from sufficient proof of guilt." *Id.* (internal quotation marks omitted). But as recounted above, *see supra* pp. 9-11, and in the People's opening brief, *see* Peo. Br. 29-31, the evidence established not



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only that defendant was near Karla's house at the time of the murder and later offered differing accounts of his whereabouts, but also that he had a motive to kill Karla, revealed knowledge of the crime scene that only the killer would have known, and made other inculpatory statements to several witnesses.

In sum, given that defendant presented his own experts to challenge the testimony of the People's bitemark experts, and that the non-bitemark evidence of defendant's guilt was itself considerable, defendant cannot show that the bitemark evidence was "a crucial, critical[,] highly significant factor" in his conviction, *Ege*, 485 F.3d at 375, or "undermined the fundamental fairness of the entire trial," *Han Tak Lee*, 667 F.3d at 403. Thus, the circuit court correctly denied defendant leave to file a successive postconviction petition raising a due process challenge to the bitemark evidence, and this Court should reverse the appellate court's decision to the contrary.

## III. The New Research Discrediting Bitemark Evidence Does Not Support Defendant's Actual Innocence Claim.

For similar reasons, the circuit court also correctly denied defendant leave to raise an actual innocence claim in a successive postconviction petition, and the appellate court correctly affirmed that ruling.

To prevail on a postconviction claim of actual innocence, a defendant "must present new, material, noncumulative evidence that is so conclusive it would probably change the result on retrial." *People v. Coleman*, 2013 IL 113307, ¶ 96. As this Court has explained, the actual innocence standard is



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"extraordinarily difficult to meet." *Id.*, ¶ 94. Here, taking the well-pleaded allegations in defendant's petition and supporting affidavits as true, *see People v. Robinson*, 2020 IL 123849, ¶ 45, the People assume for purposes of this appeal that the bitemark evidence presented at defendant's trial has been discredited and deemed unreliable by the scientific community, *see* Peo. Br. 25. The People likewise do not dispute that, under the leave-to-file standard, the affidavits and other materials that defendant submitted concerning the current scientific views on bitemark analysis are both new and material. *See Coleman*, 2013 IL 113307, ¶ 96 (evidence is "new" if it "was discovered after trial and could not have been discovered earlier through the exercise of due diligence," and "material" if it "is relevant and probative of the petitioner's innocence"). But defendant cannot satisfy the other two prongs of the actual innocence standard.

First, defendant cannot show that his new evidence casting doubt on the reliability of bitemark analysis is noncumulative, meaning he cannot show that it "adds to what the jury heard." *Id.* At trial, defendant's experts testified that they could not determine from the photographs whether the marks on Karla's shoulder were human bitemarks and called into question the reliability of the People's experts' conclusions. One defense expert explained that there was "very little evidence . . . to even substantiate that we have a bite mark," R1766, while the other testified that he was "not sure that there are any bite marks shown," R1815. The current understanding of



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scholars and scientists that forensic dentists cannot consistently determine whether an injury is actually a bitemark, *see* C2726, C2953, was thus well demonstrated to the jury.

Defendant's trial experts also made many of the same points about the unsuitability of the autopsy photographs for bitemark comparison purposes that defendant's current expert now makes. *Compare* C2934 (Dr. Pretty's postconviction affidavit describing autopsy photographs as being of "poor quality" and noting the lack of scale and evidence of skin distortion), *with* R1763-64, 1769 (Dr. Pavlik's trial testimony describing autopsy photographs as "one step above useless" and noting that photographs were not taken at right angles, did not include a scale, and one showed signs of skin distortion), and R1814-15 (Dr. Sperber's trial testimony describing the autopsy photographs as not "suitable" for comparison purposes). Defendant's new evidence thus adds little "to the information that the fact finder heard at trial." *Robinson*, 2020 IL 123849, ¶ 47.

Second, defendant also cannot show, as he must to obtain leave to file a successive postconviction petition raising an actual innocence claim, that his new evidence is conclusive enough to "raise the probability that it is more likely than not that no reasonable juror would have convicted [him]." *Id.*, ¶ 61; *see also People v. Taliani*, 2021 IL 125891, ¶ 64 ("the newly discovered evidence, when viewed in the light of all the evidence produced at trial, must



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be of such conclusive character that it would probably change the result on retrial").

To be sure, the new research defendant proffers casts doubt on the testimony of the People's forensic dentists that the marks on Karla's shoulder were human bitemarks, and thus decreases the inculpatory value of the testimony of Vicki and Mark White and Spencer Bond that defendant told them about the presence of bitemarks on Karla's shoulder several days after the murder. But the People's experts did not purport to identify defendant as the source of the bitemarks, and instead testified only that defendant's teeth were "consistent with" or "could have" made the marks. R1566-67, 1581, 1625. This case thus stands in sharp contrast with other cases where new research discrediting bitemark analysis has been found to support claims of actual innocence. *See, e.g.*, *Howard v. State*, 300 So. 3d 1011, 1017 (Miss. 2020) (testimony that bitemark "was an 'identical' match to [the defendant's] teeth" and "that [the defendant] 'indeed and without doubt' inflicted the bite mark"); *Ex parte Chaney*, 563 S.W.3d at 262 (testimony that the defendant "was a 'perfect match' and that there was only a 'one to a million' chance that someone other than [the defendant] was the source of the mark").

