No. 125621

IN THE SUPREME COURT OF ILLINOIS

CHARLES PALMER, Petitioner-Appellant, v. PEOPLE OF THE STATE OF ILLINOIS, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court, Fourth District, No. 4-19-0148 There on appeal from the Circuit Court of Macon County, Illinois No. 99 CF 139

BRIEF OF PETITIONER-APPELLANT CHARLES PALMER

Jon Loevy (6218254)
Steven Art (6302319)
Alison Leff (6296422)
Rachel Brady (6312402)
Counsel for Petitioner-Appellant
LOEVY & LOEVY
311 North Aberdeen Street
Chicago, Illinois 60607
(312) 243-5900
brady@loevy.com

Counsel for Petitioner-Appellant

ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Petitioner-Appellant Charles Palmer was wrongly convicted of beating a man named William Helmbacher to death with a hammer. The charges against Mr. Palmer and all evidence and arguments presented during his criminal case reflected the State's singular theory of guilt: that Mr. Palmer alone attacked and killed Helmbacher. From the moment of his arrest until his exoneration more than 18 years later, Mr. Palmer maintained his innocence, and he fought hard from prison to clear his name. Ultimately, DNA testing of skin found under Helmbacher's fingernails and bloody hairs found in his hand revealed that Mr. Palmer could not have been the person who beat Helmbacher to death. The State confessed error, Mr. Palmer's conviction was reversed, and the State dropped all charges against him. Since that time, and throughout the proceedings below, the State has conceded that Mr. Palmer is not Helmbacher's killer.

Following his exoneration, Mr. Palmer petitioned for a certificate of innocence (COI). 735 ILCS 5/2-702. Given the DNA evidence and the State's concession that Mr. Palmer did not kill Helmbacher, the statutory analysis of whether Mr. Palmer was entitled to a certificate of innocence should have been straightforward. 735 ILCS 5/2-702(g). The statute requires Mr. Palmer to show by a preponderance of the evidence that he "is innocent of the offenses charged in the indictment or information," 735 ILCS 5/2-702(g)(3), and the State had agreed that the conclusive DNA evidence showed that Mr. Palmer was not the person who had beaten Helmbacher to death, which was the only crime alleged in the information. The State did not contest that Mr. Palmer plainly satisfied all other statutory elements. 735 ILCS 5/2-702(g)(1), (2) & (4). Mr. Palmer therefore argued that he was entitled to a certificate of innocence as a matter of law.

But the trial court denied Mr. Palmer a certificate of innocence, and the court of appeals affirmed. Both courts accepted the State's assertion that, though innocent of killing Helmbacher, Mr. Palmer might have been involved in some other way in Helmbacher's death—namely, by acting as an accomplice to another, unidentified person who killed Helmbacher. The State invented this novel theory of guilt for the first time in its response to Mr. Palmer's COI petition, despite the fact that the charges against Mr. Palmer, his conviction, and indeed all of the criminal proceedings had been based on the theory that Mr. Palmer was the sole perpetrator of Helmbacher's murder. Moreover, the State presented its novel theory of guilt without pointing to a shred of evidence supporting it. This appeal followed.

This Court should reverse and remand with instructions that Mr. Palmer is entitled to a certificate of innocence as a matter of law. First, according to its plain meaning, structure, and legislative intent, the COI statute requires a petitioner like Mr. Palmer to prove his innocence of the particular factual offense with which he was actually charged and that led to his wrongful conviction. In this case, the State has conceded that Mr. Palmer is innocent of that offense, and the State's position that he must additionally prove his innocence of crimes that were never charged or prosecuted is plainly foreclosed by the COI statute.

In addition, due-process principles and judicial estoppel flatly foreclose the State from contesting a COI petition by requiring the petitioner to prove innocence of new theories of guilt that were never charged or pursued during criminal proceedings. It is grossly offensive to deeply rooted notions of due process to require a person whose conviction has been set aside based on conclusive DNA evidence to prove decades after

the fact that he is innocent of crimes the State never before charged, never prosecuted, and which never led to a conviction. Moreover, the State's novel factual theories presented for the first time in these COI proceedings are irreconcilable with the factual theory of guilt it pursued throughout Mr. Palmer's criminal proceedings.

Separately, even if this Court permitted the State to challenge Mr. Palmer's entitlement to a certificate of innocence by requiring him to disprove a new theory of guilt for the first time during COI proceedings, Mr. Palmer would still be entitled to a certificate of innocence. Mr. Palmer has presented strong evidence of his innocence. And as the appellate court noted, the State has not pointed to any evidence showing Mr. Palmer committed a crime under the novel theories the State introduced for the first time in response to Mr. Palmer's COI petition. When one side fails to produce any evidence at all, a preponderance-of-the-evidence analysis dictates that judgment for the petitioner is appropriate.

ISSUES PRESENTED

The certificate of innocence statute provides in relevant part that "[i]n order to obtain a certificate of innocence the petitioner must prove by a preponderance of the evidence that:

> (1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
>
> (2) (A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed . . . .
>
> (3) the petitioner is innocent of the offenses charged in the indictment or information . . . ; and
>
> (4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction."

735 ILCS 5/2-702(g). That Mr. Palmer satisfies elements (1), (2), and (4) is undisputed. The issues presented for review are:

1. Whether a petitioner satisfies subsection (g)(3) of the COI statute, which requires him to prove by a preponderance of the evidence that he "is innocent of the offenses charged in the indictment or information," when the State concedes that conclusive DNA evidence shows the petitioner is innocent of the particular factual offense charged in the information.

2. Whether civil and criminal due-process principles and estoppel bar the State from contesting a petition for a certificate of innocence by requiring the petitioner to prove by a preponderance of the evidence that he is innocent of factual offenses that were never charged or prosecuted during the criminal proceedings.

3. If the State is permitted to contest a petition for a certificate of innocence based on a novel theory of guilt, whether the State must present evidence in support of that theory in response to a petitioner's evidence of innocence.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under Illinois Supreme Court Rule 315(a). The appellate court issued its decision on November 27, 2019. Mr. Palmer filed a petition for leave to appeal on January 2, 2020, and this Court allowed the petition on March 25, 2020.

STATUTE INVOLVED

This case concerns the construction of 735 ILCS 5/2-702, which is reproduced in the appendix.

STATEMENT OF FACTS

Charles Palmer is an innocent man who was wrongly convicted of a brutal beating murder he did not commit. After 18 years of imprisonment, Mr. Palmer was exonerated by conclusive DNA evidence found under the fingernails and in the hand of the victim. C852, 856. Based on that DNA evidence, Mr. Palmer's conviction was overturned, and the State dismissed all charges against him. C545-47.

Mr. Palmer thereafter petitioned for a certificate of innocence (COI). 735 ILCS 5/2-702; C548-75. The statute required Mr. Palmer to "prove by a preponderance of evidence that . . . [he] is innocent of the offenses charged in the indictment or information . . . ." 735 ILCS 5/2-702(g)(3). The Macon County State's Attorney intervened to contest whether Mr. Palmer could make such a showing, but the State conceded, as it had earlier in the criminal case, that the DNA evidence proved Mr. Palmer could not have beaten the victim to death. C882-83, 890; R 869-70. Nonetheless, the trial court denied Mr. Palmer a certificate of innocence. C1356-59. The denial was based on a novel and alternative theory of guilt advanced by the State—one Mr. Palmer had never before been charged with or convicted of, and for which the State offered no evidence. C883-86. The court of appeals affirmed, *People v. Palmer*, 2019 IL App (4th) 190148, and this appeal followed.

A. The Murder of William Helmbacher

On the evening of August 27, 1998, a single assailant entered William Helmbacher's apartment in Decatur, Illinois and beat him to death with a hammer. C621, 628. There was no sign of forced entry and the front door was locked when Helmbacher was discovered, leading investigators to believe that Helmbacher's killer had been let in or had the key. C216, 650; R131, 214.

The crime scene was horrific. C216, 222, 621, 634. Helmbacher's head and body were severely beaten. C216-17, 222, 244, 621. His face and the floor around him were entirely covered in blood. C222, 621. The hammer used in the murder lay next to Helmbacher's body. *Id.* Given the murder weapon and the severity of the beating, it was clear that Helmbacher and his killer had been in close quarters during the assault, and there was evidence that Helmbacher had fought with his killer before he died. C626, 860-61; R296, 300, 305, 311. Skin was found under Helmbacher's nails and there were several straight hairs covered in blood in his hand. C704-14, 852, 856.

There never has been any question that Helmbacher was murdered by a single person. At all times during the criminal proceedings—from the filing of charges to the jury instructions—the State tried the case as a murder committed by a single killer. C34-39, 90-117; R101-04, 441-47, 869. The State never accused anyone other than Mr. Palmer in connection with Helmbacher's death. C34-39; R869. To this day, the State has never identified a shred of evidence that more than one person was involved in the Helmbacher murder. C872-93.

B. Douglas Lee Is the Prime Suspect, but Charges Are Not Filed

Though Mr. Palmer was charged with Helmbacher's murder five months after the crime occurred, police focused at first on a suspect named Douglas Lee, an attorney with a law practice in Decatur. C621-22, 633, 682-88. Helmbacher had been an associate attorney at Lee's law firm, and he had managed and collected rents at properties Lee owned in Decatur, including the building where he lived and was murdered. C619, 630, 637. Lee kept an apartment in the same building, and he had a master key that gave him access to all of the apartments, including Helmbacher's. C216, 225, 658-60.

Investigators learned that in the weeks leading up to Helmbacher's murder, Lee and Helmbacher had been in a heated conflict over business, with Lee believing that Helmbacher was not turning over rents he had collected, and with Helmbacher upset because Lee had not been paying him enough for his legal work. C195-98, 637, 658-59, 665, 669-70. Lee had driven from the Chicago area to Decatur on the day of Helmbacher's murder, and he went straight to Helmbacher's apartment after arriving in town. C220, 243. Later that evening, he arrived at the home of a business associate named Joseph Moyer, and he took Moyer out with him to collect rents from his tenants. C227-28, 241-44. The two stopped by Helmbacher's apartment, but there was no answer. C222, 241. By all accounts, Lee was in a fury, telling one tenant that he would destroy her belongings and cutting off power to another. C192, 237, 681. At the end of the night, Lee and Moyer stopped at Helmbacher's apartment again, Lee used his key to open the door, and the two men saw Helmbacher's dead body inside. C216, 222, 244, 621. Detectives questioned Lee extensively during the night following the murder, until Lee invoked his right to an attorney and left police headquarters. C686-88.

Police later learned that Lee called an old friend the day after he was questioned, and told her he had been alone when he discovered Helmbacher's body and that Helmbacher had died by suicide. C665-67. In addition, police learned that Lee had changed clothes on the day of Helmbacher's murder. C249. They searched Lee's car and collected items of physical evidence, noting reddish-brown stains and trace evidence on them. C261-22, 643, 1113. To this day, Lee has not been excluded as the source of the DNA from the skin found underneath Helmbacher's fingernails. C865-66. Despite this evidence, Lee was never charged. C34-40.

C. Police Turn Their Attention to Ray Taylor, Who Tells a Fabricated Story

Weeks later, investigators turned their attention to a man named Ray Taylor, a cousin of Mr. Palmer who lived upstairs from Helmbacher. C622, 692-95. On the night before he was killed, Helmbacher had reported to Decatur police that his apartment had been burglarized, saying that a mug containing $20 in coins and five bottles of beer had been stolen. C644. Two weeks after Helmbacher's death, those items were found in a garbage bag about half a mile from the building where Helmbacher was killed, and Decatur police found a single fingerprint from Taylor on that garbage bag. C690, 692-95; R159.

Four months before Helmbacher's murder, Taylor had gotten into a fight with Helmbacher and Lee in the middle of the night, threatened to kill both of them, and been arrested for assault and disorderly conduct, making him a potential suspect. SUPP-E29-32. And because he lived upstairs from Helmbacher at the time of the killing, Taylor had been interviewed four times by police before his fingerprint was found. R165-71. In all four of those interviews, Taylor denied any knowledge of the burglary or murder. *Id.*

Armed with the fingerprint evidence, Decatur police arrested Taylor and interviewed him again. C692-95. Taylor changed his story dramatically, claiming he knew all about both the Helmbacher burglary and murder. *Id.* According to Taylor, Mr. Palmer asked him to serve as a lookout for the burglary, but Taylor had refused to do so, after which Mr. Palmer brought stolen items to his apartment, which Taylor then disposed of in a dumpster. C693, R139-48. Taylor also claimed that around sunset on the day of Helmbacher's murder, Mr. Palmer approached him and spontaneously confessed

to the crime, purportedly telling Taylor he had beaten Helmbacher to death, "the guy didn't have but $11," and "there was blood everywhere." R150-51.

Taylor's story is a lie, and in these proceedings the State has finally and rightly disclaimed it. C882-83, 890; R870. Not only did Taylor give his fabricated account only after investigators found evidence implicating him in the crime, C622, 692-95, 874, and not only did Taylor's fabricated account contradict everything he told investigators during his first four interviews, C692-95, but Taylor's story about Mr. Palmer's supposed confession also contradicted the known facts of the crime. Most prominently, Taylor stated multiple times and later testified that Mr. Palmer had confessed to murdering Helmbacher at a time when Helmbacher was actually still alive. C240, 621; R165 (recounting Taylor's false story that Mr. Palmer purportedly confessed at 7 p.m. on the evening of the murder, when police reports reflect that eyewitnesses saw Helmbacher alive in his apartment at that time).

The State now concedes that Taylor's false account of Mr. Palmer's crime cannot be true, for it concedes that Mr. Palmer did not beat Helmbacher to death. C882-83, 890; R869-70. Nonetheless, Taylor's false account was used to help secure Mr. Palmer's conviction. C700-02.

D. Charles Palmer Is Wrongly Arrested for Murder

Mr. Palmer is innocent of the murder of Helmbacher and of the burglary that occurred the night before. In fact, Mr. Palmer has no connection to Helmbacher whatsoever, and he had no memory of ever encountering Helmbacher at any time in his life before being wrongly implicated in his murder. R394. At all times during this ordeal Mr. Palmer has steadfastly maintained his innocence. C557 (verified COI petition); C614

(verified amended petition); R389, 394 (Palmer trial testimony); R596 (Palmer sentencing testimony); C700, SUPP-E6 (Palmer's statements during police interviews); *see also infra* at 15-16 (discussing new DNA evidence of innocence).

Based entirely on Taylor's fabricated story, Decatur police arrested Mr. Palmer on September 22, 1998. During questioning, Mr. Palmer was adamant he had not committed the murder or robbery. C700; SUPP-E6. Mr. Palmer was held on unrelated warrants for a parole violation while Decatur police continued to investigate. C700. He was not charged with the Helmbacher murder or burglary based on Taylor's statement. C8.

E. Blood Materializes On a Pair of Charles Palmer's Shoes

Without any physical evidence, eyewitness testimony, or other legitimate evidence tying Mr. Palmer to Helmbacher's murder, Decatur police were left only with Ray Taylor's plainly unreliable statement. Investigators sought to discover other evidence of Mr. Palmer's guilt. On the day he was arrested—four weeks after Helmbacher had been killed—Decatur police confiscated the shoes Mr. Palmer was wearing, a pair of dirty black and white Fila gym shoes. C700-01, C716. When Taylor was asked later at Mr. Palmer's trial whether those shoes were the ones he purportedly had seen Mr. Palmer wearing on the night of the crime, Taylor said they were not. C912:5-12, C920:10-16.

Nonetheless, Decatur police thought they saw spots of blood on Mr. Palmer's shoes, and on September 24, 1998, they sent the shoes to the Illinois State Police crime lab with instructions that the shoes should be searched for Helmbacher's blood. C717; R247-48. Analyst Jennifer Lu searched the interior and exterior of the shoes carefully for blood, examining them with a bright light, removing the laces, taping the shoes for hair and fibers, and cutting apart the tongue to find evidence of blood. R327-28, 340. She

determined that the spots seen by police on the shoes were not blood. C719. She found no evidence of blood anywhere on the shoes. *Id.* And she reported that the shoes were worn and dirty, R328, C716, meaning they had not been washed. Analyst Lu issued an official Illinois State Police report with her findings. C704-07. Given the extraordinarily bloody crime scene, one would have expected to find some evidence of blood on the killer's shoes, but there was no trace of blood on Mr. Palmer's shoes. R132, 214, 229, 252-53; C706.

When state prosecutors received the crime lab results, they refused to charge Mr. Palmer with the Helmbacher murder or burglary. C8 (showing Mr. Palmer was not charged until January 1999). Prosecutors filed a notice with the Decatur police department that they were declining to prosecute Mr. Palmer.

The shoes were returned to the Decatur police. C1114. For two weeks, Mr. Palmer's shoes and Helmbacher's blood were stored at the Decatur police department, along with other physical evidence in the case. C1114-22. On October 15, 1998, for no apparent reason, Decatur Detective Carlton and Sergeant Glick sent Mr. Palmer's shoes to the Illinois State Police crime lab for a second time. C71**7**. This time, Decatur police instructed that the crime lab should "tear the shoes apart" and check them again for Helmbacher's blood. R332; C717, 1115.

Analyst Lu again received the shoes. R331. Later she would testify she had never before been asked to tear an item of evidence apart to search for biological evidence she had already determined was not there. R343. In addition, Analyst Lu testified that tearing apart shoes to look for blood on them was not normal procedure at the Illinois State Police crime lab. R341-43. Again, Analyst Lu found no blood on the outside of Mr.

Palmer's shoes. R333-34. As instructed by Decatur police, she began to tear the shoes apart, removing a leather decoration and a see-through mesh layer from the surface of the shoe. R31-35; C721-22. Lo and behold, underneath the thin layer of porous, see-through black mesh on the right shoe, Analyst Lu found three "pinpoint droplets" of blood. R334, 649. The discrete droplets were of a size and in a location where they would have been obvious when Analyst Lu had examined the shoes with a bright light the first time around. C722; R334-35. Again, there was no blood at all on the left shoe. C1109.

This was a curious discovery, to say the least. Given the bloody crime scene, the killer's shoes would have been soaked in blood. R132, 214, 229, 252-53. Yet both the first and second times the shoes were examined, there was no evidence of blood on the outside of the shoes. R333-34. Nor was there any evidence that the shoes had been washed, as Analyst Lu observed the first time she tested the shoes that both appeared worn and dirty. R328; C716. Moreover, the fact that three, undisturbed and discrete droplets of blood were found under a mesh layer on the shoes also illustrated that the shoes had not been washed, for there was nothing about the size or appearance of these pinpoint droplets that suggested they had come into contact with water, had been wiped, or had otherwise been disturbed. R328; C716. And if the theory was that blood had gotten onto Mr. Palmer's shoes purportedly during the commission of the Helmbacher murder—putting to one side the fact that there would have been far more blood than three pinpoint droplets—how would the blood have left no trace on the outside of the shoe, and instead have migrated beneath that layer to an inner part of the shoe? Mr. Palmer's theory at trial and during the proceedings below is that the shoes were at best contaminated, and at worst were manipulated to create evidence of Mr. Palmer's supposed guilt. C601-02;

R847; Brief of Charles Palmer, *Palmer v. People*, No. 4-19-0148, at 11-12 (4th Dist. July 12, 2019).

F. Charles Palmer Is Wrongly Charged With and Convicted of Murder

With the new blood evidence in hand, Decatur police filed a criminal complaint alleging Mr. Palmer had by himself bludgeoned Helmbacher to death with a hammer. C41-42. Mr. Palmer was then charged by information with five counts of first-degree murder, each of which expressly alleged a single course of conduct: Mr. Palmer, acting alone, had beaten Helmbacher to death with a hammer, intentionally, knowingly, or during the commission of another forcible felony. C34-39 (though the grammar has minor variations, all five murder counts allege Mr. Palmer "repeatedly struck William Helmbacher on the head and thereby caused the death of William Helmbacher"); *see infra* at 30-31. Mr. Palmer was also charged with the burglary that had taken place at Helmbacher's apartment the day before he was killed. *Id.* The State sought the death penalty. R504-11.

