IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff/Respondent,	)	
	)	
vs.	)	No. 60-11-753
	)	
	)	
CHESTER O. WEGER,	)	
	)	
Defendant/Petitioner.	)	

MOTION FOR LEAVE TO FILE SUCCESSIVE POST CONVICTION PETITION

NOW COMES the Defendant-Petitioner CHESTER O. WEGER ("Petitioner"), by his undersigned attorneys, Andrew M. Hale and Celeste S. Stack, and moves this Court for leave to file a successive post-conviction petition based upon actual innocence pursuant to 725 ILCS 5/122-1 et. seq. Petitioner's well-supported claim of actual innocence, as well as related claims concerning violations of Petitioner's constitutional rights, overwhelmingly establish that this conviction lacks validity at every level and violates the "fundamental fairness" required by every Court and in every case litigated in this state. In support of this motion, Petitioner states as follows:

1. An interminable nightmare for Petitioner and his family (who have stood by him from the onset) began in September of 1960, when State's Attorney Harland Warren, Sheriff Ray Eutsey, and Sheriff's Deputies William Dummett and Wayne Hess, began their private, unethical, and shockingly improper campaign to initiate psychological warfare against a young, local man with the specific purpose of extracting a coerced confession. There was absolutely no evidence implicating Petitioner in the horrific triple murder and there was zero evidence of probable cause to detain, arrest, and interrogate Petitioner.

2. These sworn officers of the law eventually succeeded in breaking Petitioner's will after a six-week, multi-faceted campaign of psychological pressure, threats, intimidation, and coercion. The local authorities proceeded to destroy Petitioner's life due to political, constituent, and media pressure.[1] They brought about his wrongful conviction without proper evidence and without good faith. **These assertions are well supported and set out in detail in the attached Successive Petition For Post-Conviction Relief, a copy of which is attached hereto as Exhibit A.**

3. After Petitioner's criminal trial, these same men, as well as Stephen J. Kindig, the privately employed polygraph examiner from John Reid & Associates, collected substantial monetary rewards for their misdeeds.[2]

4. The new, conclusive evidence in the attached successive petition unequivocally demonstrates that this matter cannot be summarily dismissed but must be litigated under the Post-Conviction Act which specifically requires such litigation.

5. The extensive new evidence presented, combined with the governing legal principles set forth below, demand that Petitioner's claims be further explored.

FACTUAL OVERVIEW

6. In November of 1960, Petitioner was arrested, without probable cause, after a long intentional campaign of intimidation and coercion by State's Attorney Warren and Sheriff's Deputies Dummett and Hess, who initiated the campaign without the inclusion or knowledge of the Illinois State Police who had been investigating the case since the women's bodies were discovered in St. Louis Canyon.

[1] Both Warren and Eutsey were up for re-election, were well-aware that their constituents were unhappy, and both lost their re-election bids.

[2] William Morris, Chief of the Illinois State Police, testified at trial that state agents were forbidden to accept monetary rewards. (Trial record at p. 8441.)

7. It took nearly two months (between September and November of 1960) for the local crew to finally break Petitioner's will and coerce his confession. No doubt they were surprised that this young dishwasher with a ninth-grade education was able to withstand their combined, escalating, and outrageous efforts to make him confess.

8. Petitioner's resulting "confession" was illogical, contradicted the physical evidence, and failed to elicit any legitimate motive.

9. As to any corroborating evidence (legally required where confessions are the basis of the prosecution), tellingly:

a. there were no eyewitnesses linking Petitioner to the murders;

b. there were no witnesses placing Petitioner in St. Louis Canyon when the crimes occurred;

c. nothing, including jewelry and watches, was taken from the victims, despite robbery being the alleged motive in the alleged confession;

d. no ties to, or interactions between, the victims and Petitioner existed.

e. no history of problems between lodge guests and Petitioner during his tenure as a Lodge employee.

10. These are, sadly, simply a few highlights of the many glaring faults and problems present in a prosecution that should never have occurred, which was unconstitutional at the time, and would not survive in any court today.

11. Present and previous attempts to review this case have been persistently barred by the State's refusal to produce any discovery or to allow the inspection of the physical evidence, first denied to defense counsel John McNamara, who in 1961 was defending his client against the death penalty.