The bitemark evidence here, moreover, was simply one piece of a broad circumstantial case that, taken as a whole, painted a convincing picture of defendant's guilt. As discussed above, *see supra* pp. 9-13, and in the People's opening brief, *see* Peo. Br. 29-31, the evidence established that defendant had



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both a motive and the opportunity to have committed the crime, offered changing accounts of his whereabouts at the time, made incriminating statements to several people in the hours and days after the murder — including describing crime scene details (other than the supposed bitemarks on Karla's body) that only the killer would have known and stating that he had to get his story straight and get out of town — and confided to a girlfriend years later that he had once killed a woman. The new research discrediting bitemark analysis does not cast doubt on this non-bitemark evidence. Nor does it implicate another perpetrator or suggest that defendant could not have committed the crime. *Cf. Robinson*, 2020 IL 123849, ¶ 83 (holding that new evidence was sufficient to warrant leave to file successive postconviction petition raising actual innocence claim where "a fact finder could determine that the new evidence exculpates petitioner from any involvement in the crimes and refutes the State's evidence at trial"). At bottom, given the strength of the non-bitemark evidence, and the fact that defendant called his own forensic dentists at trial to dispute the testimony of the People's experts, the new research casting doubt on the reliability of bitemark analysis does not "raise the probability that it is more likely than not that no reasonable juror would have convicted [defendant]." *Id.*, ¶ 61.

Resisting this conclusion, defendant points to other supposed evidence of his innocence, such as two unmatched fingerprints on a coffee pot found in the basement rafters and two potential alternative suspects. *See* Def. Br. 48.



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But the presence of unmatched fingerprints on the coffee pot is not inconsistent with defendant's guilt, even accepting the People's theory that the killer had handled the coffee pot, *see* R769, given that the killer obviously touched other items in Karla's house without leaving fingerprints, and that the prints could have been made by a person who had innocently handled the coffee pot on an earlier occasion. Indeed, contrary to defendant's current assertion, *see* Def. Br. 23, it is unclear from the record whether the fingerprints on the coffee pot were compared to fingerprints from Karla's fiancé, Mark Fair, or to all of the other people who were at the couple's house the evening before the murder, *see* C2759 (listing people for whom fingerprint comparisons were conducted); C2415 n.19 (defendant's earlier acknowledgment that it "is unclear from the record why law enforcement never compared the fingerprint to Mark Fair, and if it did, the comparison [is] not reflected in the records in the current possession of counsel"). In any event, the presence of unmatched fingerprints on the coffee pot, which was known at the time of trial, cannot overcome the considerable non-bitemark evidence of defendant's guilt that was presented to the jury.

The evidence of supposed alternative suspects is equally unavailing. At trial, defendant called Jerry Gibson, who testified that when he was incarcerated in August 1978, a fellow inmate, Joseph Milazzo, confessed to having killed Karla. *See* R1672-73. But testimony of jailhouse informants, while not "inherently unbelievable," is often unreliable and "must be viewed



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with caution." *People v. Belknap*, 2014 IL 117094, ¶ 55. Here, there were strong reasons for the jury to doubt Gibson's truthfulness, including his admission that he "was trying to make a deal to get off a crime" when he made his initial statement to police, R1673, and the fact that he later told an investigator that Milazzo might have said that he killed Karla in the evening, *see* R1677, which contradicts the medical examiner's testimony that Karla died around 11:45 a.m., *see* R1248.

Defendant also points to a police report documenting that three anonymous persons expressed suspicion about Joe Seitz, a friend of Karla's, and reported that he had a history of violence. *See* C1280-81. But one of the anonymous sources also told police that Seitz had been with her on the day of Karla's murder from about 10:30 a.m. until about 12:20 p.m., *see* C1281, which would rule out Seitz having been the man whom Edna and Eric Moses saw arguing with Karla in her driveway shortly before her death. And contrary to defendant's assertion that Seitz had previously threatened Karla, *see* Def. Br. 48, the police report states that one of the anonymous informants reported that Seitz had threatened *her* (the informant), not Karla, *see* C1281 ("B told me that Seitz had once threatened to kill her.").

In sum, given the strong circumstantial evidence of defendant's guilt aside from the bitemark evidence, and the contested and limited nature of the bitemark testimony that was presented at trial, the new research discrediting the field of bitemark analysis does not "raise the probability that



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it is more likely than not that no reasonable juror would have convicted [defendant]." *Robinson*, 2020 IL 123849, ¶ 61. Thus, the circuit and appellate courts both correctly held that defendant was not entitled to leave to file a successive postconviction petition raising an actual innocence claim, and this Court should deny defendant's request for cross-relief on that claim.

## CONCLUSION

This Court should reverse the appellate court's judgment with respect to defendant's due process claim, reject defendant's request for cross-relief on his actual innocence claim, and affirm the circuit court's judgment denying defendant leave to file a successive postconviction petition.

October 6, 2022

Respectfully submitted,

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**RULE 341(c) CERTIFICATE OF COMPLIANCE**

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 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, and the certificate of service, is 20 pages.

/s/ Eric M. Levin
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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 October 6, 2022, the **Reply and Cross-Appellee Brief of Plaintiff-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 service of such filing to the email addresses of the persons named below:

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