No other piece of forensic evidence—not the blood or prints on the murder weapon, nor skin underneath Helmbacher's fingernails, nor the hairs in Helmbacher's hand, nor anything else discovered at the crime scene—ever connected Mr. Palmer to the Helmbacher murder. C852-58. Moreover, other than the Fila shoes and Taylor's fabricated story, the State has never pointed to any other piece of evidence of any kind suggesting that Mr. Palmer was the killer. C872-93. As was demonstrated by the State's refusal to charge Mr. Palmer based on Taylor's fabricated story alone, the only piece of evidence available to the State to suggest Mr. Palmer is a murderer were three pinpoint drops of blood that miraculously appeared on a subsurface layer of shoes the second time

the Illinois State Police tested them and that Mr. Palmer was not wearing the night that Helmbacher was killed. *See supra* at 10-12. The State has never pointed to any evidence, other than Taylor's story, implicating Mr. Palmer in the burglary.

In April 2000, the State tried Mr. Palmer to a jury. R93-503. Like the charges, the State's opening statements, presentation of evidence, and closing arguments uniformly reflected the State's theory that Mr. Palmer, acting alone, beat Helmbacher to death with a hammer. R93-503, 869. At no point during trial did the State even suggest anyone else had been involved in the murder. *Id.* At no point did the State even suggest Mr. Palmer might have acted as an accomplice during someone else's commission of the Helmbacher murder. *Id.*

Taylor testified against Mr. Palmer. R134-79. At the time of trial, Taylor had every incentive to repeat his false story to the jury: he had by that time been charged with the burglary of Helmbacher's apartment, and he was awaiting trial on those charges. R137. Shortly after testifying at Mr. Palmer's criminal trial, however, the pending charge against Taylor—the burglary charge—was dismissed. *People v. Taylor*, No. 98-CF-1174 (June 5, 2000).

After several hours of deliberations, a note informing the Court that they were deadlocked, and several additional hours of deliberations, the jury convicted Mr. Palmer of first-degree murder. C726; R484-94. The jury acquitted Mr. Palmer of the burglary. C727. The Court found Mr. Palmer eligible for the death penalty but thankfully imposed life in prison instead. R511, 609.[1]

[1] Mr. Palmer's conviction was affirmed on direct appeal, *People v. Palmer*, No. 4-00-0634 (4th Dist., Sep. 25, 2001); this Court denied leave to appeal; and Mr. Palmer's petitions for post-conviction relief were denied, C292-93, 306-08.

G. Charles Palmer Is Exonerated When DNA Evidence Proves His Innocence

Mr. Palmer spent years fighting to prove his innocence from prison. In 2010, Mr. Palmer filed a motion for DNA testing. C46-61. Physical evidence discovered at the scene of the crime, including the killer's skin cells left under Helmbacher's nails and the bloody hairs found in Helmbacher's hand, had never been tested. C460-61. The trial court hearing the motion concluded that, because Helmbacher had suffered defensive wounds showing he fought with the assailant, DNA testing of these substances would be material to Mr. Palmer's case. R681-82. The trial court granted the motion to test the fingernail scrapings. R682; C410-11.

In 2014, DNA testing of skin from Helmbacher's fingernails revealed two DNA profiles: one was Helmbacher's and the other was an unidentified contributor. C838. Mr. Palmer was categorically excluded as a contributor of this DNA profile. *Id.* This is conclusive evidence that Mr. Palmer was innocent of beating Helmbacher to death with a hammer. R803-04 (motion to dismiss hearing); C545-46.

With these exonerating DNA results in hand, Mr. Palmer filed a second motion for DNA testing on June 3, 2014, this time seeking testing of the bloody hairs that had been found in Helmbacher's hand. C452-58. On October 9, 2014, the court granted Mr. Palmer's motion, finding again that evidence that Helmbacher had fought with his killer made the hairs materially relevant to whether Mr. Palmer was the killer. R749; C475-76.

In 2016, DNA testing again established conclusively that Mr. Palmer was not the killer. The bloody hairs in Helmbacher's hand did not belong to Helmbacher or to Mr. Palmer. C838-45.

On June 27, 2016, Mr. Palmer filed a post-conviction petition based on the exonerating DNA evidence. C530-34. On November 16, Judge Timothy Steadman vacated Mr. Palmer's conviction after the State confessed error and acknowledged that the DNA evidence warranted a new trial. R794-95; C547. On November 23, the State's Attorney moved to dismiss the charges against Mr. Palmer, again acknowledging that the DNA evidence showed Mr. Palmer was not the person who killed Helmbacher. C545-46, 547. Eighteen years after his ordeal began, all charges against Mr. Palmer were dropped, and he was finally released from prison. C863.

H. The Lower Courts Deny Mr. Palmer a Certificate of Innocence, Despite the State's Concession That He Did Not Kill Helmbacher

Mr. Palmer filed a verified COI petition. C548-58. The Macon County State's Attorney intervened and responded that it was awaiting the results of additional DNA testing regarding alternative suspect Douglas Lee before deciding what position it would take on Mr. Palmer's petition. C578-82, 584-86. That testing did not exclude Lee as the contributor of the DNA found under Helmbacher's fingernails. C865-70. Mr. Palmer thereafter filed an amended, verified COI petition. C594-614. In response, the State conceded that Mr. Palmer satisfied subsections (g)(1), (2), and (4) of the COI statute, but it challenged whether Mr. Palmer could satisfy subsection (g)(3). C882. As it had in dismissing the charges against Mr. Palmer, the State again conceded during the COI proceedings that the DNA evidence proved Mr. Palmer was not the person who had killed Helmbacher. C890 ("[T]he State concedes that Petitioner was not the primary physical aggressor in this homicide . . . ."); C882 ("The DNA evidence . . . reveal[ed] that Petitioner was not the primary assailant who caused the death of William Helmbacher."); *accord* C883 ¶(f); C892 ¶(3); R855. Nevertheless, the State opposed the certificate of

innocence by asserting a new theory of Mr. Palmer's guilt, which had never before been charged, prosecuted, or even mentioned during the criminal proceedings—namely, that Mr. Palmer was an accomplice when another, unidentified person killed Helmbacher. C882-90.

The circuit court held a hearing on Mr. Palmer's petition on January 23, 2019. The State acknowledged that, prior to the COI proceedings, it had only ever pursued a theory that "Mr. Palmer committed the murder by himself[.]" R869. And the State conceded that the DNA evidence now forecloses that theory, demonstrating Mr. Palmer could not have been the person who struck Helmbacher repeatedly with a hammer. R885. The circuit court requested supplemental authority regarding whether the State could change its theory of guilt this way. R882-83. Mr. Palmer submitted ample authority explaining that the State was barred from doing so, C1126-1355, and the State submitting nothing supporting its position, C1356.

On February 14, 2019, the circuit court denied Mr. Palmer a certificate of innocence, concluding that the State was permitted to introduce a new theory of guilt and accepting the State's theory that Mr. Palmer might have been an accomplice to unknown perpetrators. C1356-59. The appellate court affirmed. *People v. Palmer*, 2019 IL App (4th) 190148. The court rejected Mr. Palmer's interpretation of the COI statute, ruling that subsection (g)(3) permits the State to contest a certificate of innocence on any theory of guilt falling under the general headings of the offenses contained in the original information, even if those theories were never charged or prosecuted during the original criminal case. *Id.* at ¶¶ 146-50. The appellate court rejected Mr. Palmer's due process argument, finding Mr. Palmer had no interest in the COI proceedings that implicated his

right to due process, *id.* at ¶¶ 154-58; and it found that the State was not judicially estopped from pursuing two inconsistent theories of Mr. Palmer's guilt, *id.* at ¶¶ 160-61. Finally, though the appellate court acknowledged that the State had not presented any evidence supporting its novel theories of guilt during the COI proceedings, *id.* at ¶ 170, the court concluded that the burden fell on Mr. Palmer to disprove those novel theories and it decided Mr. Palmer had not met that burden, despite that he had presented evidence of innocence and the State had responded with no evidence at all, *id.* at ¶¶ 170-75. This appeal followed.

ARGUMENT

A. Mr. Palmer Is Entitled to a Certificate of Innocence Because the State Has Conceded That He Meets the Statutory Requirements

Mr. Palmer is entitled to a certificate of innocence as a matter of law. Mr. Palmer was charged by information and every count alleged he killed Helmbacher acting alone. This was the State's sole theory of guilt throughout the criminal proceedings. Never did the State suggest any other person was involved in the crime. The text, structure, and legislative intent of subsection (g)(3) of the COI statute—the only provision in dispute—make clear that, to obtain a certificate of innocence, Mr. Palmer need prove only that he is innocent of the factual offenses alleged in the information filed in his particular criminal case. It does not permit the State to oppose a certificate of innocence based on a novel theory of guilt never before charged or prosecuted. Given that the State has

conceded that Mr. Palmer did not kill Helmbacher, Mr. Palmer satisfies subsection (g)(3) and is entitled to a certificate of innocence.

1. Standard of Review

Whether Mr. Palmer is entitled to a certificate of innocence as a matter of law given the State's concessions is a question of statutory construction this Court reviews *de novo*. *People v. Smith*, 236 Ill. 2d 162, 167 (2010); *see also Smith v. Tri-R Vending*, 249 Ill.App.3d 654, 663 (1993) (noting that where a party concedes all elements of its claim, judgment as a matter of law is appropriate).

2. The COI Statutory Text at Issue

To obtain a certificate of innocence in Illinois, the COI statute requires a petitioner to prove four elements by a preponderance of the evidence. 735 ILCS 5/2-702(g). In this case, the State does not dispute that Mr. Palmer satisfies three of these four elements. 735 ILCS 5/2-702(g)(1) (Mr. Palmer was convicted and imprisoned, and served part of his sentence); 735 ILCS 5/2-702(g)(2)(A) (Mr. Palmer's conviction was set aside and all charges against him were dropped); 735 ILCS 5/2-702(g)(4) (Mr. Palmer did not voluntarily bring about his own conviction). C882. The State contests only whether Mr. Palmer can prove by a preponderance of evidence that he "*is innocent of the offenses charged in the indictment or information* [.]" 735 ILCS 5/2-702(g)(3) (emphasis added). In short, the State has conceded that Mr. Palmer "is innocent of the offenses charged in

the indictment or information," *id.*, and he is therefore entitled to a certificate of innocence.

3. The COI Statute Requires Mr. Palmer to Prove Only His Innocence of the Specific Factual Offense Charged in His Criminal Case

Subsection (g)(3) of the COI statute requires Mr. Palmer to prove by a preponderance of the evidence that he is innocent of the specific criminal offense actually charged in the indictment or information in his particular case. Contrary to the State's position, the statute does not require him to demonstrate more broadly his innocence of every theory of criminal liability that might hypothetically fall within the criminal statutes at issue in his case. This conclusion follows from the text and structure of the COI statute and from this Court's prior decisions. Because Mr. Palmer was charged only with acting as a sole principal and beating Helmbacher to death, and because the State concedes he did not commit that crime, Mr. Palmer is entitled to a certificate of innocence under subsection (g)(3).

(a) The Plain Meaning of Subsection (g)(3) Supports Mr. Palmer's Construction

This Court's "primary objective in construing a statute is to ascertain and give effect to the intent of the legislature, bearing in mind that the best evidence of such intent is the statutory language, given its plain and ordinary meaning." *People v. Johnson*, 2013 IL 114639, ¶ 9. Undefined statutory terms are presumed to have their popularly understood meanings, and importantly terms with settled legal meanings are presumed to incorporate those established legal meanings. *Id.*

The phrase "is innocent of the offenses charged in the indictment or information" in subsection (g)(3) has a plain and popular meaning that is unambiguous. The reference

to "offenses" is modified by the words "charged in the indictment or information." Accordingly, the petitioner is required to prove innocence of those offenses actually described in the charging document, and the legislature plainly contemplated that courts would reference the specific factual content of charging documents in analyzing subsection (g)(3). *Smith*, 236 Ill. 2d at 167 ("[O]ur primary goal is to ascertain and give effect to the drafter's intention, and the most reliable indicator of intent is the language used, which must be given its plain and ordinary meaning.").

That the legislature intended to limit "offenses" in subsection (g)(3) to those "charged in the indictment or information" is reinforced by subsection (d), which requires a COI petition to "state facts in sufficient detail to permit the court to find that the petitioner is likely to succeed at trial in proving that the petitioner is innocent of *the offenses charged in the indictment or information*[.]" 735 ILCS 5/2-702(d) (emphasis added). The fact that precisely the same phrase is used twice to describe the proof necessary to obtain a certificate of innocence leaves no room for debate. Given this context and the modifying words "charged in the indictment or information," the word "offenses" cannot be read to encompass the entire statutory provision for each crime at issue in the criminal defendant's case. Instead, the plain and popular meaning of the phrase "offenses charged in the indictment or information" must encompass the particular factual offenses described in the petitioner's charging documents.

While the term "offense" is defined in the criminal code as "a violation of any penal statute of this State," 725 ILCS 5/102-15, the legislature modified the term in the COI statute by referring to "the offenses charged in the indictment or information," 735 ILCS 5/2-702(g)(3). In this case, the State has given this phrase a reading equivalent to

the broad and general definition of "offense" in the criminal code, but that reading would render the modifying language "charged in the indictment or information" mere surplusage, which is an interpretive approach this Court has rejected repeatedly. *Hirschfield v. Barrett*, 40 Ill. 2d 224, 230 (1968) (holding that courts should avoid surplusage by giving meaning and effect to statutory language wherever possible); *People v. Frieberg*, 147 Ill. 2d 326, 348 (1992) (same). It is important that this Court give full effect to all the statutory language and not read out words the legislature included to limit the proof a COI petitioner must present. The plain language of the COI statute thus requires an examination of the factual allegations that actually gave rise to the crime charged in the petitioner's indictment or information.

Were there any doubt that this is the plain meaning of the phrase "offenses charged in the indictment or information," a robust body of criminal law establishes that the phrase must refer to the particular factual offenses described by the charging instrument in the particular case at issue. *People v. Nere*, 2018 IL 122566, ¶ 42 ("Where a term has a settled legal meaning, this court will normally infer that the legislature intended to incorporate that settled meaning."). As this Court explained in *Smith*, 99 Ill. 2d 467 (1984), an indictment must include not only a statement of the offense and its elements, but also "allegations of the essential facts to enable the accused to prepare a defense which, if successful, would bar further prosecution for the same offense." *Id.* at 470-71; *see also People v. Lutz*, 73 Ill. 2d 204, 211-13 (1978) (charging instrument insufficient when it did not allege facts specifying any alternative methods of committing the offense); *People v. Trumbley*, 252 Ill. 29, 31 (1911) ("It is a fundamental rule of criminal pleading that an indictment must allege all of the facts necessary to constitute

the crime with which the defendant is charged, and an indictment which does not set forth such facts with sufficient certainty will not support a conviction."); 725 ILCS 5/111-3 (requiring a charge to allege "the nature and elements of the offense as definitely as can be done"). The "offenses charged in the indictment or information" are never general categories of crimes or restatements of criminal statutes. On the contrary, charging documents must always describe the nature of the crime with factual particularity.

Moreover, while it has long been the law that a person charged as a principal can be convicted on proof that he was only an accomplice, *Baxter v. People*, 8 Ill. 368 (1846), it is similarly deeply rooted that when a charging document alleges facts supporting a theory of principal liability but not an accountability theory, a conviction on the latter theory is impermissible, *Usselton v. People*, 149 Ill. 612 (1894). *See also People v. Baldwin*, 199 Ill. 2d 1 (2002) (noting "the well-settled general rule that a defendant must be charged with an instrument that sets forth allegations with sufficient provision to allow defendant to prepare a defense."); *People v. Deng*, 2013 IL App (2d) 111089, ¶ 16 (holding that an indictment alleging only principal liability failed to adequately allege accountability liability); *People v. Doss*, 99 Ill. App. 3d 1026, 1029-30 (4th Dist. 1981) (same). As discussed below, Mr. Palmer was charged as the sole principal, and the information is devoid of any reference to an accountability theory. To read subsection (g)(3) in a manner that required him to prove innocence of theories of liability that were never set out in charging documents would directly contradict this established body of law.

Accordingly, the phrase "offenses charged in the indictment or information" must mean the factual account of the crimes contained in the charging instrument. The plain

language of this provision, and its established legal meaning, permits no broader construction. This Court need not go further than the plain meaning to adopt Mr. Palmer's construction of the COI statute, *In re Hernandez*, 2020 IL 124661, ¶ 18 ("If the statutory language is clear, it will be given effect without resort to other aids for construction."); but if the Court does go further, every other canon of statutory construction that might apply also supports Mr. Palmer's reading of subsection (g)(3).

(b) The COI Statute's Structure and Other Language Supports Mr. Palmer's Construction

This Court has recognized that "[o]ne of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. Words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute." *Michigan Ave. Nat. Bank v. County of Cook*, 191 Ill. 2d 493, 504 (2000). Viewed as a whole, there is ample evidence that subsection (g)(3)'s reference to "offenses charged in the indictment or information" refers to the charging document's particular factual allegations.

First, the COI statute bears the title "Petition for a certificate of innocence that the petitioner was innocent of all offenses for which he or she was incarcerated." 735 ILCS 5/2-702; *Alvarez v. Pappas*, 229 Ill. 2d 217, 230-31 (2008) (noting that courts may refer to the title of statute to aid in interpretation). Similar references to the offenses for which the petitioner "was incarcerated" appear throughout the statutory language. 735 ILCS 5/2-702(b) ("The petition shall request a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated."); 735 ILCS 5/2-702(h) ("If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which

he or she was incarcerated."); *see also* 735 ILCS 5/2-702(f) (referring to "alleged wrongful incarceration"). The statute therefore plainly contemplates proof of innocence of the crimes for which the petitioner *was actually incarcerated*, not proof of innocence of different crimes for which the petitioner *might have been* incarcerated had a different criminal case been presented. Reading these provisions in concert with subsection (g)(3)'s reference to "offenses charged in the indictment or information" supports the conclusion that the petitioner is required to prove innocence of the factual offense that was actually charged, presented at trial, and then became the basis of the alleged wrongful imprisonment. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 25 ("Statutory provisions should be read in concert and harmonized.").

The same can be said of the COI statute's repeated references to the petitioner's crime of conviction. 735 ILCS 5/2-702(b) (referring to "[a]ny person convicted . . . for one or more felonies . . . which he or she did not commit"); 735 ILCS 5/2-702(c) (referring to "the claim for certificate of innocence of an unjust conviction"); 735 ILCS 5/2-702(f) (discussing reliance on evidence from "the criminal proceedings related to convictions which resulted in the alleged wrongful incarceration"). A conviction is a "judgment of conviction or sentence entered . . . upon a verdict or finding of guilt of an offense, rendered by a legally constituted jury . . . ." 720 ILCS 5/2-5. The conviction rests upon the jury's determination of guilt, and so it follows that a conviction can be based only on the theories and evidence presented to the jury. *Chiarella v. United States*, 445 U.S. 222, 236–37 (1980). Reading subsection (g)(3) in harmony with other language in the statute also supports Mr. Palmer's construction of subsection (g)(3).

(c) Legislative History Supports Mr. Palmer's Construction

All available evidence of the legislative purpose of the COI statute also establishes that Mr. Palmer's construction of subsection (g)(3) is correct. While legislative intent is the most reliable indicator of the legislature's objectives, *City of Chicago v. Fraternal Order of Police*, 2020 IL 124831, ¶ 34, courts will consider other indicia of legislative purpose as well, *Pappas*, 229 Ill. 2d at 231. As discussed, the plain language and structure of the statute demonstrates that it was enacted to serve a public policy favoring certificates of innocence for individuals who can establish they were wrongly convicted of those offenses for which they were charged, convicted, and imprisoned. But "[i]n determining the General Assembly's intent, [this Court] may consider not only the language of the statute, but also the purpose and necessity for the law, the evils sought to be remedied, and the goals to be achieved." *Id.* In so doing, "courts presume that the General Assembly, in the enactment of legislation, did not intend absurdity, inconvenience, or injustice." *Michigan Ave. Nat. Bank*, 191 Ill. 2d at 493.

Subsection (a) of the COI statute sets out the legislature's findings and purposes in providing an avenue for petitioners like Mr. Palmer to secure certificates of innocence. 735 ILCS 5/2-702(a); *see also Citizens Util. Bd. v. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 126 (1995) ("The function of a statutory preamble is to supply reasons and explanations for the legislative enactments."). The legislature found that the COI statute was necessary because individuals wrongly convicted of crimes had "been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law[.]" *Id.* In addition, the legislature instructed that courts considering COI petitions should "in

the interest of justice, give due consideration to the difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destructions of evidence or other factors not caused by [the petitioner] or those acting on their behalf." *Id.*

Mr. Palmer's construction of subsection (g)(3) is the only one that serves these purposes, and the State's position below that Mr. Palmer was required to prove his innocence of offenses that were never charged or prosecuted in his case undermines them. An interpretation of the statute that would require a petitioner, years after a conviction, to prove his or her innocence of every factual offense the State might hypothetically have pursued during the original criminal proceeding—but did not pursue—would render the statute itself a technical obstacle to relief. Yet the very purpose of the statute was to eliminate such technical obstacles.