12. Many of the case files, reports, witness statements, lab reports and other important records were apparently destroyed, lost, and/or improperly and secretly disseminated to civilians with ties to the State.

13. This Court, by presiding over the recent litigation under 725 ILCS 5/116-3, is fully aware of the persistent misconduct in the failure to protect the integrity of the evidence.

14. The right to inspect the evidence in order to present a defense via the Sixth Amendment has been repeatedly, unilaterally, and improperly denied by authorities who failed to impound evidence, handed it out as souvenirs, destroyed it and commingled important evidence, destroying its potential exculpatory value.

15. There have been obvious and inherent difficulties in examining a 60-year-old case where the witnesses and primary officers are long deceased and cannot be questioned or confronted. Many important case files, and items of important physical evidence, are missing, presumably destroyed, and gone forever.

16. Despite this, there is overwhelming and extensive new evidence, attached to the successive petition, which constitutes new, conclusive evidence that Petitioner is truly and actually innocent.

17. Additionally, the successive petition explores the myriad violations of constitutional rights that did and do exist and demonstrates that Petitioner's conviction is legally invalid and unworthy of confidence.

18. None of these obstacles are the fault of Petitioner.

19. Despite Petitioner's steadfast protestations of his innocence for over six decades, Petitioner was barred from exploring, or even asserting, his innocence until 1996, as post-conviction innocence claims and post-conviction genetic testing did not exist until 1996. *People v. Washington*, 171 Ill.2d 475, 216 Ill.Dec. 773, 665 N.E.2d 1330 (1996)(*725/5-116-3)(effective January 1, 1998).*

20. By 1998, most of the primary officials, officers, and witnesses were deceased and

the physical evidence had been mishandled, destroyed, lost and/or contaminated, and case files were lost, destroyed, and/or in the possession of civilian friends and family of the initial prosecutors.

21. As this Court is aware, in 2004, Petitioner's appointed counsel filed a motion for genetic testing and requested discovery but later, inexplicably, withdrew all filings. Petitioner's appointed counsel in 2004 inaccurately represented to the court that slides were broken, open, and loose, yet experts from Microtrace (Drs. Skip and Chris Palenik) and counsel for both sides saw no evidence of this over the two full days of expert examination or in the 2000+ photos taken of the physical evidence.[3]

22. Petitioner's prior counsel abandoned Petitioner's request for forensic testing and failed to pursue related matters.

23. Again, Petitioner is, and always has been, required to rely on the advice of his counsel.

PROCEDURAL HISTORY

24. In Petitioner's direct appeal, the primary issue raised was the trial court's use of an improper standard in determining that the confessions were voluntary and admissible. The Illinois Supreme Court agreed that the trial court *erred* in applying the wrong standard, but instead of remanding the case, the high court took it upon itself to apply what was then considered the correct standard and then determined the confessions were voluntary based solely upon the cold record. *People v. Weger*, 25 Ill.2d 370 (1962).

25. Other issues were raised but were denied in the opinion's closing, via a few

[3] It is noteworthy that in the State's pleading filed after Microtrace's 2021 evidence inventory and examination, the State never adopted or attempted to support the description of the evidence by 2004 defense counsel, despite objecting to testing based solely on the wholly refuted claim that the chain of custody had been broken.

conclusory paragraphs. Appellate issues that are still viable and relevant today are addressed in the attached petition.

26. In 1967, a post-conviction petition was filed and litigated concerning the extensive pretrial publicity, leaks to the media, and the resulting prejudice to Petitioner's ability to receive a fair trial. The trial court dismissed it, and the dismissal was affirmed by the reviewing court.

27. A federal *habeas corpus* petition was filed on similar grounds and dismissed on motion. The federal district court noted, however, that the extensive pretrial publicity was likely prejudicial, but defense trial counsel failed to request a change of venue or take other steps to remedy the prejudice. *United States ex rel. Weger v. Brierton*, 414 F. Supp. 1150 (N.D. Ill. 1976).

28. In 1997, Petitioner filed a *pro se* pleading alternatively entitled "Motion to Amend Mittimus," also calling it a post-conviction petition under 725 ILCS 5/122-1 and a petition to vacate under 735 ILCS 2/1401. Petitioner complained that he only should have served 11 years, as he was promised during his interrogation.

29. Eventually, counsel was appointed and an amended post-conviction petition raising an *Apprendi*[4] issue was filed, partially litigated (key witnesses did not testify), and denied by the trial court.

30. On appeal, appointed defense counsel filed a motion to dismiss the appeal under *Pennsylvania v. Finley*, 481 U.S. 551 (1987), which was granted in a brief Rule 23 order. *Apprendi* was eventually determined by the Illinois Supreme Court not to be retroactive and, therefore, inapplicable to Petitioner's case.

31. In 2004, appointed defense counsel filed a motion for genetic testing and discovery motions, but withdrew the filings based, apparently, upon the inaccurate belief that the physical

[4] *Apprendi* requires that special facts that increase a sentence require a specific finding by the jury via verdict form and instruction, that the aggravating fact exists and has been proven beyond a reasonable doubt.

evidence was unsuitable for testing due to evidence slides being broken, open, and scattered in boxes.

32. In 2020, Petitioner's current defense counsel filed a motion for forensic testing and after extensive litigation, the belief of 2004 defense counsel (that forensic testing was impossible) was negated by the detailed inventory and examination conducted by Microtrace over the course of two full days in 2021. The 2021 evidence inspection was conducted pursuant to order of this Court.

33. The 2020 motion for forensic testing was eventually granted, and selected items of evidence were sent to Bode Technology, a private genetics lab that conducted certain types of genetic testing (designed for old evidence and rootless hair shafts) that, to date, the Illinois State Police Lab *does not perform*.

34. In addition, defense counsel has filed motions and attempted to procure discovery and exculpatory materials that were denied Petitioner's trial counsel repeatedly in 1960 and 1961.

35. Based upon years of investigation, genetic testing, newly received discovery materials, and expert review of the case and available materials, Petitioner has filed the attached Successive Petition for Post-Conviction Review based upon actual innocence.

STATUTORY AND PRECEDENTIAL LAW APPLICABLE TO MOTIONS FOR LEAVE TO FILE SUCCESSIVE PETITIONS

36. The state supreme court recently clarified the proper standard and necessary steps for this Court to determine whether leave to proceed with this successive post-conviction petition must be granted. Since post-conviction claims of actual innocence were first allowed in 1996 under *People v. Washington*, 171 Ill.2d 475, 216 Ill. Dec. 773, 665 N.E.2d 1330 (1996), these laws have been refined, rendering older definitions inapplicable.

37. The Post-Conviction Hearing Act (the "Act") provides a remedy for convicted

criminal defendants to assert that "in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both." 725 ILCS 5/122-1(a)(1) (West 2018).

38. The Act contemplates the filing of only one postconviction petition. *Id.* §§ 122-1(f), 122-3. However, exceptions exist allowing successive petitions in order to avoid fundamental miscarriages of justice and fairness. *People v. Edwards*, 2012 IL 111711, ¶ 22d, 360 Ill. Dec. 784, 969 N.E.2d 829.

39. Successive actual innocence claims are allowed under [t]he "fundamental miscarriage of justice" exception. See *Pitsonbarger*, 205 Ill. 2d 444, 459, 275 Ill. Dec. 838, 793 N.E.2d 609 (2002).

40. This exception is not unique to Illinois. The United States Supreme Court has stated that the exception serves "as an additional safeguard against compelling an innocent man to suffer an unconstitutional loss of liberty [citation omitted], guaranteeing that the ends of justice will be served in full." (Internal quotation marks omitted) *Szabo*, 186 Ill. 2d at 43 (Freeman, C.J., specially concurring, joined by Heiple, J.) (quoting *McCleskey v. Zant*, 499 U.S. 467, 495, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991)).

41. In order to demonstrate a miscarriage of justice to excuse the application of the procedural bar, a petitioner must show actual innocence. See *Pitsonbarger*, 205 Ill.2d at 459; *Sawyer v. Whitley*, 505 U.S. 333 (1992); *People v. Edwards*, 2012 IL 111711, ¶ 23.

42. The first stage for filing a successive petition is a motion to file a successive petition with the successive petition based upon a claim of actual innocence attached for this Court's review. *Coleman*, 2013 IL 113307, ¶ 83, 374 Ill. Dec. 922, 996 N.E.2d 617.