In accordance with this policy goal, subsection (f) permits courts evaluating COI petitions to take judicial notice of evidence used during the proceedings that gave rise to the criminal conviction. 735 ILCS 5/2-702(f). In providing for judicial notice of evidence from the prior proceedings, the legislature made plain its intent that the claim and evidence of innocence should be assessed against the facts, theories, and evidence used during the original criminal proceedings, not some novel theory of guilt that had never been presented.

In fact, any interpretation of subsection (g)(3) that would require a COI petitioner to prove his or her innocence of uncharged and untried crimes would require that the petitioner have full access to evidence that might have disappeared years ago. That would directly contradict the legislature's statement that courts implementing the statute must be mindful that the passage of time, death of witnesses, and destruction of evidence

routinely deprive COI petitioners of essential proof when their convictions have been reversed and charges dropped decades after their wrongful convictions. 735 ILCS 5/2-702(a); *Scofield v. Board of Ed. of Cmty. Consol. Sch. Dist. No. 181*, 411 Ill. 11, 15 (1952) ("[I]n construing a statute or determining its constitutionality, all its sections are to be construed together in the light of the general purpose and plan, the evil intended to be remedied, and the object to be obtained, and if the language is susceptible of more than one construction, the statute should receive the construction that will effect its purpose rather than defeat it."). Plainly, COI petitioners like Mr. Palmer cannot be expected to have access to the evidence necessary to disprove a theory of guilt that was never charged or presented during the original criminal proceedings. Indeed, the entire reason that factual content is required in a charging instrument is to ensure defendants know what facts they must gather in support of a defense. *See supra* at 22-23.

The legislative history supports these conclusions as well. During the legislature's consideration of the statute, it expressed its intent to prevent the situation where courts considering COI petitions would be required to retry an entire criminal case. *See* 95th Ill. Gen. Assem., House Proceedings, May 18, 2007, at 5-6 (statements of Representative Flowers). As a result, legislators drafted a statute that provides judges with tools to quickly evaluate petitions based on evidence from the criminal case and new evidence of innocence. *Id.* As an illustration of the need to resolve cases in this manner, legislators pointed to the case of a man exonerated by DNA evidence of those crimes for which he was charged and convicted. *Id.* at 12; *see also* Brief of Exonerees As Amici Curiae In Support of Plaintiff-Appellant Charles Palmer.

The legislature has further streamlined the granting of certificates of innocence where a criminal defendant secures post-conviction relief on an actual innocence claim. 730 ILCS 5/5-5-4(c). During debate on this amendment, then-Senator Raoul explained that an additional civil proceeding to prove innocence should not be necessary where evidence of innocence to a petitioner's crime of conviction is strong. 98th Ill. Gen. Assem., Senate Proceedings, May 23, 2013; *see also* 98th Ill. Gen. Assem., House Proceedings, April 19, 2013 (statement of Representative Davis, noting that the amendment was drafted to help "the wrongly convicted receive a certificate of innocence without going through an additional civil process").

The legislature's intent expressed in subsection (a) of the COI statute and the legislative history supports Mr. Palmer's construction that he is required to show his innocence only of those factual offenses actually contained in the charging documents. The State's view that it can try Mr. Palmer during COI proceedings on crimes never charged or prosecuted before is plainly inconsistent with the COI statute's policy.

(d) The Remedial Purpose of the COI Statute and Its Placement in the Declaratory Judgment Act Supports Mr. Palmer's Construction

Finally, the COI statute is placed in Article II, Part 7 of the code of civil procedure, titled "Action For Declaratory Judgment." 735 ILCS 5/2-701 *et seq.* The fact that the COI statute is part of the Declaratory Judgment Act also supports Mr. Palmer's view that he need only prove he is innocent of the factual offense he was charged with.

This Court has liberally construed the Declaratory Judgment Act in support of its remedial purpose and in favor of the intended beneficiary. *See, e.g., Illinois Gamefowl Breeders Ass'n v. Block*, 75 Ill. 2d 443, 452 (1979) ("The declaratory judgment remedy

should be liberally applied and not restricted by unduly technical interpretations."). To interpret the COI statute illiberally would undermine the legislature's purpose. *Trossman v. Trossman*, 24 Ill. App. 2d 521, 524 (1st Dist. 1960). A liberal construction is one that manifests the spirit or purpose of the law and seeks to overcome procedural hurdles in favor of obtaining substantial justice. *See Superior Bank FSB v. Golding*, 152 Ill. 2d 480, 486 (1992).

Mr. Palmer's proposed construction of subsection (g)(3) is one that limits the proof required of a COI petitioner to evidence that he is factually innocent of the particular crime of which he was charged and convicted. The State proposes it should be permitted to proceed on any theory of guilt, even if it was never charged or presented during criminal proceedings. For the reasons already explained, the State's position is contrary to the text, structure, and legislative intent behind the COI statute. In addition, the State's position fatally undermines its remedial purpose. For that reason, as well, this Court should adopt Mr. Palmer's construction of the COI statute.

4. Mr. Palmer Was Charged Only With Murder As the Sole Principal Responsible For Beating Helmbacher to Death With A Hammer

Subsection (g)(3) of the COI statute requires Mr. Palmer to prove his innocence of "the offenses charged in the indictment or information." Based on the statutory text, structure, and case law just discussed, it is therefore necessary to look at the factual content of the particular charging documents in Mr. Palmer's case. Though Mr. Palmer was not charged upon his initial arrest in September 1998, Decatur police filed a criminal complaint against him on January 28, 1999. C41-42. On February 5, 1999, the State filed a six-count information. C34-39.

All of the charging instruments in Mr. Palmer's case, including the criminal complaint, allege he, as the sole perpetrator, beat Helmbacher to death with a hammer. C41-42. There is no mention whatsoever of other perpetrators, co-conspirators, or accomplices. *Id.*

Similarly, the information filed against Mr. Palmer sets out five counts of first-degree murder (Counts I-V) and one count of residential burglary (Count VI). Of the first-degree murder counts, Counts I and II charged an intentional killing based on 720 ILCS 5/9-1(a)(1) and alleged only that Mr. Palmer "repeatedly struck William Helmbacher on the head, [. . .] thereby causing the death of William Helmbacher." *See* C34 (Count I) & C35 (Count II). Count III charged a knowing killing based on 720 ILCS 5/9-1(a)(2) and again alleged only that Mr. Palmer "repeatedly struck William Helmbacher in the head, . . . thereby causing the death of William Helmbacher." C36. Counts IV and V charged felony murder, based on 720 ILCS 5/9-1(a)(3), and named robbery and residential burglary as the predicate felonies, and again alleged only that, while committing one of those felonies, Mr. Palmer "repeatedly struck William Helmbacher on the head and thereby caused the death of William Helmbacher." *See* C37 (Count IV) & C38 (Count V).[2] Finally, Count VI charged Mr. Palmer with the residential

[2] A defendant charged with felony murder can be liable for murder where the predicate forcible felony forms the intent element of first-degree murder and the forcible felony results in death, even where death was unintended. Or a defendant can be liable for a killing committed by another during the course of a forcible felony. *See generally People v. Dekens*, 182 Ill. 2d 247 (1998). Given that none of the charging documents ever alleged any other individual—specifically or generally—was involved in the crime, the State obviously proceeded against Mr. Palmer on the first of these felony-murder theories.

burglary that occurred the day before Helmbacher was killed, C39 (Count VI), a crime of which Mr. Palmer was ultimately acquitted, C727.

Each first-degree murder count against Mr. Palmer thus alleged exclusively that Mr. Palmer, acting alone, beat Helmbacher to death with a hammer. There is no mention in any of the counts of Mr. Palmer playing any role in the crime except as the sole perpetrator. There is no mention of any other individual being involved in the crime. Unsurprisingly given the charges, the State's arguments and evidence at trial focused exclusively on the theory that Mr. Palmer killed Helmbacher alone by beating him to death with a hammer. *See supra* at 6, 13-14. Mr. Palmer was convicted of that crime. *Id.* at 14.

5. The State Has Conceded That the DNA Evidence Shows Mr. Palmer Is Not the Person Who Beat Helmbacher to Death

On multiple occasions the State has expressly conceded that Mr. Palmer did not commit the offense it charged him with and of which he was convicted. Mr. Palmer's conviction was vacated on the State's motion confessing error and acknowledging that, based on the DNA evidence, Mr. Palmer was entitled to a new trial. R794-95; C547. The State thereafter moved to dismiss all charges against Mr. Palmer, again explicitly acknowledging that the DNA evidence demonstrated he could not have been the person who fought with and killed Helmbacher. C545-46, 547. In its response to Mr. Palmer's petition, the State wrote: "the State concedes that Petitioner was not the primary physical aggressor in this homicide . . . ." C890. And it conceded that "[t]he DNA evidence . . . reveal[ed] that Petitioner was not the primary assailant who caused the death of William Helmbacher." C882; *accord* C883 ¶(f); C892 ¶(3); R855. At no time since the DNA

testing has been completed has the State argued that Mr. Palmer is the person who beat Helmbacher to death.

6. Mr. Palmer Is Entitled to a Certificate of Innocence

Properly construed, subsection (g)(3) requires Mr. Palmer to establish by a preponderance of the evidence that he is innocent of the factual offenses with which he was charged. In light of the State's concession that Mr. Palmer did not commit those offenses, Mr. Palmer satisfies subsection (g)(3) of the COI statute. Accordingly, Mr. Palmer is entitled to a certificate of innocence as a matter of law. *Smith*, 249 Ill. App. 3d at 663 (where a party concedes all elements of a claim, judgment as a matter of law is appropriate). This Court should end its analysis with that finding, and reverse and remand with instructions to grant Mr. Palmer a certificate of innocence.

B. The State Cannot Contest the Certificate of Innocence by Requiring Mr. Palmer to Prove His Innocence of an Offense It Never Charged or Pursued

Though the State acknowledges that Mr. Palmer did not kill Helmbacher, it nonetheless argued below that Mr. Palmer is not entitled to a certificate of innocence. In the State's view, Mr. Palmer must prove not only that he is innocent of the crime for which he was charged and convicted, but also that he is innocent of all other crimes the State can conceive of his participating in after the fact, even though those crimes were never charged or presented during his criminal proceedings. Specifically, the State contends Mr. Palmer must show he is innocent of acting as an accomplice to another, unidentified person who killed Helmbacher, perhaps during the commission of another felony. The appellate court erred by failing to recognize the due process interests at stake in a COI proceeding and by allowing the State to take a position contrary to these principles.

1. Standard of Review

Whether due process or estoppel principles foreclose the State from requiring Mr. Palmer to prove his innocence of an offense that was never charged or pursued during prior criminal proceedings are questions of law this Court reviews *de novo*. *Land v. Bd of Educ. of City of Chicago*, 202 Ill. 2d 414, 421 (2002); *Arvia v. Madigan*, 209 Ill. 2d 520, 536 (2004).

2. The State's Attempt to Make Mr. Palmer Disprove a Novel Theory of Guilt During COI Proceedings Offends Due Process Principles

The State's position that Mr. Palmer must prove he is innocent of factual offenses with which he was never charged offends civil and criminal due process principles. To the extent the Court views these COI proceedings as civil in nature and collateral to Mr. Palmer's criminal case, the Court must apply the test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine whether the State's argument comports with due process. Alternatively, if the Court views the COI proceedings as criminal in nature, it should apply the inquiry of *Medina v. California*, 505 U.S. 437 (1992). *See Nelson v. Colorado*, 137 S. Ct. 1249, 1254-55 (2017). Whichever path this Court takes, the State's position is foreclosed by foundational due process principles.

(a) The State's Position Offends Due Process Principles Governing Civil Cases

Given that the COI proceedings fall within the code of civil procedure and "[b]ecause no further criminal process is implicated, *Mathews* provides the relevant inquiry." *Id.* (internal quotations omitted) (analyzing Colorado analogue to Illinois COI statute under *Mathews* civil due-process framework); *People v. Fields*, 2017 IL App (1st)

140988-U, ¶¶ 86-90 (2017) (Pucinski, J., dissenting) (discussing the similarities between the Illinois and Colorado statutes).

To determine whether a state statutory regime offends civil procedural due process principles, the *Mathews* balancing test requires the Court to evaluate (1) the private interests affected, (2) the government interests at stake, and (3) the risk of erroneous deprivation of those interests through the state procedure used, and the value of additional safeguards. *Mathews*, 424 U.S. at 335. "These same factors are considered in resolving what procedural safeguards are required by the due process clause of the Illinois constitution." *In re Andrea F.*, 208 Ill. 2d 148 (2003).

1. *The COI Statute Implicates Substantial Private Interests of Which Mr. Palmer Cannot Be Deprived Without Due Process*. There are significant private interests implicated by the COI statute, which entitled Mr. Palmer to due process. For starters, Mr. Palmer has a fundamental interest in the presumption of innocence, which is explicitly recognized in the COI statute. To that end, if a petitioner satisfies subsection (g), the COI statute mandates that the court "shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated." 735 ILCS 5/2-702(h). As the U.S. Supreme Court recognized recently in *Nelson*, an individual, like Mr. Palmer, whose conviction has been erased has a fundamental interest in restoration of the presumption of his innocence. 137 S. Ct. at 1255-56 n.9 (observing that the private interest in the presumption of innocence is "unquestionably" a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental").

The private interest in the presumption of innocence is so fundamental that the statute's requirement that COI petitioners discharge the burden of proving their innocence after their criminal convictions have been set aside cannot pass constitutional muster. As *Nelson* observed, a state may not presume that a person who has been acquitted or exonerated is not entitled to statutory relief provided by the state for innocent persons. 137 S. Ct. at 1256 ("Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions."). Similarly, the State of Illinois should not be permitted to make a declaration of innocence for a person never convicted of a crime contingent on that person's ability to prove his or her own innocence by a preponderance of the evidence. *See* 735 ILCS 5/2-702(g) (placing the burden squarely on the COI petitioner). Whether the statute's assignment of the burden to the petitioner runs afoul of the bedrock presumption of innocence is discussed in detail by amici. *See* Brief Amicus Curiae of First Defense Legal Aid and Nineteen Criminal Defense Lawyers In Support of Defendant-Appellant; *see also Fields*, 2017 IL App (1st) 140988-U, ¶ 95. Regardless, *Nelson* leaves no doubt that, under *Mathews*, a petitioner has a significant private interest—indeed, a fundamental one—in the mandatory declaration of his innocence that comes with the grant of a certificate of innocence.

It is also evident that the COI statute implicates Mr. Palmer's private interests in light of its provision for mandatory expungement and sealing of a petitioner's criminal record. To that end, the statute directs that the granting court "shall enter an order expunging the record of arrest for the official records of the arresting authority and order that the records of the clerk of the circuit court and Department of State Police be sealed . . . and the name of the defendant obliterated from the official index . . . in connection

with the arrest and conviction for the offense . . . .” 735 ILCS 5/2-702(h); *see also* 20 ILCS 2630/5.2(b)(8) (requiring the same automatic expungement when a certificate of innocence is issued).[3] This mandatory remedy is precisely the type of private interest that due process protects. *Romero v. O'Sullivan*, 302 Ill. App. 3d 1031, 1036 (4th Dist. 1999) (citing *Kellas v. Lane*, 923 F.2d 492 (7th Cir. 1990) (when a statute “uses language of a mandatory nature, such as ‘will,’ ‘shall’ or ‘must,’ a protected interest is created because the state has placed substantive limitations on the discretion that can be exercised by state officials”).

The COI statutory regime also implicates Mr. Palmer's private interest in employment and education, as it entitles COI recipients to job and educational assistance and grants. *See* 110 ILCS 947/62; 20 ILCS 1015/2. This Court and the U.S. Supreme Court have long recognized that these interests are protected by due process, explaining that “the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.” *Allgeyer v. Louisiana,* 165 U.S. 578, 589 (1897). Moreover, without the expungement just discussed, the lingering record of an arrest and charges of murder seriously infringes upon interests

[3] By contrast, a person whose conviction is invalidated in Illinois but who has not obtained a certificate of innocence is not entitled to mandatory expungement. *See* 20 ILCS 2630/5.2(b)(1) (permitting a petition for expungement after vacatur of a conviction); 20 ILCS 2630/5.2(d)(5)-(6) (permitting objections and giving the court discretion to grant or deny the petition)); *cf. People v. Howard*, 233 Ill.2d 213, 219-20 (2009) (noting that expungement is not mandatory when a conviction has been set aside, based on language similar to the current statute).

in pursuing educational opportunities, employment, and an occupation, as Mr. Palmer well knows. *Coldwell Banker v. Clayton*, 105 Ill. 2d 389, 397 (1985) (noting property and liberty interest in "the right to pursue a trade, occupation, business or profession" protected "by the due process clauses of the Illinois and Federal constitutions").[4]

Finally, the fact that a COI recipient is entitled to restitution from the State of Illinois in an amount corresponding to the length of incarceration, 705 ILCS 505/8; to educational grants, 110 ILCS 947/62; and to job placement assistance, 20 ILCS 1015/2, further shows that the COI statute confers a property interest protected by due process. This is because "[a] person's interest in a government benefit is recognized as a due process property interest where the individual has a legitimate claim or entitlement to the benefit upon the satisfaction of legally enumerated uniform criteria set forth in state or federal law, local ordinances, or mutually explicit understandings." *Interstate Material Corp. v. City of Chicago*, 150 Ill. App. 3d 944, 952 (1986) (citations omitted).

Accordingly, the appellate court was incorrect to conclude that there are no constitutionally protected due process interests at stake in a COI proceeding. *Palmer*, 2019 IL App (4th) 190148, ¶ 154.

2. *The Governmental Interests at Stake Are Relatively Limited*. By comparison, the government interests at stake are extraordinarily limited, if they exist at all. The State certainly has no interest in withholding from COI petitioners recognition that they are innocent, given the deeply rooted nature of the presumption of innocence for those whose

[4] An individual whose criminal record reflects an arrest or charges for murder may also face obstacles relating to other protected rights, including serving on a jury, receiving public benefits, voting, traveling abroad, or owning a firearm. These obstacles support the view that significant private interests are implicated by the COI statutory regime.

convictions have been set aside. Nor does the State have any interest in limiting a COI petitioner's employment or educational prospects. A state is permitted to impose such limitations only when it can show that its interest in doing so clearly outweighs the substantial private interest at stake. *See*, *e.g.*, *Interstate Material*, 150 Ill. App. 3d at 954. At most, the State has an interest in limiting the entitlement program it has created to minimize the risk of error or prevent fraud. *Id.*; *see also Mathews,* 424 U.S. 319 at 344-45 (noting the quantum and quality of the process due in a particular situation depend upon the need to serve the purpose of minimizing the risk of error).

3. *The State's Approach to the COI Statute Risks Erroneous Deprivation of the Due Process Interests at Stake*. Bearing in mind that the balance of interests weighs heavily in favor the COI petitioner, it is impossible to accept the State's view, adopted by the courts below, that a COI petitioner like Mr. Palmer can be required to prove his innocence of offenses of which he was never charged or convicted. Due process requires a meaningful opportunity to be heard at a meaningful time. *See*, *e.g.*, *Wendl v. Moline Police Pension Bd.*, 96 Ill. App. 3d 482, 487 (3d Dist. 1981) ("The test of the adequacy of notice is whether it clearly apprises a defendant of the claims to be defended against and whether the defendant, on the basis of the notice given, could anticipate the possible effects of the proceeding."); *see also* 11A Ill. Law and Prac. Constitutional Law § 335 (citing *In re Estate of Levin*, 135 Ill. App. 3d 866 (1st Dist. 1985), for the proposition that "[t]he procedural due process right to a hearing includes not only the right to present evidence, but also a reasonable opportunity to know fully and clearly, to persons of reasonable intelligence, what claims the hearing presents and what consequences it

proposes; the test is whether an interested party can anticipate the possible effects and orders of the hearing.").

As contemplated by the COI statute, Mr. Palmer presented DNA evidence in his petition that conclusively proved he was innocent of the Helmbacher killing, which was the only crime charged in the information in his case, *see supra* at 30-31. The State agreed that Mr. Palmer had made such a showing. *Id.* But then for the first time in its responsive brief, it asserted that Mr. Palmer had perhaps committed crimes that were never investigated, charged, or pursued during criminal proceedings, and it asserted that Mr. Palmer had failed to prove his innocence of those hypothetical crimes. By allowing the State to take that approach, the lower courts rendered the procedures established by the COI statute meaningless, such that they could not possibly ensure Mr. Palmer's interests described above were properly protected. Regardless of whether the State can constitutionally require a COI petitioner to bear the burden of proving innocence, *see supra* at 36, there can be no question that requiring a petitioner to prove innocence of crimes that were never charged deprives him of any process at all. *See Nelson*, 137 S. Ct. at 1257 (reminding that the risk of erroneous deprivation in these circumstances "is not the risk of wrongful or invalid conviction *any* criminal defendant may face," but is "instead, the risk faced by a defendant whose conviction has already been overturned").

In view of Mr. Palmer's protected interests in the relief provided by the COI statute, and the fact that the State's construction of the COI statute ensures erroneous deprivation of those interests, the State cannot contest Mr. Palmer's COI petition by requiring him to prove his innocence of crimes it never charged in the underlying criminal case. The construction of the COI statute advanced by the State and adopted by

the courts below undermines established principles of procedural due process. In such a circumstance, it is incumbent on this Court to adopt a construction of the statute that avoids these constitutional problems. *Gill v. Miller*, 94 Ill. 2d 52, 57 (1983).

If the State is permitted to impose a burden on a COI petitioner whose conviction has been set aside to prove innocence, years or decades after the fact, of a crime that was never charged or prosecuted, as was the case in the courts below, the COI statutory regime would not provide sufficient process to satisfy state and federal due process protections.

(b) The State's Position Offends Due Process Principles Governing Criminal Cases

Even if this Court were to decide that the COI proceeding is quasi-criminal in nature, it would reach the same result, for the State's position that Mr. Palmer must prove his innocence of crimes never charged or prosecuted also offends deeply rooted due process principles that govern criminal cases. In meaningful ways, COI proceedings in Illinois are quasi-criminal: they are often filed under the same case number as the original criminal case; the statute directs courts to take notice of evidence previously submitted in the criminal case, 735 ILCS 5/2-702(f); and often courts apply procedural rules as they would in criminal cases, *see*, *e.g.*, *People v. Fields*, 2017 IL App (1st) 140988-U, ¶¶ 27-29 (permitting witness who had received incentives in exchange for his testimony to testify because of the State's Attorney's statutory authority to plea bargain with the witness). Viewing the COI proceeding as criminal in nature, *Medina* dictates that the question is whether the proceeding "'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" 505 U.S. at 446 (quoting *Patterson v. New York*, 432 U.S. 197, 202 (1977)). The State's position that Mr.

Palmer must prove his innocence of crimes never charged or prosecuted during his criminal case offends two deeply rooted and related principles: (1) that an individual is presumed innocent; and (2) that a criminal defendant has the right to present a defense to the charges alleged.

"The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Coffin v. United States*, 156 U.S. 432, 453, 15 S. Ct. 394, 403, 39 L. Ed. 481 (1895) (citing *Alexander v. People*, 96 Ill. 96 (1880)). The accused never has a burden to prove his or her innocence of a crime. *People v. Weinstein*, 35 Ill. 2d 467, 470 (1966). The appellate court apparently concluded that this due process principle is not implicated given that Mr. Palmer's conviction has been vacated and that he seeks a certificate of innocence. *Palmer*, 2019 IL App (4th) 190148, ¶¶ 153-54. But the U.S. Supreme Court rejected precisely that conclusion in *Nelson*, when it made clear that, even after a conviction is vacated, and even when the litigation concerns a statutory entitlement equivalent to the COI statute, procedures that undermine the presumption of innocence offend fundamental and deeply rooted due process principles within the meaning of *Medina*. *Nelson*, 137 S. Ct. at 1255 n.9; *see also id.* at 1258-63 (Alito, J.) (concurring in the judgment). The State's position that Mr. Palmer should be presumed guilty of a crime never charged until he proves otherwise is incompatible with *Nelson* and the presumption of innocence.

Corollary to this principle is another just as deeply rooted: that criminal defendants have a constitutional right to know and to mount a defense at trial to the legal theories and evidence actually presented by the State. This due process right is derived

from the federal and state constitutions, and it is codified in various statues. *People v. Millsap*, 189 Ill. 2d 155, 160-66 (2000) (defendant has a due process right to make a closing argument controverting each of the State's theories of guilt based on the evidence presented); *People v. Meyers*, 158 Ill. 2d 46, 51 (1994) ("A defendant has the fundamental right, under both the Federal and State Constitutions, to be informed of the 'nature and cause' of criminal accusations made against him."). This is the reason that Illinois law requires charges to be stated with factual particularity, *Meyers*, 158 Ill. 2d at 650; and that jury instructions must be determined before closing arguments, *People v. Crespo*, 203 Ill. 2d 335, 345 (2001). And it is the reason that the State cannot change its theory of guilt in a criminal case after the case has been sent to the jury—not during jury deliberations, *Millsap*, 189 Ill. 2d at 163-65; on appeal, *Crespo*, 203 Ill. 2d at 344-45; or during post-conviction proceedings, *People v. Robinson*, 2020 IL 123849, ¶ 75.

Deeply rooted due process principles prevent the State from prosecuting a case of accomplice liability when the defendant has been charged only as a principal, prevent it from instructing the jury on a theory of accomplice liability after a case of principal liability has been sent to the jury, and prevent it from explaining away DNA evidence with a new theory during post-conviction proceedings. Certainly, those due process principles should also prevent the State from contesting the official declaration of innocence sought in a COI proceeding after a conviction has been set aside on a theory that was never before charged or prosecuted.

The State's position that Mr. Palmer must prove his innocence of crimes never charged undermines the deeply rooted presumption of innocence to which Mr. Palmer is entitled and his fundamental right to know the State's theories and evidence against him.

As with the *Mathews* analysis above, the only tenable result is for this Court to reject the State's position and adopt a construction of the statute that avoids this constitutional problem. *Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018) ("Under the constitutional-avoidance canon, when statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems."). Only Mr. Palmer's proposed construction of the COI statute avoids these constitutional problems.

3. The State's Attempt to Make Mr. Palmer Disprove a Novel Theory of Guilt During COI Proceedings Is Foreclosed by Estoppel Principles

The doctrine of judicial estoppel also bars the State, as a matter of law, from advancing a factual theory of Mr. Palmer's guilt in these COI proceedings that is inconsistent with the sole factual theory of guilt included in the charges against Mr. Palmer and advanced during criminal proceedings. Whether judicial estoppel applies based on the different theories advanced by the State is a question of law this Court reviews *de novo*. *Smeilis v. Lipkis*, 2012 IL App (1st) 103385, ¶ 23.

Judicial estoppel prevents a litigant, including the State, from playing "fast and loose" with its positions, and it "provides that a party who assumes a particular position in a legal proceeding is estopped from assuming a contrary position in a subsequent legal proceeding" to gain an unfair advantage. *People v. Caballero*, 206 Ill. 2d 65, 80 (2002) (quoting *Bidani v. Lewis*, 285 Ill. App. 3d 545, 549 (1st Dist. 1996)). "The uniformly recognized purpose of the doctrine is to protect the integrity of the judicial process by prohibiting parties from 'deliberately changing positions' according to the exigencies of the moment." *Seymour v. Collins*, 2015 IL 118432, ¶ 36 (citation omitted).

For a court to apply judicial estoppel, "the party to be estopped must have (1) taken two positions; (2) that are factually inconsistent, (3) in separate judicial . . . proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) have succeeded in the first proceeding and received some benefit from it." *Caballero*, 206 Ill. 2d at 80. Courts have applied judicial estoppel in criminal proceedings to stop the State from advancing factually inconsistent theories of a criminal defendant's guilt, *People v. Wisbrock*, 223 Ill. App. 3d 173, 175 (3rd Dist. 1991); *People v. Lawlor*, 291 Ill. App. 3d 97, 102-03 (2d Dist. 1997); and courts do so routinely in civil cases when a party advances a "wholly new view of the facts" in order to prevail, *Smeilis*, 2012 IL App (1st) 103385, ¶ 33.

In Mr. Palmer's case, the State satisfies all five factors. The State has taken two factually inconsistent positions, charging and prosecuting Mr. Palmer on the factual theory that he alone bludgeoned Helmbacher to death with a hammer, and opposing the certificate of innocence on the theory that Mr. Palmer did not attack Helmbacher at all, but served instead as an accomplice. Factual positions are inconsistent when "the truth of one must necessarily preclude the truth of the other." *Dep't of Transp., State of Ill. v. Coe*, 112 Ill. App. 3d 506, 510 (4th Dist. 1983) (citation omitted). To be sure, the State's factually inconsistent positions are much more than alternative factual theories, they are mutually exclusive—in the first Mr. Palmer beat Helmbacher to death and in the second he did not. Completing the analysis, the State's inconsistent factual theories were advanced in judicial proceedings, they were intended in both proceedings to be accepted as true, and they were used in the criminal case to obtain a conviction and life sentence and in the COI proceedings to deny Mr. Palmer statutory relief.

In these circumstances, judicial estoppel applies. The State's conduct illustrates precisely the type of injustice the doctrine is designed to avoid: it took almost 20 years for Mr. Palmer to finally show with conclusive DNA evidence that he did not kill Helmbacher; in response to that showing, the State did an about-face after decades of litigation, agreed with Mr. Palmer that he had not killed Helmbacher, but then asserted that he committed a completely different kind of crime of which he would have to prove his innocence; all to Mr. Palmer's significant disadvantage given the "difficulties of proof caused by the passage of time." 735 ILCS 5/2-702(a). Estoppel precludes this sort of gamesmanship. This Court should hold that the State is estopped from advancing a novel and inconsistent theory of liability to oppose Mr. Palmer's petition for a certificate of innocence.

C. The State Presented No Evidence Supporting Either of Its Novel Theories of Guilt

Finally, even if this Court permitted the State to contest a COI petition by asserting novel theories of guilty never before presented during criminal proceedings—a path it should not take—Mr. Palmer would still be entitled to a certificate of innocence because the State has offered no evidence to support its new theories. The preponderance standard requires Mr. Palmer to proffer evidence of his innocence, which he has done in these proceedings. At that point, the burden shifted to the State to present evidence supporting its novel theories of guilt. But as the appellate court readily recognized, the State failed to do so. For these reasons as well, Mr. Palmer is entitled to a certificate of innocence.

1. Standard of Review

A preponderance of the evidence analysis is a balancing test. It "requires the trier of fact to weigh the evidence presented by the parties and to find for the party who, overall, has the stronger evidence." *City of Chicago v. Illinois Workers' Comp. Com'n*, 373 Ill. App. 3d 1080, 1091 (1st. Dist. 2007). This Court must evaluate "whether, as a matter of law, there is any evidence in the record to prove the essential elements of the case." *See Zank v. Chicago, R. I. & P. R. Co.*, 17 Ill. 2d 473, 476 (1959) (internal citation omitted). If, after weighing all evidence on both sides of the contested issue, a factfinder concludes there is no evidence on one side of the scale, or no evidence of an essential element on one side of the scale, the trier of fact must find in favor of the side that did present evidence. *Tucker v. New York, C. & St. L.R. Co*., 12 Ill. 2d 532, 534 (1957) (a party's evidence is legally insufficient "if, when all the evidence is considered … there is a total failure to prove one or more essential elements of the case").

It is not certain what standard of review applies to the question whether the State can succeed on a preponderance of evidence standard where the COI petitioner has introduced evidence of innocence and the State has introduced no evidence at all in support of its theories of guilt. In a criminal proceeding, this Court would review the sufficiency of the State's evidence *de novo* given uncontested facts. *People v. Smith*, 191 Ill. 2d 408, 411 (2000). In a bench trial on the papers, which accurately describes the proceedings below, the standard of review is also *de novo*. *Schlobohm v. Police Bd.*, 122 Ill. App. 3d 541, 544 (1984). In reviewing factual findings on appeal after a civil trial, this Court has said review is limited to whether findings are against the manifest weight of the evidence. *Best v. Best*, 223 Ill. 2d 342, 348 (2006). Appellate courts have struggled

to decide whether that standard or an abuse-of-discretion standard applies to the review of COI proceedings. *People v. Pollock*, 2014 IL App (3d) 120773, ¶ 27. Resolving the question is not outcome determinative here, because applying even the most stringent of these standards, the State cannot defeat a COI petition supported by evidence of innocence by putting forward no evidence at all.

2. Mr. Palmer's Evidence of Innocence Is Entirely Unrebutted

The State contended below that, though innocent of killing Helmbacher, Mr. Palmer may have acted as an accomplice to another, unidentified person who killed Helmbacher. Therefore, the State's argument continues, Mr. Palmer might have been found guilty on a felony-murder theory or on an accountability theory. *People v. Palmer*, 2019 IL App (4th) 190148, ¶ 103. To prove his innocence of these novel theories, the preponderance standard of subsection (g) of the COI statute would place the burden on Mr. Palmer to produce evidence of his innocence, at which point the burden would shift to the State to counter that evidence with stronger evidence of its own. Here, Mr. Palmer has presented evidence of his innocence, and the State presented nothing in response.

(a) Mr. Palmer Presented Ample Evidence of Innocence

As discussed, Mr. Palmer's has presented ample evidence of his innocence, including his innocence of the State's novel theories. Mr. Palmer has presented his own testimony, *supra* at 9-10; DNA evidence exonerating him, *supra* at 15-16; and evidence of a more likely alternative perpetrator, *supra* at 6-7 (discussing Lee). Courts have recognized that any one of these categories alone standards as powerful evidence of innocence. *People v. Lofton*, 2011 IL App (1st) 100118, ¶¶ 36-37 (new evidence consistent with defendant's maintaining his own innocence since his arrest constitutes a

legitimate claim of actual innocence); *People v. Rozo*, 2012 IL App (2d) 100308, ¶ 19 (DNA evidence found under victim's fingers could "significantly advance defendant's claim of actual innocence"); *People v. Robinson*, 2020 IL 123849, ¶ 80 (evidence of another likely perpetrator "is of such a conclusive character as to probably change the outcome at a retrial"). Mr. Palmer discharged his initial burden to demonstrate his innocence, even of the alternative theories advanced by the State for the first time in these proceedings. The appellate court's conclusion otherwise is incorrect—indeed the appellate court ignored Mr. Palmer's own assertions of his innocence entirely. *See Palmer*, 2019 IL App (4th) 190148, ¶¶ 169-173.

(b) As the Appellate Court Recognized, the State Presented No Evidence to Support Its Novel Theories

In contrast, the State offered no evidence whatsoever of its novel theories of guilt. The appellate court recognized this fact, noting that "the State offered no proof that a robbery or burglary was committed on August 27, 1998, or that Palmer elicited Helmbacher's murder or aided or abetted its commission[.]" *Palmer*, 2019 IL App (4th) 190148, ¶ 170. Even under the most generous standard of review that might apply, the appellate court's finding in favor of the State "is against the manifest weight of the evidence" because "the opposite conclusion is clearly evident" and "the finding . . . is unreasonable, arbitrary, [and] not based on the evidence presented." *Best*, 223 Ill. 2d at 350-51.

Put simply, the State has failed to establish any element of its assertions that Mr. Palmer committed felony murder or is accountable as an accomplice to a still-unnamed killer. The State has presented no evidence of a forcible felony that Mr. Palmer purportedly was committing when Helmbacher was killed by an unnamed person, nor

intent to commit any such felony. *Palmer*, 2019 IL App (4th) 190148, ¶ 170. Nor did the State present any evidence that Mr. Palmer aided or abetted any other person in Helmbacher's killing, as would be required to prove accomplice liability. *Id.*; 720 ILCS 5/5-2(c) (1991). Given the acknowledgment by the appellate court that this proof was lacking, the preponderance of the evidence plainly favored Mr. Palmer. *Stenger v. Swartwout*, 62 Ill. 257, 257 (1871) ("Where as to any essential element of a cause of action or defense there is no evidence at all . . . this court will interfere and set it aside."). For that reason as well, even if this Court did allow the State to proceed on entirely novel theories of guilt, Mr. Palmer would be entitled to a certificate of innocence.

CONCLUSION

For the foregoing reasons, this Court should reverse and remand with instructions to enter an order granting Mr. Palmer a certificate of innocence.

RESPECTFULLY SUBMITTED,

CHARLES PALMER

BY: /s/ Rachel Brady
One of Mr. Palmer's Attorneys

Jon Loevy (6218254)
Steven Art (6302319)
Alison Leff (6296422)
Rachel Brady (6312402)
Counsel for Petitioner-Appellant
LOEVY & LOEVY
311 North Aberdeen Street
Chicago, Illinois 60607
(312) 243-5900
brady@loevy.com

Counsel for Petitioner-Appellant

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 34l(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,827 words.

/s/ Rachel Brady
Attorney for Appellant

Arthur Loevy
Jon Loevy
Steven Art
Rachel Brady
Alison Leff
LOEVY & LOEVY
311 N. Aberdeen, 3rd Floor
Chicago, Illinois 60607
(312) 243-5900
brady@loevy.com

No. 125621

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, Fourth District,
Respondent-Appellee,	)	No. 4-19-0148
	)	
vs.	)	Original Appeal from the Circuit
	)	Court of Macon County,
CHARLES PALMER,	)	No. 99 CF 139
	)	
Petitioner-Appellant.	)	Hon. Jeffrey Geisler,
	)	Judge Presiding.

NOTICE OF FILING AND PROOF OF SERVICE

I, Rachel Brady, an attorney, certify that on July 7, 2020, this Brief of Petitioner-Appellant Charles Palmer was electronically submitted to the Clerk's office, and was served by email to the following counsel of record:

Jay Scott
Macon County State's Attorney
253 E. Wood St., 4th Floor
Decatur, IL 62523
jscott@sa-macon-il.us

David J. Robinson
Luke McNeill
Office of the State Appellate Prosecutor
4thdistrict@ilsaap.org

Kwame Raoul
Illinois Attorney General
Michael M. Glick
Criminal Appeals Division Chief
100 West Randolph Street
Chicago, IL 60601
eserve.criminalappeals@atg.state.il.us
mglick@atg.state.il.us

Within 5 days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

By: *s/ Rachel Brady*
Attorney for Petitioner-Appellant

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.

By: *s/ Rachel Brady*
Attorney for Petitioner-Appellant

Arthur Loevy
Jon Loevy
Steven Art
Rachel Brady
Alison Leff
LOEVY & LOEVY
311 N. Aberdeen, 3rd Floor
Chicago, Illinois 60607
(312) 243-5900
brady@loevy.com

No. 125621

IN THE SUPREME COURT OF ILLINOIS

CHARLES PALMER, Petitioner-Appellant, v. PEOPLE OF THE STATE OF ILLINOIS, Defendant-Appellee.	)	Appeal from the Appellate Court, Fourth District, No. 4-19-0148 There on appeal from the Circuit Court of Macon County, Illinois No. 99 CF 139,

APPENDIX TO BRIEF OF PETITIONER-APPELLANT CHARLES PALMER

Jon Loevy (6218254)
Steven Art (6302319)
Alison Leff (6296422)
Rachel Brady (6312402)
Counsel for Petitioner-Appellant
LOEVY & LOEVY
311 North Aberdeen Street
Chicago, Illinois 60607
(312) 243-5900
brady@loevy.com

Counsel for Petitioner-Appellant

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS TO APPENDIX

No. 125621

IN THE SUPREME COURT OF ILLINOIS

CHARLES PALMER,	)	Appeal from the Appellate
	)	Court, Fourth District,
Petitioner-Appellant,	)	No. 4-19-0148
	)	
	)	There on appeal from the Circuit
v.	)	Court of Macon County, Illinois
	)	No. 99 CF 139,
	)	
PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Defendant-Appellee.	)	

TRIAL COURT ORDER

People of the State of Illinois)
)
Plaintiff,)
)
vs.) No. 99-CF-139
)
Charles B. Palmer)
)
Defendant)

ORDER

Cause removed from advisement following the hearing on Amended Petition For Certificate Of Innocence under 735 ILCS 5/2-702. The court having considered the petition, response and reply, the arguments and the record, removes the case from advisement and enters the following findings, conclusions and order.