43. A claim of actual innocence under the Act can be filed at any time and there are

no time limits per the explicit language of the Act via legislative enactment. 725 ILCS 5/122-1, et seq.

44. "To establish a claim of actual innocence, the supporting evidence must be (1) newly discovered, (2) material and not cumulative, and (3) of such a conclusive character that it would probably change the result on retrial." *People v. Robinson*, 2020 IL 123849, ¶ 47, 450 Ill. Dec. 37, 181 N.E.3d 37. "Newly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence." *Id.* "Evidence is material if it is relevant and probative of the petitioner's innocence." *Id.* "Noncumulative evidence adds to the information that the fact finder heard at trial." *Id.* "Lastly, the conclusive character element refers to evidence that, when considered along with the trial evidence, would probably lead to a different result on retrial." *Id.*

45. At this initial stage of a successive, actual innocence-based petition, the Court makes an independent determination *without input from the State, argument of the parties, or any other adversarial proceedings. People v. Bailey*, 2017 IL 121450, 421 Ill. Dec. 833, 102 N.E.3d 114 (emphasis added).

46. The showing required for leave to file a successive petition is *more lenient* than the standards applicable at the *second or third stages* that follow. *People v. Robinson*, 2020 IL 123849, ¶ 43.

47. Also, at this initial stage, *no credibility and/or other evidentiary determinations are to be made. Robinson*, 2020 IL 123849 *Id.*

48. At this stage, the Court conducts an independent review of the petition's claims alone, with no input from the parties, with no further filings (other than this motion and the attached Successive Petition), and with no argument by either party.

49. The Illinois Supreme Court has recently held that "questions regarding the admissibility and reliability of such evidence *are not relevant* considerations *at the motion for leave to file stage of a successive postconviction proceeding*." *People v. Robinson*, 2020 IL 123849, ¶ 81.

50. Additionally, the Illinois Rules of Evidence do not apply, at all, to any stage of post-conviction litigation. (See Illinois Rule of Evidence 1101(b)(3)(eff. Sept. 17, 2019) which specifically provides that the rules of evidence do not apply to postconviction hearings), *People v. Robinson*, 2020 IL 123849, ¶ 78.

51. "Probability, rather than certainty, is the key in considering whether the fact finder would reach a different result after considering the prior evidence along with the new evidence." *Robinson, Id.* ¶ 48. "The conclusive character evidence is the most important element of an actual innocence claim." *Id.* ¶ 47. *People v. Poole*, 2022 IL App (4th) 210347, ¶ 79.

52. In *Robinson*, the defendant filed a motion for leave to file a successive postconviction petition, alleging actual innocence. *Id.* ¶ 21. The defendant claimed he had no involvement in the murder for which he was convicted and that Tucker, a fellow gang member, had committed the murder. *Id.* ¶¶ 21-23. In support of the petition, the defendant attached affidavits from multiple witnesses who observed Tucker in the vicinity of the murder on the night in question, holding an "A.K.," and another who averred that Tucker had confessed to the killing. *Id.* ¶¶ 25, 28.

53. The *Robinson* trial court determined that the affidavits were newly discovered and material evidence; however, they did not totally vindicate or exonerate the defendant. *Id.* ¶ 30. The trial court denied the defendant's request for leave to file a successive postconviction petition, and the appellate court affirmed. *Id.* ¶¶ 30, 33.

54. The *Robinson* Court first reiterated the elements of an innocence claim, stating:

> "To establish a claim of actual innocence, the supporting evidence must be (1) newly discovered, (2) material and not cumulative, and (3) of such a conclusive character that it would probably change the result on retrial." *People v. Robinson*, 2020 IL 123849, ¶ 47, 450 Ill. Dec. 37, 181 N.E.3d 37. "Newly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence." *Id.* "Evidence is material if it is relevant and probative of the petitioner's innocence." *Id.* "Noncumulative evidence adds to the information that the fact finder heard at trial." *Id.* "Lastly, the conclusive character element refers to evidence that, when considered along with the trial evidence, would probably lead to a different result on retrial." *Id.* "Probability, rather than certainty, is the key in considering whether the fact finder would reach a different result after considering the prior evidence along with the new evidence." *Id.* ¶ 48. "The conclusive character evidence is the most important element of an actual innocence claim." *Id.* ¶ 47. See, also, *People v. Poole*, 2022 IL App (4th) 210347, ¶ 79.