1. That on April 27, 2000 the defendant Charles B. Palmer was convicted of first degree murder of William Helmbacher and not guilty of residential burglary in a jury trial.

2. On May 8, 2000 the defendant was sentenced to a term of natural life imprisonment.

3. On October 11, 2016 a First Successive Petition For Post-Conviction Relief was filed based on newly discovered DNA evidence.

4. On November 16, 2016 the State confessed the First Successive Petition For Post-Conviction and the judgment and sentence for the murder conviction were vacated.

5. On November 23, 2016 the State's Motion To Dismiss was granted without prejudice as to the remaining charges against Charles Palmer.

6. On June 16, 2017 a Petition For Certificate of Innocence was filed by Charles Palmer under 735 ILCS 5/702.

7. An Amended Petition For Certificate of Innocence was filed August 30, 2018 with an exhibit list.

8. On November 9, 2018 the State's Attorney filed a Response to the Amended Petition for Certificate of Innocence.

9. On January 16, 2019 the defendant, Charles Palmer, filed a reply in support of his Amended Petition.

10. That on January 23, 2019 the court heard legal argument and took the case under advisement giving counsel 10 days to submit additional case law.

11. On February 6, 2019, the petitioner filed a supplemental brief.

12. For a Certificate of Innocence to be granted the petitioner must show by a preponderance of the evidence that:

A. He was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment and has served all or any part of the sentence; and

B. The judgment was reversed or vacated and the indictment or information dismissed...;and

C. The petitioner is innocent of the offenses charged in the indictment or information...;and

D. The petitioner, by his own conduct, voluntarily causes or brings about his conviction.

13. The State's Attorney concedes he has satisfied three of the requirements and only contests the provision that the petitioner is innocent of the charges in the indictment or information.

14. At the trial in 2000, the State's theory was that the defendant, Charles Palmer, was a primary attacker that caused the death of William Helmbacher.

15. The DNA returned from Mr. Helmbacher's fingernail and the hair strands held in Mr. Helmbacher's hand excluded Mr. Palmer as a contributor to this DNA.

16. The State now argues based on the totality of the circumstances it is more likely than not that Mr. Palmer participated in the homicide of William Helmbacher either as an accessory or as a participant to an underlying felony that escalated into an attack that caused the death of Mr. Helmbacher.

17. The petitioner argues that the State's theory at trial was that Mr. Palmer, acting alone, bludgeoned Mr. Helmbacher to death and that is why the jury convicted Mr. Palmer of murder.

18. One of the petitioner's arguments is that Mr. Palmer was convicted of murder for being the primary attacker and the State cannot change their theory after the trial to an alternate theory of criminal liability.

19. There is no case law that the court is aware of on this issue but the court does note that count four of the information alleges "while committing or attempting to commit a forcible felony, robbery...caused the death of William Helmbacher."

20. The court does find that if the defendant, Charles Palmer, had been retried for murder the State could change their theory for convicting Mr. Palmer of murder and thus has not conceded Mr. Palmer is entitled to a Certificate of Innocence.

21. The court does not find that this settles the issue of the certificate without looking at the other evidence.

22. The court next reviews the statements and testimony from Ray Taylor.

23. The court has reviewed the police report in April of 1998 where Ray Taylor threatened to kill Mr. Helmbacher.

24. The court has also reviewed the record that Ray Taylor's fingerprints were found on a garbage bag that contained items that belonged to William Helmbacher.

25. Ray Taylor denied any involvement in the crime during his initial interviews until his fingerprints were found on the garbage bag.

26. Ray Taylor's testimony at trial was that Charles Palmer told him that he "beat the dude to death" and that "the guy didn't have but $11.00."

27. Even though Ray Taylor is a first cousin of Charles Palmer, the court does review his testimony with caution.

28. The court next reviews the forensic evidence found on the Fila shoes.

29. The court is aware of the argument made by the petitioner that the shoes collected by the police were a different color than the ones collected by Detective Carlton from the defendant, but the court finds that is more likely than not that these were the shoes Ray Taylor told investigators that Charles Palmer was wearing prior to William Helmbacher being killed.

30. These shoes were sent to the state crime lab and were tested initially by forensic scientist Lu on the reddish brown stains on both shoes.

31. No blood was found present on these stains.

32. Forensic scientist Lu was asked to re-examine the shoes by Detective Carlton and Lu tore up the shoes to examine the interior.

33. The forensic scientist found three stains and compared the stains to Helmbacher's blood standard.

34. One stain contained a sufficient amount of DNA for comparison and matched the blood standard of William Helmbacher.

35. The petitioner has not brought forward any evidence that the Decatur Police Department planted the blood on the shoes retrieved from Charles Palmer other than the argument that the state crime lab did not find any blood the first time and it was not until the shoes were sent back a second time that the blood stain was found suitable for comparison.

36. The court is aware that forensic scientist Lu testified that she thought the request to tear apart the shoes was a strange request but does not find that the Decatur Police Department planted the evidence on petitioner's shoe.

37. As to the circumstantial evidence, the court notes the testimony establishes that Charles Palmer was in the same building on the day Mr. Helmbacher was killed.

38. The court also takes into consideration that Charles Palmer changed into Michael Callaway's clothes after the homicide but had to wash them before changing into them.

39. In reviewing all of the evidence presented at trial, the DNA analyzed after the trial and the arguments made, the court understands why the State has decided not to retry the case at this time with the evidence that is available and the burden beyond a reasonable doubt.

40. Having said that, the court cannot find that the petitioner has proven by the preponderance of the evidence that the petitioner has established he is innocent of the charge of murder.

Wherefore, the court denies the petitioner's request for Certificate Of Innocence.

Entered: 2/14/19

Jeffrey S. Geisler
Associate Judge

No. 125621

IN THE SUPREME COURT OF ILLINOIS

CHARLES PALMER, Petitioner-Appellant, v. PEOPLE OF THE STATE OF ILLINOIS, Defendant-Appellee.	)	Appeal from the Appellate Court, Fourth District, No. 4-19-0148 There on appeal from the Circuit Court of Macon County, Illinois No. 99 CF 139

APPELLATE COURT OPINION

2019 IL App (4th) 190148

NO. 4-19-0148IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 27, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHARLES B. PALMER, Defendant-Appellant.	) Appeal from the) Circuit Court of) Macon County) No. 99CF139)) Honorable) Jeffrey S. Geisler,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court, with opinion.
Justices Knecht and Turner concurred in the judgment and opinion.

OPINION

¶ 1 Charles B. Palmer petitioned the Macon County circuit court for a certificate of innocence. The court denied his petition. Palmer appeals. We affirm the judgment because we are unable to say it is an abuse of discretion.

¶ 2 I. BACKGROUND

¶ 3 A. The Charges (February 1999)

¶ 4 The information against Palmer had six counts, the first five of which accused him of committing the first degree murder of William Helmbacher. Specifically, according to counts I to V, Palmer did the following on August 27, 1998: (1) "with the intent to kill or do great bodily harm to [Helmbacher], repeatedly struck [him] on the head, thereby causing [his] death" (count I); (2) "repeatedly struck [Helmbacher] on the head, knowing said act would cause the death of [Helmbacher], thereby causing [his] death" (count II); (3) "repeatedly struck [Helmbacher] [o]n the head, knowing such act created a strong probability of death or great bodily harm to

[Helmbacher], thereby causing [his] death" (count III); (4) "while committing or attempting to commit a forcible felony, [r]obbery, *** repeatedly struck [Helmbacher] on the head and thereby caused [his] death" (count IV); and (5) "while committing or attempting to commit a forcible felony, [r]esidential [b]urglary, *** repeatedly struck [Helmbacher] on the head and thereby caused [his] death" (count V). See 720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (1998).

¶ 5 In the remaining count, count VI, the State alleged that on the day before the murder, August 26, 1998, Palmer committed residential burglary of Helmbacher's apartment (*id.* § 19-3).

¶ 6 B. The Jury Trial (April 2000)

¶ 7 1. *The Testimony of Ray Taylor*

¶ 8 a. The Burglary of Helmbacher's Apartment on August 26, 1998

¶ 9 Ray Taylor, a first cousin of Palmer, testified that he lived in an apartment building in Decatur, upstairs from the apartment that Helmbacher had occupied, and that around dusk on August 26, 1998, Palmer came to Taylor's apartment and told him he was going to break into Helmbacher's apartment.

¶ 10 The two of them, Palmer and Taylor, went downstairs. Palmer entered Helmbacher's apartment through a window and, from the inside, opened the front door and asked Taylor to keep watch for him. Taylor "stood there, and then *** went upstairs," returning to his own apartment.

¶ 11 Soon afterward, Palmer came upstairs to Taylor's apartment, bringing with him some bottles of beer and a jar with change in it, among other things. He asked Taylor for a bag, and Taylor handed him a plastic garbage bag. Palmer put some of the things in the bag, and he and Taylor drank some of the beers.

¶ 12 Later, the two of them walked to a dumpster, a few blocks from Taylor's apartment, and Taylor threw the garbage bag into the dumpster.

¶ 13 Taylor then went to his mother's residence and did not see Palmer again that night.

¶ 14 b. Taylor Sees Palmer the Next Evening, August 27, 1998

¶ 15 On the evening of August 27, 1998, Taylor saw Palmer at the apartment of another cousin of Taylor's, John Bradford. Palmer asked Taylor to come in, and upon entering, Taylor noticed that Palmer was wearing different shoes and different clothes from those he had been wearing the day before, and Taylor further noticed that the shoes Palmer now had on were too small, with his heels protruding out of the back of them. By way of explanation, Palmer told Taylor, " 'Man, you know I had to beat the dude to death.' " " 'What dude?' " Taylor asked. It was the man in the apartment downstairs from Taylor's apartment, Helmbacher, Palmer answered—adding regretfully Helmbacher had only $11 on him as it turned out. Taylor asked Palmer where his new tennis shoes were, the ones he was wearing the previous day. Palmer replied that " 'blood was everywhere.' "

¶ 16 c. Police Interrogations of Taylor

¶ 17 Later in the evening of August 27, 1998, the police came to Taylor's apartment and questioned him about Helmbacher's murder, and on September 1, 1998, the police questioned him again. In those first two interviews, Taylor, who was unwilling to get involved, divulged nothing of what he had heard about Helmbacher's murder.

¶ 18 Taylor became more cooperative later in September 1998, when the police approached him a third time and informed him that (1) a garbage bag containing property stolen from Helmbacher had been found and (2) Taylor's fingerprints were on the bag. This time, Taylor told the police what he knew about Palmer's participation in the burglary and the murder. In an

interview room off the booking area, a police officer showed Taylor a pair of tennis shoes, and at that time Taylor identified them as the shoes Palmer was wearing on August 26, 1998, the day before the murder, when Palmer burglarized Helmbacher's apartment.

¶ 19 d. No Specific Promises Made to Taylor by the State

¶ 20 Taylor, who had two prior felony convictions, acknowledged that in Macon County case No. 98-CF-1476, he faced a charge of residential burglary (*id.*) because of his participation in the August 26, 1998, burglary of Helmbacher's apartment. Taylor denied, however, that the State had made any specific promises to him in return for his testimony in the present case. All the State had told him was that his testimony would be taken into account.

¶ 21 2. *The Testimony of Joseph Moyer*

¶ 22 Joseph Moyer testified that, in August 1998, both he and Helmbacher were employees of Douglas Lee and that on the evening of August 27, 1998, Moyer and Lee were collecting rent from occupants of apartment buildings owned by Lee.

¶ 23 At about 9:45 p.m., as they were making their rounds, Moyer and Lee arrived at Helmbacher's apartment and knocked on the door. No one answered. They left to collect rent at other buildings.

¶ 24 At 10:30 p.m. or 10:45 p.m., they returned to Helmbacher's apartment. Lee peered through a small window in the front door and saw a half-eaten cheeseburger on a table and Helmbacher's shoes on the floor. Suspecting that something was amiss, Lee opened the door, and Helmbacher was dead on the floor, right in front of them.

¶ 25 Moyer, who had a previous felony conviction for burglary, admitted that Lee was angry with Helmbacher the night of August 27, 1998, because Helmbacher had fallen behind in collecting rent for Lee.

¶ 26 3. *The Testimony of Brian Cleary*

¶ 27 Brian Cleary, a Decatur police officer, testified that on the evening of August 27, 1998, he responded to a call at Helmbacher's apartment. Upon arriving there, Cleary looked through a window and saw Helmbacher lying on the floor. Cleary saw no signs of forced entry.

¶ 28 4. *The Testimony of Roger Ryan*

¶ 29 On August 27 and 28, 1998, a Decatur detective, Roger Ryan, investigated the scene of the murder. The inside of the door to Helmbacher's apartment was splattered with blood, and blood had pooled around Helmbacher's body. A hammer lay nearby. Ryan saw no bloody footprints nor did he see any blood outside the apartment.

¶ 30 5. *The Testimony of Travis Hindman*

¶ 31 A forensic pathologist, Travis Hindman, had performed an autopsy on Helmbacher's body. The cause of Helmbacher's death, Hindman testified, was brain trauma resulting from narrow-surface blunt trauma to the head. The head wounds were compatible with blows from a hammer.

¶ 32 6. *The Testimony of Mike Callaway*

¶ 33 According to Mike Callaway's testimony, Palmer spent the night of August 27, 1998, with him. When Palmer arrived at Callaway's apartment that night around 10 p.m., Callaway did not notice any blood on him. (After the passage of two years, Callaway was unsure whether he had told a Decatur detective, Tim Carlton, that it was just before dark when Palmer arrived at his apartment, but that could have been what he had told Carlton, Callaway agreed.)

¶ 34 Sometime that evening, after Palmer's arrival, Callaway went to a liquor store, and about 45 minutes later, when Callaway returned, Palmer was wearing one of Callaway's shirts.

Callaway told Palmer he had to wash his own clothes and wear them. Later, during Palmer's stay at his apartment, Callaway saw him washing clothes.

¶ 35 7. *The Testimony of Tim Carlton*

¶ 36 According to Tim Carlton's testimony, Callaway told him, in an interview, that it was around dark on August 27, 1998, when Palmer arrived at his apartment.

¶ 37 On September 22, 1998, Carlton interviewed Palmer. At the time of the interview, Palmer was wearing a pair of white tennis shoes with red specks on them. Carlton took the shoes from Palmer and showed them to Taylor. Then Carlton put the shoes in evidence storage.

¶ 38 Later, the shoes were sent to the Illinois State Police crime laboratory for analysis. Initial testing found no human blood on the shoes. Then, without touching the shoes, Carlton had them sent back to the crime laboratory with instructions to "take them apart" and analyze them again.

¶ 39 8. *The Testimony of Roger Morville*

¶ 40 On September 24, 1998, Roger Morville, the evidence officer for the Decatur Police Department, transported Palmer's tennis shoes to the crime laboratory. After the initial testing, Morville transported the shoes from the laboratory back to the evidence storage area of the Decatur police department. On October 15, 1998, he again transported the shoes from evidence storage to the crime laboratory. At that time, the shoes were still in a sealed evidence storage bag, and they had not been tampered with or altered.

¶ 41 9. *The Testimony of Jennifer Lu*

¶ 42 Jennifer Lu was a crime laboratory employee trained in forensic biology. On September 25, 1998, she performed the initial analysis on Palmer's tennis shoes, testing only the

red specks on the laces and on the outside of the shoes. Lu determined that these red specks on the exterior of the shoes were not human blood.

¶ 43 On November 4, 1998, at the request of the Decatur Police Department—an unprecedented request, in her experience—Lu disassembled the shoes and then reexamined them, looking for previously hidden blood on the pieces. She now found three stains on the right side of the right shoe: The first stain was under a piece of leather covered with mesh, and the other two stains were under the mesh. Lu tested these stains and found all three of them to be human blood.

¶ 44 There also was a blood-like substance in Helmbacher's fingernail scrapings, which the Decatur Police Department likewise had sent to the crime laboratory. Lu, however, did not test the fingernail scrapings.

¶ 45 10. *The Testimony of Dana Pitchford*

¶ 46 Dana Pitchford, a forensic scientist for the Illinois State Police, performed a DNA analyses of (1) a blood standard from Helmbacher and (2) the bloodstains that Lu had found on Palmer's right shoe. The DNA analysis showed that the three bloodstains on Palmer's shoe were Helmbacher's blood. The likelihood that someone other than Helmbacher could have been the source of the bloodstains was 1 out of 42 trillion in the "White" population and 1 out of 38 trillion in the "Black" population. (Helmbacher was "White.")

¶ 47 11. *The Testimony of Brian Bell*

¶ 48 The defense called Brian Bell, a Decatur police sergeant, who testified that on September 21, 1998, he interviewed Taylor and Taylor admitted going into Helmbacher's apartment during the burglary of August 26, 1998.

¶ 49 12. *The Testimony of Jeremy Welker*

¶ 50 The defense also called Jeremy Walker, another Decatur police officer, who testified that when he interviewed Taylor on August 28, 1998, Taylor told him he was home the evening of August 27, 1998, and that he heard nothing unusual that evening.

¶ 51 13. *Palmer's Testimony*

¶ 52 Palmer took the stand in his own behalf and denied committing the charged offenses. He testified that, instead, he spent the day and night of August 26, 1998, in Taylor's apartment, drifting in and out of sleep because he had been feeling unwell. On August 27, 1998, he woke up between 11 a.m. and noon, still feeling sick, and around 3:30 p.m. or 4 p.m. he went to Callaway's apartment, where he stayed until the next day.

¶ 53 In Callaway's apartment, Palmer put on some pants and a shirt belonging to Callaway. He and Callaway often wore one another's clothing, Palmer testified.

¶ 54 Palmer denied lending his shoes to anyone, but he suggested that someone might have worn his shoes without his permission.

¶ 55 14. *The Verdict and the Sentence*

¶ 56 On April 27, 2000, the jury returned two verdicts.

¶ 57 One of the verdicts read as follows: "We, the jury, find the defendant, Charles B. Palmer, not guilty of residential burglary."

¶ 58 The other verdict read as follows: "We, the jury, find the defendant, Charles B. Palmer, guilty of First Degree Murder."

¶ 59 On May 8, 2000, for the first degree murder charged in count I (*id.* § 9-1(a)(1)), the circuit court sentenced Palmer to natural life imprisonment.

¶ 60 C. The Direct Appeal (September 2001)

¶ 61 Palmer took a direct appeal, in which he made three arguments. *People v. Palmer*, No. 4-00-0634, slip order at 1 (2001) (unpublished order under Illinois Supreme Court Rule 23).

¶ 62 First, Palmer argued that the State had failed to prove him guilty, beyond a reasonable doubt, of first degree murder. *Id.* In so arguing, he claimed that the blood on his shoe had been " 'discovered under suspicious and questionable circumstances.' " *Id.* at 10. Finding that "*[n]othing* in the record support[ed] that claim," the appellate court decided the evidence was sufficient to support the conviction. (Emphasis in original.) *Id.*

¶ 63 Second, Palmer argued that the prosecutor, in his rebuttal argument, committed an impropriety by characterizing defense counsel's closing argument as " 'smoke and mirrors.' " *Id.* at 11. The appellate court held that not only had Palmer procedurally forfeited this issue by omitting to object during the prosecutor's rebuttal argument (*id.* at 13) but the smoke and mirrors metaphor was a fair response to defense counsel's closing argument (*id.* at 15), a response that stopped short of disparaging defense counsel's integrity (*id.* at 16).

¶ 64 Third, Palmer claimed that the circuit court had erred by instructing the jury on attempted residential burglary, attempted robbery, and robbery. *Id.* He argued that those instructions had "misled the jury [by] impl[ying] that he was guilty of three other crimes with which he was never charged." *Id.* The appellate court disagreed. *Id.* Because the State had charged Palmer in count IV with killing Helmbacher while committing or attempting to commit robbery and in count V with killing Helmbacher while committing or attempting to commit residential burglary, it was necessary to instruct the jury on the predicate offenses of robbery, attempted robbery, and attempted residential burglary. *Id.* at 17. The information notified Palmer, before the trial, that the State would proceed under a felony murder theory as set forth in counts IV and V, so

he was not misled or surprised. *Id.* at 19. Nor would he be put in jeopardy twice for the same offense. *Id.*

¶ 65 Thus, disagreeing with all three of Palmer's arguments on direct appeal, the appellate court affirmed the judgment. *Id.*

¶ 66 D. The First Postconviction Proceeding (August 2002)

¶ 67 On August 18, 2002, Palmer petitioned for postconviction relief.

¶ 68 On August 28, 2002, the circuit court summarily dismissed the petition "as being frivolous and patently without merit because it was not timely filed."

¶ 69 On September 11, 2002, Palmer moved for reconsideration, and on October 16, 2002, while a ruling on that motion for reconsideration was still pending, he filed a second motion for reconsideration, now citing the supreme court's decision in *People v. Boclair*, 202 Ill. 2d 89 (2002).

¶ 70 On November 12, 2002, the circuit court granted the motion for reconsideration and vacated the original summary dismissal only to summarily dismiss the postconviction petition again, this time on the basis of its substance instead of its lateness.

¶ 71 Palmer appealed, and in his appellate brief, he made essentially four arguments.

¶ 72 First, Palmer argued that a detective " 'plant[ed] blood' " on the right tennis shoe after a crime laboratory employee analyzed both shoes and determined that the stains on them were not human blood. *People v. Palmer*, 352 Ill. App. 3d 877, 884 (2004). In response, the appellate court reminded Palmer that on direct appeal the appellate court rejected his claim that the blood on his shoe was " 'discovered under suspicious and questionable circumstances.' " *Id.* Palmer "simply [was] rephras[ing] an issue previously addressed on direct appeal," and a defendant

"[could not] avoid *res judicata* by adding additional allegations that [were] encompassed by a previously adjudicated issue." *Id.*

¶ 73 Second, Palmer argued that because Helmbacher had been an attorney and because trial counsel had acknowledged knowing Helmbacher professionally, Palmer was denied his right to conflict-free representation. *Id.* at 884-85. The appellate court disagreed: Trial counsel "had no previous relationship with the victim that would give rise to divided loyalties." *Id.* at 885.

¶ 74 Third, Palmer argued that trial counsel had rendered ineffective assistance by failing to call several named witnesses. *Id.* Palmer, however, had failed to support that claim by providing affidavits from the witnesses. *Id.*

¶ 75 Finally, Palmer argued, "the trial court [had] erred by 'allowing [the State] to proceed to trial with insufficient evidence.' " *Id.* Specifically, he argued, "the State [had] failed to conduct tests on substances found under the victim's fingernails," and, consequently, the State " 'ha[d] imprisoned the wrong man.' " *Id.* The appellate court regarded this as another argument recycled from the direct appeal. The decision on direct appeal had "rejected [Palmer's] argument that the State failed to prove him guilty beyond a reasonable doubt of first degree murder," and "[s]ince [Palmer's] argument ha[d] already been addressed, the trial court did not err in summarily dismissing [his] postconviction petition." *Id.*

¶ 76 E. The First Petition for DNA Testing and the Results of the Testing

¶ 77 On June 10, 2010, pursuant to section 116-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-3 (West 2010)), Palmer petitioned for the forensic testing of any DNA that might be found on previously untested items of evidence, including fingernail scrapings, the handle of the hammer, doorframe swabs, and pulled head hairs.

¶ 78 The State moved to dismiss Palmer's petition for DNA testing, and on June 13, 2011, the circuit court held a hearing on the State's motion. In the hearing, the court noted that the victim, Helmbacher, had defensive wounds as if he had fought with his assailant; therefore, the court decided that a DNA analysis of the scrapings taken from under Helmbacher's fingernails would be materially relevant. (But the court allowed the State's motion for dismissal as to the other items of evidence.)

¶ 79 In 2013, pursuant to the circuit court's ruling, Cellmark Forensics performed a DNA test of the fingernail scrapings and set forth its findings in a report dated January 22, 2014. According to the report, the fingernail scrapings from the right hand revealed two profiles: one from Helmbacher and the other from a foreign contributor. Both Palmer and Taylor were excluded as being possible contributors of the DNA profile found under the fingernails of Helmbacher's right hand.

¶ 80 F. The Second Petition for DNA Testing and the Results of the Testing

¶ 81 On June 3, 2014, Palmer petitioned for further DNA testing, this time on "the hairs and blood-like substance found in the bags that were placed around the hands of the victim."

¶ 82 On October 9, 2014, the circuit court granted this second petition for DNA testing and on December 1, 2014, followed up with a written order.

¶ 83 In a report dated April 7, 2016, Cellmark announced its findings: Two of the hairs yielded no data, but a third hair came from someone other than Palmer or Helmbacher.

¶ 84 G. The Successive Postconviction Proceeding

¶ 85 On July 27, 2016, citing the results of the DNA testing, Palmer moved for permission to file a successive petition for postconviction relief. See 725 ILCS 5/122-1(f) (West 2016). The remedy the proposed successive petition sought was a new criminal trial.

¶ 86 On October 5, 2016, the circuit court granted permission to file the proposed successive petition.

¶ 87 On November 16, 2016, the State confessed the successive petition, and the circuit court granted the prayer of the petition: a new trial. Accordingly, the court vacated the judgment and sentence on count I of the information; reinstated counts II, III, IV, and V; set bond at $1 million; and put the case on another judge's trial call.

¶ 88 H. The State's Motion to Dismiss the Charges Without Prejudice

¶ 89 On November 23, 2016, after a follow-up investigation, the State moved for the dismissal of the charges, without prejudice, because (to quote from the State's motion) "the State ha[d] determined that there [was] insufficient evidence to prove this case beyond a reasonable doubt."

¶ 90 On the same date, the circuit court granted the State's motion for dismissal, vacating and dismissing all counts of the information.

¶ 91 I. Palmer's Amended Petition for a Certificate of Innocence: His Arguments and the State's Counterarguments

¶ 92 On August 30, 2018, Palmer filed an amended petition for a certificate of innocence, with documentary evidence attached. On November 9, 2018, the State filed a response, likewise with documentary evidence attached. On February 6, 2019, Palmer filed a supplemental brief in support of his amended petition.

¶ 93 The contentions and opposing contentions were substantially as follows.

¶ 94 1. *Palmer's Theory That a Different Pair of Shoes Was Substituted for the Shoes the Police Took From Him*

¶ 95 a. Palmer's Argument

¶ 96 In Palmer's view, the evidence in the jury trial was contradictory as to whether the shoes that were tested and on which Helmbacher's blood was found were the same shoes that Decatur Detective Tim Carlton took from him on September 22, 1998. There were varying descriptions of what color the shoes were. The laboratory report described the shoes as "black and white." Taylor testified, however, that the shoes the police officers showed him at the jail "were red and white as far as [he] remember[ed]." Likewise, Palmer testified he used to have "a pair of red and white shoes." Carlton described the shoes as being "white" and as having "Fila marks."

¶ 97 b. The State's Counterargument

¶ 98 Carlton testified that after interviewing Taylor, he "was looking for Fila tennis shoes." Carlton noticed that Palmer was wearing white tennis shoes with Fila marks when he interviewed Palmer on September 22, 1998, about a month after the murder. Carlton took the shoes from Palmer and showed them to Taylor. Upon being shown the shoes, Taylor, according to his own testimony, told the police "they were the shoes that [Palmer] had on" "the day of the burglary." After being so informed by Taylor, Carlton put the shoes in a bag (Carlton testified) and delivered them to the evidence room, without altering them. The shoes that the State presented as an exhibit in the criminal trial were the same shoes that Carlton had taken from Palmer.

¶ 99 2. *Palmer's Theory That After the First Test Found Nothing, the Police Planted Helmbacher's Blood on the Shoes Before Sending Them Back to the Crime Laboratory for Another Test*

¶ 100 a. Palmer's Argument

¶ 101 Because Helmbacher was struck by a hammer 20 times and the murder scene was gory with his blood, Palmer argued "[i]t was impossible that there would be no blood found on a pair of shoes used in such a crime." Lu found no blood in her first testing of the shoes, and she sent the shoes back to the Decatur Police Department along with her negative finding. Two weeks

then passed, during which (Palmer represented to the circuit court) the police department had simultaneous access to the shoes and to "Helmbacher's blood standard and other physical evidence containing Helmbacher's blood." After the passage of those two weeks, the police department sent the shoes back to the crime laboratory, this time with a request that Lu tear the shoes apart and then retest them. Lu testified she had never before received such a request. Nevertheless, she disassembled the shoes, as requested, and "found three pinpoints of blood: one under a piece of leather with mesh over it and two under mesh—certainly not what would be expected in such a violent, bloody crime," Palmer added. Therefore, in his view, "[t]he only way that this blood could have appeared on [his] shoes [was] if it was put there." The blood was, he claimed, "planted."

¶ 102 b. The State's Counterargument

¶ 103 The negative finding in the first test was explainable, the State argued, because judging from the new DNA evidence, Palmer was not the primary assailant of Helmbacher. If, instead of being the wielder of the hammer, Palmer had been an accessory, standing off to the side, his shoes would not necessarily have become drenched in Helmbacher's blood. With blood spattering everywhere, though, tiny droplets could well have landed on Palmer's shoe and rolled into crevices and seams of the shoe.

¶ 104 The request for retesting likewise was explainable, the State argued—and it already had been explained in the jury trial. When the shoes were sent to the crime laboratory the first time, the laboratory request sheet called for testing to be done only on some reddish-brown stains, the red specks, on the outside of the shoes. This initial written direction was a mistake and contrary to Carlton's intent: He had wanted all along for the shoes to be thoroughly examined, inside and out. Consequently, after the shoes came back with the mere finding that the stains on the outside

were not blood, Carlton had the shoes sent back to the crime laboratory to be torn apart and then examined and tested, in accordance with his original intent.

¶ 105 In all the trips the shoes took back and forth between the Decatur Police Department and the crime laboratory, they were sealed in an evidence bag. Also, whenever the police department had custody of the shoes, they were kept in a sealed condition in the department's evidence area, to which only the evidence officer, Moville, had access. (The other evidence officer was away from the police department in August and September 1998.) The State established all this by citation to Moville's trial testimony.

¶ 106 Even if one disbelieved Moville (although there was no reason to disbelieve him), another difficulty with Palmer's planting theory, the State argued, was that Helmbacher's blood standard was kept at the crime laboratory instead of at the Decatur Police Department. "Helmbacher's blood standard and [Palmer's] Fila tennis shoes were never simultaneously in the custody of the Decatur Police Department between the first and second examinations, contrary to [Palmer's] claims." Rather, as Lu testified, "Helmbacher's *dried* blood standard remained at the crime lab and was not returned to the police department." (Emphasis added.) As a matter of fact, Helmbacher's blood standard was still at the crime laboratory at the time of the jury trial. " 'And you still have that card in the Springfield Forensic Science Lab?' " Lu was asked at trial. " 'Correct,' " she answered.

¶ 107 3. *Palmer's Suggestion That Douglas Lee Should Be Suspected of Murdering Helmbacher*

¶ 108 a. Palmer's Argument

¶ 109 Helmbacher worked for Lee not only as an attorney in Lee's law firm but also as a kind of property manager, helping Lee with the collection of rent. Lee was disgruntled with Helmbacher because, in his opinion, Helmbacher had not been turning over to him enough of the

rent money. And Helmbacher, for his part, was disgruntled with Lee because, in his opinion, Lee had not been sharing enough of the profits of the law business with him. Helmbacher and Lee had planned to meet in the evening on August 27, 1998, to discuss these differences, and in the planned meeting, Lee had intended to dispense with Helmbacher's services as a property manager. In fact, that very evening, Lee himself had been going around to different tenants, angrily trying to collect the rent himself and telling them to pay the rent from now on to him instead of to Helmbacher. While denying any involvement in Helmbacher's murder, Lee admitted to the Decatur police that he had been to Helmbacher's apartment on three separate occasions the night of the murder. He had knocked on Helmbacher's door, he told the police, but had been unable to raise anyone. Finally, on the third visit, Lee used his master key to let himself into Helmbacher's apartment. (Lee owned the apartment building and, when he was in town, sometimes spent the night in Helmbacher's apartment.) When Lee pushed open the front door, he and the man with him, Moyer, saw Helmbacher's body on the floor, just inside the front door.

¶ 110 When investigators requested to take Lee's fingerprints, Lee invoked his right to counsel and stopped cooperating with them.

¶ 111 The day after Helmbacher's murder, Lee telephoned an old friend, Jane Redenberg, and talked to her about Helmbacher's death. He told Redenberg that he was alone when he discovered Helmbacher's body (whereas, according to Lee's statement to the Decatur police, Moyer was with him), that Helmbacher had committed suicide (whereas it was obvious that Helmbacher had been beaten to death with the hammer that lay near his body), and that he had found Helmbacher's body in the back bedroom of the apartment (whereas he found Helmbacher's body just inside the front door). In recounting to the Decatur police what Lee had told her,

Redenberg mentioned that Lee had been seeing a psychiatrist, that he was having marital problems, and that he had been acting strangely.

¶ 112 "In 2017," Palmer wrote in his amended petition, "a forensics lab compared the DNA from the hairs and fingernail scrapings with Doug Lee's DNA. The results excluded Doug Lee as a contributor to the hair, but did not exclude him as a contributor to the DNA found under Helmbacher's fingernails."

¶ 113 b. The State's Counterargument

¶ 114 The State quoted from Cellmark's report on the DNA analysis of the fingernail scrapings: "The report reads, 'due to the possibility of allelic drop out, *no conclusions can be made* (emphasis added) on this mixture profile." Thus, the State argued, "the report [did] not read that Doug Lee [could not] be excluded," contrary to Palmer's representation. "More accurately, [the report] state[d] that no conclusions [could] be drawn at all."

¶ 115 4. *Palmer's Attacks on Taylor's Credibility*

¶ 116 a. Palmer's Argument

¶ 117 Palmer characterized Taylor as "a person of dubious credibility," not only because Taylor had "multiple prior felony convictions" and not only because, before implicating Palmer, Taylor repeatedly denied to the police that he knew anything about the murder. What also made Taylor unreliable was his need to save his own skin. When the police found Taylor's fingerprints on the garbage bag containing Helmbacher's stolen goods, Taylor needed to get the police off his case by offering them an alternative, bigger win. Taylor, Palmer argued, "had every reason to point the finger at Mr. Palmer: His fingerprints were found on a bag full of the victim's stolen belongings[,] and he was facing other criminal charges (which were dismissed after he implicated at [*sic*] Mr. Palmer)." Taylor himself, according to Palmer, had been "a suspect in the murder."

¶ 118 After all, Palmer argued, by murdering Helmbacher, Taylor would have done just what he threatened to do a few months before. "A few months before the murder," Palmer wrote, citing an attached police report, "Taylor had gotten into a fight with Helmbacher and Lee in the middle of the night. During the fight, Taylor threatened to kill both Helmbacher and Lee, and [the Decatur Police Department] arrested Taylor for assault, disorderly conduct, and resisting arrest."

¶ 119 b. The State's Counterargument

¶ 120 The State argued that Taylor's reluctance to implicate Palmer in Helmbacher's murder could have been owing to the close relationship that Taylor had with Palmer: They were first cousins, and Palmer often resided in Taylor's apartment.

¶ 121 Palmer's theory was that, despite their close relationship, desperation drove Taylor to falsely implicate him. That theory, the State countered, was implausible because Taylor had no reason to think that he himself was seriously suspected of murdering Helmbacher. Granted, Taylor was a suspect in the residential burglary of Helmbacher's apartment (because of the discovery of Taylor's fingerprints on the garbage bag), but that was a long way from making Taylor a suspect in Helmbacher's murder. The residential burglary was over and done with the day before Helmbacher was murdered, and there was no objective reason to think that one crime had anything to do with the other.

¶ 122 To be sure, the charge Taylor was facing, residential burglary, was a serious offense, but it was unrebutted that no promise of leniency had been made to him in return for his testimony against Palmer. The State had promised Taylor only that his cooperation would be taken into account. Thus, Taylor had nothing definite to gain from implicating his first cousin.

¶ 123 And, besides, the State argued, Taylor was not the only trial witness whose credibility could be called into question: Some key parts of Palmer's testimony made no sense and were hard to believe.

¶ 124 For instance, Palmer testified that on August 26, 1998, the day of the burglary, he was so sick he could not keep anything down and he spent the day on Taylor's couch, drifting in and out of sleep. This sickness, Palmer testified, persisted throughout the next day, August 27, 1998, the day of Helmbacher's murder, and Palmer remained so nauseated that, around noon, he still did not dare put anything in his stomach except broth. Around 2:30 p.m. or 3 p.m., however, despite his supposed queasiness, Palmer exited the apartment building when he saw a friend of his, Robert Martin, rolling down the street outside in his wheelchair, and Palmer visited with Martin and even drank beer with him.

¶ 125 Indeed, Martin himself testified that around 2 p.m. on August 27, 1998, he was present with Palmer and Taylor and that all three of them drank beer. Martin had no recollection of Palmer's saying he was sick or acting as if he were sick.

¶ 126 The State thought it also was inconsistent with Palmer's claimed illness that, according to his testimony, he left the apartment building at 3:30 p.m. or 4 p.m. on August 27, 1998—he never explained why he left—and went to his friend Michael Callaway's house "for the rest of that day, and that night until the next day." After arriving at Callaway's house, Palmer bought some beer for Callaway and, as Palmer put it, "stayed at Mike's all that night, all that day[,] because [he] was sick. If [he] hadn't been sick, [he] probably wouldn't have stayed that long." That testimony made no sense to the State because if Palmer really were sick, he surely would not have left Taylor's apartment in the first place. There was no testimony that Taylor had asked his

ailing first cousin to leave or that Taylor had hinted he was overstaying his welcome—and Palmer had been sociably drinking beer with Taylor and Martin just that afternoon.

¶ 127 Also troubling to the State was a conflict between Palmer's testimony and Callaway's testimony on a crucial point. On the one hand, Palmer testified he arrived at Callaway's apartment between 3:30 and 4 p.m., which, in August, would have been well within daylight hours. On the other hand, Callaway testified that although he was uncertain of the exact time when Palmer arrived at his house, it was around 10 p.m. and, in any event, it was dark out when Palmer arrived.

¶ 128 Why does it matter so much whether Palmer arrived at Callaway's house in the afternoon of August 27, 1998, or in the evening? It matters because Helmbacher was murdered sometime between 7 p.m. and 11 p.m. on August 27, 1998. Tonya Estes last saw Helmbacher alive at 7 p.m. that day; she saw him sitting in his living room, reading. Lee and Moyer discovered Helmbacher's body at 11 p.m. The State suggested that Palmer had lied about when he arrived at Callaway's apartment because, being an accessory to Helmbacher's murder, he knew the murder had happened in the evening and, therefore, it was crucial that he convince the jury he arrived at Callaway's apartment before then, in the afternoon.

¶ 129 Something Palmer did after arriving at Callaway's apartment made no sense to the State, either, unless Palmer had felt an urgent need to dispose of his possibly blood-spattered clothing. After Palmer arrived at Callaway's apartment and Callaway left to go to the liquor store, Palmer took off his own shirt and pants and put on a shirt and some pants belonging to Callaway. Palmer testified it was not unusual for him and Callaway to wear each other's clothes, but that is not the impression one gets from Callaway's testimony: He testified that when he returned from the liquor store and saw Palmer wearing his shirt and pants, he told Palmer to wash his own clothes and wear them. And what was stranger or more suspicious, in the State's view, was that Palmer

had to wash Callaway's shirt and pants before putting them on. If both Palmer's clothing and Callaway's clothing were dirty, the State reasoned, Palmer might as well have washed his own clothing and worn it—unless he was worried that washing might not be good enough and that bloodstained clothing was best thrown away. (We note, however, Callaway's testimony that later during Palmer's stay in his apartment, he saw Palmer washing clothes. And Palmer kept his shoes.)

¶ 130 J. The Circuit Court's Decision on Palmer's Amended Petition for a Certificate of Innocence

¶ 131 On February 14, 2019, the circuit court entered an order denying Palmer's amended petition for a certificate of innocence. The order explained why the court had arrived at that decision. Some of the stated reasons were as follows.

¶ 132 First, although the circuit court had reviewed Taylor's testimony "with caution," Taylor was Palmer's first cousin, and according to Taylor's testimony, Palmer told him he had " 'beat[en] the dude to death' " and that " 'the guy didn't have but $11.00.' "

¶ 133 Second, the circuit court acknowledged Palmer's argument "that the shoes collected by the police were a different color than the ones collected by Detective Carlton from [Palmer], but the court [found] that [it was] more likely than not that these were the shoes Ray Taylor told the investigators that Charles Palmer was wearing prior to William Helmbacher being killed."

¶ 134 Third, upon tearing the shoes apart, Lu found three stains, one of which "contained a sufficient amount of DNA for comparison and matched the blood standard of William Helmbacher."

¶ 135 Fourth, Palmer had not presented any evidence that the Decatur Police Department had planted the blood on the shoes "other than the argument that the state crime lab did not find any blood the first time and it was not until the shoes were sent back a second time that the blood

stain was found suitable for comparison." Just because, according to Lu's testimony, it was unusual for a police department to request that shoes be torn apart and retested, that had no tendency to prove the Decatur Police Department had planted the blood.

¶ 136 Fifth, Palmer was in the same building the day Helmbacher was killed.

¶ 137 Sixth, Palmer "changed into Callaway's clothes after the homicide but had to wash them before changing into them."

¶ 138 In sum, "[i]n reviewing all of the evidence presented at trial, the DNA analyzed after the trial[,] and the arguments made, the [circuit] court underst[ood] why the State ha[d] decided not to retry the case at this time with the evidence that [was] available and the burden [of proof] beyond a reasonable doubt." But "[h]aving said that, the court [could not] find that [Palmer] had proven by the preponderance of the evidence that [Palmer] ha[d] established he [was] innocent of the charge of murder." Therefore, the court denied Palmer's request for a certificate of innocence.

¶ 139 This appeal followed.

¶ 140 II. ANALYSIS

¶ 141 A. Proof of Innocence, Whether as a Principal or as an Accomplice

¶ 142 To win a certificate of innocence, the petitioner must prove the following four propositions by a preponderance of the evidence:

> "(1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
>
> (2)(A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the

> petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; or (B) the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois;
>
> (3) the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State; and
>
> (4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction." 735 ILCS 5/2-702(g) (West 2018).

It is undisputed, on appeal, that Palmer proved the first, second, and fourth of those propositions (*id.* § 2-702(g)(1), (2), (4)); the dispute is whether he proved the third proposition (*id.* § 2-702(g)(3)).

¶ 143 The third proposition in section 2-702(g) is made up of two alternative propositions: "[T]he petitioner is innocent of the offenses charged in the indictment or information," or alternatively, "his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State." *Id.* The act charged in the information, beating Helmbacher to death with a hammer, was a felony against the State, and Palmer has never suggested otherwise. Instead, he sought to prove he was "innocent of the offenses charged in the *** information." *Id.* Palmer, the circuit court found, had failed to carry that burden of proof: He had failed to prove, by a preponderance of the evidence, that he was "innocent of the offenses charged in the *** information." *Id.*

¶ 144 Before scrutinizing that evidentiary finding by the circuit court, we must resolve a controversy over the meaning of the statutory phrase "innocent of the offenses charged in the ***

information." *Id.* The States argues, on the one hand, that the offense charged in count I of the information and of which the jury found Palmer guilty was, quite simply, the "first degree murder of William Helmbacher" and that Palmer's guilt of that offense was not dependent on his having personally wielded the hammer; he could have been equally guilty of the offense by aiding its commission, such as by being a lookout (see 720 ILCS 5/5-2(c) (West 1998); *People v. Johnson*, 318 Ill. App. 3d 281, 290 (2000)).

¶ 145 But count I, Palmer observes, did not charge him with being a lookout; rather, it charged him with personally beating Helmbacher to death. The *offense* in count I, Palmer argues, was what the count said: "FIRST DEGREE MURDER, In that the said defendant [(Palmer)], without lawful justification and with the intent to kill or do great bodily harm to William Helmbacher, repeatedly struck William Helmbacher on the head, thereby causing the death of William Helmbacher." Counts II through V likewise alleged that Palmer personally beat Helmbacher to death, and *that*, Palmer insists—and *only* that—was what he had to disprove in the civil proceeding for a certificate of innocence. In other words, by Palmer's understanding, the *offense* is not merely the statutory name "first degree murder" but also the alleged acts, set forth in counts I through V, by which Palmer allegedly committed first degree murder, and by proving—as the State conceded he proved—that he personally did not beat Helmbacher to death, Palmer proved his innocence of first degree murder *as alleged in counts I through V*, counts that did not charge him with what he regards as a different offense of aiding and abetting someone else's act of beating Helmbacher to death.

¶ 146 The State's interpretation of "offense" is, for three reasons, more convincing than Palmer's interpretation.

¶ 147 First, murdering Helmbacher by personally beating him to death and murdering him by aiding and abetting someone else's act of beating him to death are not different offenses; they are the same offense of the first degree murder of Helmbacher, as the State demonstrates by its quotation from *People v. Ceja*, 204 Ill. 2d 332, 361 (2003):

> "It is proper to charge a defendant as a principal even though the proof is that the defendant was only an accomplice. [Citations.] Courts permit this pleading practice because *accountability is not a separate offense*, but merely an alternative manner of proving a defendant guilty of the substantive offense. [Citations.]" (Emphasis added.)

Presumably, the legislature was aware of such cases as *Ceja* when, in 2008, the legislature added section 2-702 to the Code of Civil Procedure. See *Innovative Modular Solutions v. Hazel Crest School District 152.5*, 2012 IL 112052, ¶ 34. Therefore, the legislature presumably was aware—and absent any clear indication to the contrary in the statutory language, the legislature must have intended (see *Butler v. Harris*, 2014 IL App (5th) 130163, ¶ 28)—that an offense would be the same substantive offense regardless of whether it were committed as a principal or as an accomplice (see *Ceja*, 204 Ill. 2d at 361).

¶ 148 Second, section 2-702(g) "must be afforded its plain, ordinary[,] and popularly understood meaning" (*People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 279 (2003)), and common speech differentiates between the offense and the specific factual means of committing the offense. For example, in *People v. Strong*, 363 Ill. 602, 605 (1936), the supreme court said that "an indictment shall allege every material fact constituting the offense charged." Or, to take another example, the supreme court said in *People v. Hale*, 77 Ill. 2d 114, 120 (1979), that a criminal complaint lacking an allegation of insulting, provoking, or injurious physical contact "did not

allege all the material facts constituting the offense of battery." (Internal quotation marks omitted.) So, the offense was indeed first degree murder, as the State argues, and beating Helmbacher with a hammer was merely a factual means of committing the offense.

¶ 149 Third, "[s]tatutes are to be construed in a manner that avoids absurd or unjust results" (*Croissant v. Joliet Park District*, 141 Ill. 2d 449, 455 (1990)), and it would be absurd and unjust to award a certificate of innocence to someone who, though exonerated of being the principal in a murder, is unable to prove, by a preponderance of the evidence, that he or she was innocent of being an accomplice to the murder. It would be unreasonable to award a suspected lookout, for example, the compensation (see 705 ILCS 505/8(c), 11(b) (West 2018)) and benefits (see 20 ILCS 1015/2 (West 2018)) to which a certificate of innocence would entitle its holder. After all, an accomplice is just as blameworthy, in the eyes of the law, as the principal perpetrator of the crime. See *People v. Brown*, 267 Ill. App. 3d 482, 487 (1994).

¶ 150 For those three reasons, in our *de novo* interpretation of section 2-702(g)(3) (735 ILCS 5/2-702(g)(3) (West 2018)), we conclude that to obtain a certificate of innocence on the theory that "the petitioner is innocent of the offenses charged in the indictment or information," the petitioner must prove, by a preponderance of the evidence, that he or she was neither a principal nor an accomplice in the commission of the charged offenses. See *Country Mutual Insurance Co. v. State Farm Mutual Automobile Insurance Co.*, 339 Ill. App. 3d 78, 81 (2003) (holding that issues of statutory interpretation are reviewed *de novo*). The principal and the accomplice are, in the eyes of the law, one and the same. "The acts of such other in such instances become the acts of the accused in the contemplation of law, and may be alleged so to be in the indictment." *Lionetti v. People*, 183 Ill. 253, 255 (1899).

¶ 151 B. The Unanswered Threshold Question in Palmer's Due-Process Argument

¶ 152 On the authority of *People v. Millsap*, 189 Ill. 2d 155, 166 (2000), and similar cases, Palmer argues that "[e]valuating new theories presented by the State for the first time at the [certificate of innocence] phase" violates due process. "This is because," he reasons, "once a case is submitted to a criminal jury, established law dictates that the State cannot change its theory. There is no reason to depart from that law when the State contests a petition for a [certificate of innocence]."

¶ 153 The law, in the context of a criminal trial, is that of procedural due process, which requires fair procedures leading up to the governmental deprivation of liberty. See *People v. Cardona*, 2013 IL 114076, ¶ 17. No one shall be deprived of life, liberty, or property without due process of law. U.S. Const., amend. XIV, § 1; Ill. Const. 1970, art. I, § 2. Anyone claiming a violation of procedural due process must address "the threshold question [of] whether there exists a liberty or property interest which has been interfered with by the State." (Internal quotation marks omitted.) *Segers v. Industrial Comm'n*, 191 Ill. 2d 421, 434 (2000). The constitutionally protected interest in a felony trial is obvious: the interest in liberty. The procedures leading up to the deprivation of that interest have to give the defendant "meaningful notice and a meaningful opportunity to be heard." (Internal quotation marks omitted.) *Tolliver v. Housing Authority*, 2017 IL App (1st) 153615, ¶ 22 ("The essence of procedural due process is meaningful notice and a meaningful opportunity to be heard." (Internal quotation marks omitted.)). A defendant is denied meaningful notice and a meaningful opportunity to be heard if, after the jury instructions have been settled and the parties have made their closing arguments in reliance thereon, the judge answers a note from the deliberation room by instructing the jury on a new theory of guilt, such as guilt by accountability. See *Millsap*, 189 Ill. 2d at 166. Such a procedure would be unfair to the defendant because when making his or her closing argument to the jury, the defendant never had

occasion to argue against a theory of guilt by accountability; the defendant never had a reason to do so because the theory hitherto was unmentioned. Consequently, the defendant would lose his or her constitutionally protected interest in liberty without meaningful notice of a theory against him, guilt by accountability, and without a meaningful opportunity to be heard on that theory.

¶ 154 But "procedural due process protections are triggered only when a constitutionally protected liberty or property interest is at stake." *Tiller v. Klincar*, 138 Ill. 2d 1, 14 (1990). It is unclear how a constitutionally protected liberty or property interest is at stake in a proceeding for a certificate of innocence. Palmer leaves that threshold question unanswered (see *Segers*, 191 Ill. 2d at 434)—and the answer is far from obvious. He suffered no deprivation of liberty in this civil proceeding, and we do not see how, by denying him a certificate of innocence, the circuit court took any property from him. See *id.* at 435 ("The due process clause protects interests that a person *has already acquired* in specific benefits, not merely an expectation or abstract need for such benefits." (Emphasis in original and internal quotation marks omitted.)). Therefore, we conclude, *de novo* (see *People v. Hall*, 198 Ill. 2d 173, 177 (2001)), that Palmer's due process argument never gets off the ground.

¶ 155 C. In Any Event, Procedural Fairness to Palmer

¶ 156 Even if we could overlook the unanswered threshold question of what constitutionally protected interest was at stake in this civil proceeding for a certificate of innocence, we would find no procedural unfairness. Procedurally, this case was nothing like *Millsap*.

¶ 157 The State in *Millsap*, unlike the State in this civil proceeding, had the burden of proof, and the defendant had the right to respond to all of the suggested grounds on which he might be found guilty—a right that was frustrated in *Millsap*. Here, by contrast, it was Palmer who had

the burden of proof (see 735 ILCS 5/2-702(g) (West 2018)), and the State had the right to respond to *his* presentation. It makes no sense, then, to claim that Palmer, like the defendant in *Millsap*, was blindsided by a new theory of guilt and deprived of an opportunity to argue against it. It is true that, in response to Palmer's amended petition, the State raised a new theory of guilt (though not a new offense), arguing there was reason to believe that Palmer was an accessory to Helmbacher's murder. But then, instead of being shut down by an unfair procedure, Palmer had a full and fair opportunity to prove and argue he was innocent of being an accessory.

¶ 158 So, there was no procedural unfairness to Palmer. He presented his evidence and arguments, the State responded, and he responded to the State's response. That is just the way a matter should proceed.

¶ 159 D. Palmer's Invocation of the Doctrine of Judicial Estoppel

¶ 160 According to Palmer, the doctrine of judicial estoppel prohibits the State from "changing its theory of Mr. Palmer's guilt more than 20 years after his wrongful conviction." In the jury trial, the State won by taking the position that Palmer, as a principal, had beaten Helmbacher to death. Some 20 years later, in its "Response to Amended Petition for Certificate of Innocence Under 735 ILCS 5/2-702," the State took the position that Palmer "more likely than not *** participated in the homicide of William Helmbacher, either as an accessory or as a willing participant to an underlying felony that escalated into a violent attack and ultimately a homicide." An "accessory" is "[a] person who aids or contributes in the commission of a crime." Black's Law Dictionary 14 (7th ed. 1999). It is impossible to be both an accessory and a principal in the commission of murder; a person would have to be one or the other. Thus, Palmer is correct that the position the State took in the criminal trial and the position the State took later, in his proceeding for a certificate of innocence, are in that respect inconsistent.

¶ 161 The inconsistency, however, is not that of "a weather vane" pivoting whenever "the winds of self-interest change." *Department of Transportation v. Coe*, 112 Ill. App. 3d 506, 507 (1983). Instead, the inconsistency represents an honest change of mind in response to new DNA evidence, which was unavailable in the earlier, criminal proceeding. Parties that change their theory after being presented with "new evidence bearing upon the issue are not acting in bad faith"; they are not "playing 'fast and loose' with the court, the kind of conduct the doctrine [of judicial estoppel] is intended to address." *People v. Runge*, 234 Ill. 2d 68, 133 (2009). The doctrine must be carefully confined to its anti-hoodwinking purpose. See *Ceres Terminals, Inc. v. Chicago City Bank & Trust Co.*, 259 Ill. App. 3d 836, 850 (1994). Judicial estoppel is an "extraordinary" measure, which must be "applied with caution to avoid impinging on the truth-seeking function of the court." (Internal quotation marks omitted.) *Id.* at 857. Changes of position in response to new, previously unavailable evidence "are consistent with the court's truthfinding role" and do not trigger judicial estoppel. (Internal quotation marks omitted.) *Runge*, 234 Ill. 2d at 133. Therefore, we find no abuse of discretion in the circuit court's refusal to apply that doctrine against the State. See *Seymour v. Collins*, 2015 IL 118432, ¶ 48.

¶ 162 E. The Claimed Inconsistency Between the State's Present Theory and the Jury's Verdicts

¶ 163 Palmer argues that for two reasons the State could not legitimately oppose his amended petition by arguing he failed to prove his innocence of felony murder: (1) the jury acquitted him of burglary and (2) the State never charged him with robbery.

¶ 164 It is true the jury found Palmer "not guilty of residential burglary"—without qualification. The jury did not acquit him, however, of robbery, and contrary to Palmer's assertion, the State did indeed charge him with the predicate felony of robbery (see 720 ILCS 5/2-8, 9-1(a)(3) (West 1998)): That was count IV.

¶ 165 F. Palmer's Assertion That the Circuit Court "Did Not Consider" Various Items of Evidence

¶ 166 Palmer asserts that the circuit court "did not consider" (1) exonerating DNA evidence; (2) Palmer's own assertions of innocence; (3) evidence of an alternative suspect; and (4) evidence that, on the night of the murder, Palmer was not wearing the shoes that subsequently were tested.

¶ 167 "We presume that the trial court considered all of the evidence unless the record indicates the court did not do so." *People v. $280,020 in United States Currency*, 2013 IL App (1st) 111820, ¶ 26. Not only does the record fail to rebut that presumption, but in its order, the circuit court explicitly addressed all four of the items that Palmer claims the court failed to consider. Just because those four items did not persuade the court to grant Palmer's request for a certificate of innocence, it does not follow that the court disregarded those items or failed to consider them.

¶ 168 G. Palmer's Contention That There Is No Proof of a Predicate Felony or of His Guilt by Accountability

¶ 169 In its response to Palmer's amended petition for a certificate of innocence, the State argued that, "[w]eighing the totality of the evidence, it [was] more likely than not that [Palmer] participated in the murder of William Helmbacher, either as an accessory or as a willing participant to an underlying felony that escalated into a violent attack and ultimately a homicide."

¶ 170 Because the State offered no proof that a robbery or burglary was committed on August 27, 1998, or that Palmer elicited Helmbacher's murder or aided or abetted its commission, Palmer argues that "the State did not present evidence to establish each element of the *prima facie* case" and, hence, the court abused its discretion by denying his request for a certificate of innocence.

¶ 171 We must not forget, however, that the ultimate burden of proof, this time, was on Palmer instead of on the State. Palmer had the burden of proving, by a preponderance of the evidence, that he was innocent of Helmbacher's murder. See 735 ILCS 5/2-702(g)(3) (West 2018).

> " 'A party is not required to make plenary proof of a negative averment. It is enough that he introduces such evidence as, in the absence of all counter testimony, will afford reasonable ground for presuming that the [negative] allegation is true; and when this is done, the *onus probandi* will be thrown on his adversary.' " *Upper Salt Fork Drainage District v. DiNovo*, 385 Ill. App. 3d 1083, 1097 (2008) (quoting *Graves v. Bruen*, 11 Ill. 431, 441 (1849)).

Thus, the burden of coming forward with responsive evidence shifted to the State only if Palmer *first* carried his burden of coming forward with evidence reasonably justifying a finding that he did *not* commit felony murder or murder by accountability. See *id.*

¶ 172 Palmer came forward with DNA evidence that reasonably justified a finding that he was not the primary assailant of Helmbacher. At the same time, however, Palmer had to acknowledge, in his amended petition, that upon tearing apart and retesting the Fila tennis shoes, Lu "found three tiny 'pinpoint droplets' of blood inside of the shoes" and that "[s]ubsequent DNA testing of these droplets matched Helmbacher's blood standard." Palmer admitted that these Fila shoes were his own shoes when he argued, in his amended petition, that "[t]he only way that this blood could have appeared on *Mr. Palmer's shoes* is if it was put there." (Emphasis added.)

¶ 173 This admission by Palmer was documentary evidence. In fact, all the evidence in the civil proceeding below was documentary. There was an amended petition for a certificate of innocence, with exhibits attached; a response from the State, with exhibits attached; and Palmer's response to the State's response. And that was it. This was, essentially, a bench trial on paper,

which normally would call for a *de novo* standard of review. See *Schlobohm v. Police Board*, 122 Ill. App. 3d 541, 544 (1984); *Delasky v. Village of Hinsdale*, 109 Ill. App. 3d 976, 980 (1982). The parties are in agreement, however, that the standard of review applicable to this case is the most deferential standard of review recognized by the law (see *In re D.T.*, 212 Ill. 2d 347, 356 (2004)): We should ask whether the denial of a certificate of innocence was an abuse of discretion (see *People v. McClinton*, 2018 IL App (3d) 160648, ¶ 14). Given the presence of Helmbacher's blood on Palmer's shoes and given the problems the State identified in Palmer's trial testimony, we are unconvinced it was *unreasonable* of the circuit court to find Palmer's burden of proof to be uncarried. See *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003) (a trial court abuses its discretion only if no reasonable person could take the trial court's view). It was within the range of reasonableness to find a failure by Palmer to prove he did *not* commit felony murder or murder on a theory of accountability. See *id.*

¶ 174 All that the new DNA evidence tended to prove was that Palmer was not the primary assailant; it lacked any tendency to disprove he was an accomplice to Helmbacher's murder. Bear in mind that Palmer could have been an accomplice only if he was *not* the primary assailant; therefore, disproving he was the primary assailant did not disprove he was an accomplice. People commonly are killed in robberies that go bad. There can be more than one participant in a robbery, and Helmbacher's blood was found in Palmer's shoe.

¶ 175 We acknowledge Palmer's argument that "[t]he [circuit] court gave too much weight to the shoe evidence in view of the suspicious circumstances of the shoes' forensic testing." But the State explained why the shoes were sent back to the crime laboratory for retesting: Initially, the laboratory request sheet called for testing only of the reddish brown stains on the outside of the shoes, and that initial request was contrary to Carlton's wishes; he had wanted the shoes to be

examined and tested more thoroughly. To believe that the police planted Helmbacher's blood on the shoes between the first and second trips to the laboratory, one would have to believe that (1) the police had a separate stash of Helmbacher's blood and (2) the police planted pin-drops of Helmbacher's blood underneath one layer or two layers of material, onto areas of the shoe that, apparently, Lu could access only by tearing the shoe apart. The planting theory would not necessarily convince every reasonable mind. See *id.*

¶ 176 III. CONCLUSION

¶ 177 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 178 Affirmed.

No. 4-19-0148

Cite as:	*People v. Palmer*, 2019 IL App (4th) 190148
Decision Under Review:	Appeal from the Circuit Court of Macon County, No. 99-CF-139; the Hon. Jeffrey S. Geisler, Judge, presiding.
Attorneys for Appellant:	Arthur Loevy, Jon Loevy, Steve Art, Rachel Brady, and Alison Leff, of Loevy & Loevy, of Chicago, for appellant.
Attorneys for Appellee:	Jay Scott, State's Attorney, of Decatur (Patrick Delfino, David J. Robinson, and Luke McNeill, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

No. 125621

IN THE SUPREME COURT OF ILLINOIS

CHARLES PALMER,	)	Appeal from the Appellate
	)	Court, Fourth District,
Petitioner-Appellant,	)	No. 4-19-0148
	)	
	)	There on appeal from the Circuit
v.	)	Court of Macon County, Illinois
	)	No. 99 CF 139,
	)	
PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Defendant-Appellee.	)	

NOTICE OF APPEAL

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Instructions

Check the box to the right if your case involves custody, visitation, or removal of a child.

Just below "Appeal to the Appellate Court of Illinois," enter the number of the appellate district that will hear the appeal and the county of the trial court.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party is filing the appeal ("appellant") and which party is responding to the appeal ("appellee").

To the far right, enter the trial court case number and trial judge's name.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

FILED
MAR 05 2019
LOIS A. DURBIN
CIRCUIT CLERK

APPEAL TO THE APPELLATE COURT OF ILLINOIS

FOURTH **District**

from the Circuit Court of

Macon **County**

In re _____

People of the State of Illinois

Plaintiff/Petitioner *(First, middle, last names)*

☐ **Appellant** ☑ **Appellee**

v.

Charles B. Palmer

Defendant/Respondent *(First, middle, last names)*

☑ **Appellant** ☐ **Appellee**

Trial Court Case No.: 99-CF-139

Honorable Jeffrey S. Geisler

Judge, Presiding

NOTICE OF APPEAL

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2. Name of Each Person Appealing:

Name: Charles B. Palmer
First *Middle* *Last*

☐ Plaintiff-Appellant ☑ Petitioner-Appellant

OR

☐ Defendant-Appellant ☐ Respondent-Appellant

Name: _____
First *Middle* *Last*

☐ Plaintiff-Appellant ☐ Petitioner-Appellant

OR

☐ Defendant-Appellant ☐ Respondent-Appellant

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February 14, 2019
Date

_____
Date

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Date

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4. State your relief:

☑ reverse the trial court's judgment *(change the judgment in favor of the other party into a judgment in your favor)* and ☐ send the case back to the trial court for any hearings that are still required;

☐ vacate the trial court's judgment *(erase the judgment in favor of the other party)* and ☐ send the case back to the trial court for a new hearing and a new judgment;

☐ change the trial court's judgment to say: _____

☐ order the trial court to: _____

☐ other: _____

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/s/ Rachel Brady
Your Signature

Rachel Brady, Attorney for Appellant
Your Name

Loevy & Loevy, 311 N. Abderdeen St., 3rd Floor
Street Address

Chicago, IL 60607
City, State, ZIP

(312) 243-5900
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Name

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In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

   a. To:

   Name: Nichole Kroncke, Assistant State's Attorney for Macon County
   First *Middle* *Last*

   Address: Macon County State's Attorney Office, 253 E Wood St, Decatur, IL 62523
   Street, Apt # *City* *State* *ZIP*

   Email address: nkroncke@sa-macon-il.us

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     _____
     Address of Post Office or Mailbox
   - ☐ Third-party commercial carrier, with delivery paid for at:

     _____
     Name (for example, FedEx or UPS) and office address
   - ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☑ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     _____
     Name of prison or jail

In **1c**, fill in the date and time that you sent the document.

   c. On: 02/26/2019
   Date

   At: 2:45 ☐ a.m. ☑ p.m.
   Time

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:

   a. To:

   Name: Kwame Raoul, Illinois Attorney General
   First *Middle* *Last*

   Address: 100 W. Randolph Street., Chicago, IL 60601
   Street, Apt # *City* *State* *ZIP*

   Email address: _____

   b. By:
   - ☐ Personal hand delivery
   - ☑ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     311 N Aberdeen St, 3rd Fl, Chicago, IL 60607
     Address of Post Office or Mailbox
   - ☐ Third-party commercial carrier, with delivery paid for at:

     _____
     Name (for example, FedEx or UPS) and office address
   - ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☐ Email *(not through an EFM or EFSP)*

Enter the Case Number given by the Appellate Clerk: _____

☐ Mail from a prison or jail at:

_____
Name of prison or jail

c. On: 02/26/2019
Date

At: 2:45 ☐ a.m. ☑ p.m.
Time

In **3**, if you sent the document to more than 2 parties or lawyers, fill in **a**, **b**, and **c**. Otherwise leave **3** blank.

3. I sent this document:

a. To:

Name: _____
First *Middle* *Last*

Address: _____
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:
☐ Personal hand delivery
☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

_____
Address of Post Office or Mailbox

☐ Third-party commercial carrier, with delivery paid for at:

_____
Name (for example, FedEx or UPS) and office address

☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
☐ Email *(not through an EFM or EFSP)*
☐ Mail from a prison or jail at:

_____
Name of prison or jail

If you are serving more than 3 parties or lawyers, fill out and file 1 or more *Additional Proo fo fService* forms with this *Notice o f Appeal*.

c. On: _____
Date

At: _____ ☐ a.m. ☐ p.m.
Time

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the Proof of Service is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

/s/ Rachel Brady
Your Signature

Rachel Brady, Attorney for Appellant
Print Your Name

No. 125621

IN THE SUPREME COURT OF ILLINOIS

CHARLES PALMER,	)	Appeal from the Appellate
	)	Court, Fourth District,
Petitioner-Appellant,	)	No. 4-19-0148
	)	
	)	There on appeal from the Circuit
v.	)	Court of Macon County, Illinois
	)	No. 99 CF 139,
	)	
PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Defendant-Appellee.	)	

STATUTE 735 ILCS 5/2-702

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 5. Code of Civil Procedure (Refs & Annos)
Article II. Civil Practice (Refs & Annos)
Part 7. Action for Declaratory Judgment (Refs & Annos)

735 ILCS 5/2-702

5/2-702. Petition for a certificate of innocence that the petitioner was innocent of all offenses for which he or she was incarcerated

Effective: January 1, 2014
Currentness

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

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

(b) Any person convicted and subsequently imprisoned for one or more felonies by the State of Illinois which he or she did not commit may, under the conditions hereinafter provided, file a petition for certificate of innocence in the circuit court of the county in which the person was convicted. The petition shall request a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated.

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

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

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

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

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

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

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

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

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

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

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

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

(h) If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated. Upon entry of the certificate of innocence or pardon from the Governor stating that such pardon was issued on the ground of innocence of the crime for which he or she was imprisoned, (1) the clerk of the court shall transmit a copy of the certificate of innocence to the clerk of the Court of Claims, together with the claimant's current address; and (2) the court shall enter an order expunging the record of arrest from the official records of the arresting authority and order that the records of the clerk of the circuit court and Department of State Police be sealed until further order of the court upon good cause shown or as otherwise provided herein, and the name of the defendant obliterated from the official index requested to be kept by the circuit court clerk under Section 16 of the Clerks of Courts Act in connection with the arrest and conviction for the offense but the order shall not affect any index issued by the circuit court clerk before the entry of the order. The court shall enter the expungement order regardless of whether the petitioner has prior criminal convictions.

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

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

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

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

Credits

P.A. 82-280, § 2-702, added by P.A. 95-970, § 15, eff. Sept. 22, 2008. Amended by P.A. 96-1550, § 15, eff. July 1, 2011; P.A. 98-133, § 15, eff. Jan. 1, 2014.

Notes of Decisions (29)

735 I.L.C.S. 5/2-702, IL ST CH 735 § 5/2-702
Current through P.A. 101-648. Some statute sections may be more current, see credits for details.

End of Document

No. 125621

IN THE SUPREME COURT OF ILLINOIS

CHARLES PALMER,	)	Appeal from the Appellate
	)	Court, Fourth District,
Petitioner-Appellant,	)	No. 4-19-0148
	)	
	)	There on appeal from the Circuit
v.	)	Court of Macon County, Illinois
	)	No. 99 CF 139,
	)	
PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Defendant-Appellee.	)	

CRIMINAL INFORMATION

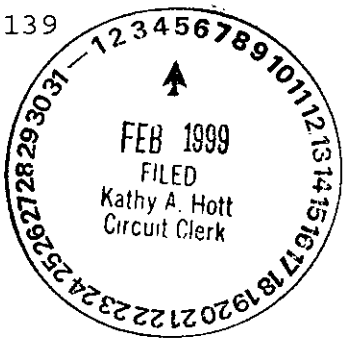
IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
MACON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,

-vs- NO. 99-CF-139

CHARLES B. PALMER
D.O.B. 9-30-54 (M)

Statutes violated: Ch. 720
Section: 5/9-1(a)(1)
Ill. Compiled Stat.



INFORMATION
(Count I)

NOW COME the People of the State of Illinois by the State's Attorney of Macon County and inform this court that on or about August 27, 1998 in the County of Macon, Illinois, the above-named defendant(s) did commit the offense of FIRST DEGREE MURDER, In that the said defendant, without lawful justification and with the intent to kill or do great bodily harm to William Helmbacher, repeatedly struck William Helmbacher on the head, thereby causing the death of William Helmbacher.

_____
STATE'S ATTORNEY OF MACON COUNTY, ILLINOIS

By,_____
first being duly sworn, who states on oath the above matters to be true.

Subscribed and sworn to before me on 2-5-99

SEAL

_____
NOTARY PUBLIC

I hereby waive the right to a preliminary hearing in this cause.

_____Defendant _____Defendant

I hereby waive the right to trial by jury in this cause.

_____Defendant _____Defendant

Date:_____ Bond fixed at $_____

_____
JUDGE

JWA/cj

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
MACON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,

-vs- NO. 99-CF-139

CHARLES B. PALMER

Statutes violated: Ch. 720
Section: 5/9-1(a)(1)
Ill. Compiled Stat.

INFORMATION
(Count II)

NOW COME the People of the State of Illinois by the State's Attorney of Macon County and inform this court that on or about August 27, 1998 in the County of Macon, Illinois, the above-named defendant(s) did commit the offense of FIRST DEGREE MURDER, In that the said defendant, without lawful justification, repeatedly struck William Helmbacher on the head, knowing said act would cause the death of William Helmbacher, thereby causing the death of William Helmbacher.

_____
STATE'S ATTORNEY OF MACON COUNTY, ILLINOIS

By,_____
first being duly sworn, who states on oath the above matters to be true.

Subscribed and sworn to before me on 2-5-99

SEAL

_____
NOTARY PUBLIC

I hereby waive the right to a preliminary hearing in this cause.

_____Defendant _____Defendant

I hereby waive the right to trial by jury in this cause.

_____Defendant _____Defendant

Date:_____ Bond fixed at $_____

_____
JUDGE

JWA/cj

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
MACON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,

-vs- NO. 99-CF-139

CHARLES B. PALMER

Statutes violated: Ch. 720
Section: 5/9-1(a)(2)
Ill. Compiled Stat.

INFORMATION
(Count III)

NOW COME the People of the State of Illinois by the State's Attorney of Macon County and inform this court that on or about August 27, 1998 in the County of Macon, Illinois, the above-named defendant(s) did commit the offense of FIRST DEGREE MURDER, In that the said defendant, without lawful justification, repeatedly struck William Helmbacher in the head, knowing such act created a strong probability of death or great bodily harm to William Helmbacher, thereby causing the death of William Helmbacher.

_____
STATE'S ATTORNEY OF MACON COUNTY, ILLINOIS

By,_____
first being duly sworn, who states on oath the above matters to be true.

Subscribed and sworn to before me on 2-5-99

SEAL

_____
NOTARY PUBLIC

I hereby waive the right to a preliminary hearing in this cause.

_____Defendant _____Defendant

I hereby waive the right to trial by jury in this cause.

_____Defendant _____Defendant

Date:_____ Bond fixed at $_____

_____
JUDGE

JWA/cj

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
MACON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,

-vs- NO. 99-CF-139

CHARLES B. PALMER

Statutes violated: Ch. 720
Section: 5/9-1(a)(3)
Ill. Compiled Stat.

INFORMATION
(Count IV)

NOW COME the People of the State of Illinois by the State's Attorney of Macon County and inform this court that on or about August 27, 1998 in the County of Macon, Illinois, the above-named defendant(s) did commit the offense of FIRST DEGREE MURDER, In that the said defendant, without lawful justification, while committing or a attempting to commit a forcible felony, Robbery, in violation of Illinois Revised Statutes, Chapter 720, Section 5/18-1, repeatedly struck William Helmbacher on the head and thereby caused the death of William Helmbacher.

_____
STATE'S ATTORNEY OF MACON COUNTY, ILLINOIS

By,_____
first being duly sworn, who states on oath the above matters to be true.

Subscribed and sworn to before me on 2-5-99

SEAL

_____
NOTARY PUBLIC

I hereby waive the right to a preliminary hearing in this cause.

_____Defendant _____Defendant

I hereby waive the right to trial by jury in this cause.

_____Defendant _____Defendant

Date:_____ Bond fixed at $_____

_____
JUDGE

JWA/cj

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
MACON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,

-vs- NO. 99-CF-139

CHARLES B. PALMER

Statutes violated: Ch. 720
Section: 5/9-1(a)(3)
Ill. Compiled Stat.

INFORMATION
(Count V)

NOW COME the People of the State of Illinois by the State's Attorney of Macon County and inform this court that on or about August 27, 1998 in the County of Macon, Illinois, the above-named defendant(s) did commit the offense of FIRST DEGREE MURDER, In that the said defendant, without lawful justification, while committing or attempting to commit a forcible felony, Residential Burglary, in violation of Illinois Revised Statutes, Chapter 720, Section 5/19-3, repeatedly struck William Helmbacher on the head and thereby caused the death of William Helmbacher.

_____
STATE'S ATTORNEY OF MACON COUNTY, ILLINOIS

By,_____
first being duly sworn, who states on oath the above matters to be true.

Subscribed and sworn to before me on 2-5-99

SEAL

_____
NOTARY PUBLIC

I hereby waive the right to a preliminary hearing in this cause.

_____Defendant _____Defendant

I hereby waive the right to trial by jury in this cause.

_____Defendant _____Defendant

Date:_____ Bond fixed at $_____

_____
JUDGE

JWA/cj

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
MACON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,

-vs- NO. 99-CF-139

CHARLES B. PALMER

Statutes violated: Ch. 720
Section: 5/19-3 ILCS
FORMERLY: Ch. 38, Sec. 19-3
Ill. Rev. Stat.
a Class 1 crime.

INFORMATION
(Count VI)

NOW COME the People of the State of Illinois by the State's Attorney of Macon County and inform this court that on or about August 26, 1998 in the County of Macon, Illinois, the above-named defendant(s) did commit the offense of RESIDENTIAL BURGLARY, In that the said defendant knowingly, and without authority, entered into the dwelling place of William Helmbacher, located at 301 West Macon Street, Decatur, Macon County, Illinois, with the intent to commit therein a theft.

"OFFICIAL SEAL"
Courtney B. Jacobs
Notary Public, State of Illinois
MY Commission Expires 12/04/2001

Lawrence R. Richter
STATE'S ATTORNEY OF MACON COUNTY, ILLINOIS

By, _____
first being duly sworn, who states on oath the above matters to be true.

Subscribed and sworn to before me on 2-5-99

SEAL

Courtney B. Jacobs
NOTARY PUBLIC

I hereby waive the right to a preliminary hearing in this cause.

_____Defendant _____Defendant

I hereby waive the right to trial by jury in this cause.

_____Defendant _____Defendant

Date:_____ Bond fixed at $_____

_____
JUDGE

JWA/cj

C 39

C.8

99CF 139

WARRANT# _____DPD

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

MACON COUNTY

WARRANT OF ARREST

TO ALL PEACE OFFICERS OF THE STATE OF ILLINOIS:

You are hereby commanded to arrest Charles B. Palmer, B/M, DOB: 09-30-54 and bring him or her without unnecessary delay before the Honorable Tim Steadman Judge of the Circuit Court of the Sixth Judicial Circuit, Macon County, in the courtroom usually occupied by him in the Macon County Courthouse in the City of Decatur, or if he is absent or unable to act, before the nearest or most accessible court in Macon County, to answer a charge made against this person for the offense of:

First Degree Murder.

The amount of bail is $1,000,000.00

ISSUED AT DECATUR (CITY), MACON COUNTY, ILLINOIS, this 28th day of January, 1998.

JUDGE

C 40

C.9

No. 125621

IN THE SUPREME COURT OF ILLINOIS

CHARLES PALMER, Petitioner-Appellant, v. PEOPLE OF THE STATE OF ILLINOIS, Defendant-Appellee.	)))))))))))	Appeal from the Appellate Court, Fourth District, No. 4-19-0148 There on appeal from the Circuit Court of Macon County, Illinois No. 99 CF 139,

TABLE OF CONTENTS TO RECORD ON APPEAL

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-19-0148
	)	Circuit Court No: 1999CF139
	)	Trial Judge: Jeffrey Geisler
v	)	
	)	
	)	
PALMER, CHARLES B	)	
Defendant/Respondent	)	

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-19-0148
	)	Circuit Court No: 1999CF139
	)	Trial Judge: Jeffrey Geisler
v	)	
	)	
	)	
PALMER, CHARLES B	)	
Defendant/Respondent	)	

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-19-0148
	)	Circuit Court No: 1999CF139
	)	Trial Judge: Jeffrey Geisler
v	)	
	)	
	)	
PALMER, CHARLES B	)	
Defendant/Respondent	)	

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-19-0148
	)	Circuit Court No: 1999CF139
	)	Trial Judge: Jeffrey Geisler
v	)	
	)	
	)	
PALMER, CHARLES B	)	
Defendant/Respondent	)	

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-19-0148
	)	Circuit Court No: 1999CF139
	)	Trial Judge: Jeffrey Geisler
v	)	
	)	
	)	
PALMER, CHARLES B	)	
Defendant/Respondent	)	

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-19-0148
	)	Circuit Court No: 1999CF139
	)	Trial Judge: Jeffrey Geisler
v	)	
	)	
	)	
PALMER, CHARLES B	)	
Defendant/Respondent	)	

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-19-0148
	)	Circuit Court No: 1999CF139
	)	Trial Judge: Jeffrey Geisler
v	)	
	)	
	)	
PALMER, CHARLES B	)	
Defendant/Respondent	)	

SUPPLEMENT TO THE EXHIBITS - TABLE OF CONTENTS

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-19-0148
	)	Circuit Court No: 1999CF139
	)	Trial Judge: Jeffrey Geisler
v	)	
	)	
	)	
PALMER, CHARLES B	)	
Defendant/Respondent	)	

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-19-0148
	)	Circuit Court No: 1999CF139
	)	Trial Judge: Jeffrey Geisler
v	)	
	)	
	)	
PALMER, CHARLES B	)	
Defendant/Respondent	)	

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Witness Testimony from Jury Trial

Name of Witness	Direct	Cross	Redirect	Recross
Joanna Helmbacher	R107			
Joseph Moyer	R109	R115		
Brian Cleary	R130	R130	R132	
Jeremy Welker	R132			
Ray Taylor	R134	R162	R175	R176
William McGaughey	R182	R187	R192	
Daniel Sebok	R193			
Mike Callaway	R197	R203	R207	R209
Roger Ryan	R210	R222	R226	R229
Tim Carlton	R232	R244	R251	R253
Roger Morville	R255	R263		
Mark Mills	R264	R279	R284	
Robert Martin	R285	R287		
Travis Hindman	R290	R314	R318	
Jennifer Lu	R321	R338	R343	
Dana Pitchford	R345	R358	R361	
Brian Bell	R366			
Jeremy Welker	R369			
Erma Singleton	R371	R373		
Michael Applegate	R379			
Charles Palmer	R387	R398		
Tim Carlton	R427	R431	R433	