55. The *Robinson* Court held that both the trial and appellate court had erroneously applied the incorrect standard, requiring evidence of total vindication or exoneration to support a claim of actual innocence. *Id.* ¶ 55. In reversing the lower courts, the supreme court held that "a standard that requires evidence of total vindication or exoneration to support a claim of actual innocence" is incorrect. *Id.*

56. The *Robinson* court held that new evidence may be conclusive even if it does not completely exonerate defendant (*id.* ¶ 48) and further, it requires only that the defendant present evidence that places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt. *(Id. ¶ 56).*

57. The *Robinson* Court's reversal noted the new evidence would probably change the outcome of the trial, considering that "no physical or forensic evidence linked the defendant to the crimes, and no eyewitnesses identified him as being involved or even present at the time of the relevant events*." Id.* at ¶ 80. This was true, despite the petitioner's seventy page-court-reported confession to a prosecutor.

58. Here, the new evidence presented would most definitely probably change the trial result, as it is simply overwhelming.

59. The State's case was based on confessions that simply should never have occurred given the numerous constitutional violations and the outrageous coercion that produced them.

60. In Illinois, one may not be convicted based solely on a confession and confessions must be corroborated.

61. In this trial, the alleged corroboration was highly attenuated and weak, failing conclusively to tie Petitioner to the crimes. The new evidence provided demonstrates that not only are the confessions invalid, but the alleged corroboration was either false or incredible and is impeached.

62. The successive petition overwhelmingly meets the low, plenary standard and must be docketed for further proceedings.

63. Petitioner has steadfastly maintained his innocence for 62 years and to deny him this single, undoubtedly final opportunity to demonstrate his innocence violates every principle and the basic underpinnings of our entire criminal justice system.

64. If the present motion for leave to file is granted, the attached successive petition is docketed for second-stage proceedings where the State will have the opportunity to file a motion to dismiss or an answer, or a combination of both where multiple issues are brought. *People v. Sanders*, 2016 IL 118123, ¶¶ 25-28, 37.

65. This Honorable Court's review of the attached Successive Petition will demonstrate that the claim of actual innocence is also overwhelmingly supported and should be docketed for second stage proceedings.

66. At the second stage, the State will respond by either moving to dismiss, filing an

answer (thus agreeing to an evidentiary hearing), or perhaps that State will, at long last, vacate Petitioner's conviction.

67. As a brief preview, the successive petition contains new genetic evidence that excludes Petitioner and overwhelmingly negates the physical evidence used to wrongfully convict him.

68. Also attached are expert reports by nationally recognized authorities that reveal new, conclusive, exculpatory evidence too voluminous to be summarized here. These experts set out new, conclusive evidence of Petitioner's innocence supported by extensive studies and other evidence.

69. To deny Petitioner the right to have this new evidence reviewed in depth by the Court via the post-conviction litigation process would only delay justice and would clearly contradict the standards set out above in recent Illinois Supreme Court opinions.

70. "Justice delayed is justice denied" is a quote usually attributed to William Gladstone, a British prime minister in the mid-1800's, but it is a maxim seen in the Bible, the Magna Carta, and other ancient texts.

71. It is time to finally open this matter to the truth-seeking process of litigation that is specifically created to review claims of wrongful conviction and specifically intended to open, scrutinize, and reveal Petitioner's incredibly long-standing assertion of wrongful conviction.

WHEREFORE, Petitioner Chester O. Weger, respectfully requests that this Honorable Court grant him leave to file this Successive Post-Conviction Petition based upon actual innocence and move the case forward to the second stage where adversarial proceedings may begin.

Respectfully submitted,

/s/ Andrew M. Hale
One of the Attorneys for Petitioner Chester O. Weger

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	**)**	
Respondent,	**)**	
	)	
vs.	**)**	**No. 60-11-753**
	)	
	)	
CHESTER WEGER,	**)**	
Petitioner.	**)**	

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that on February 17, 2023 copies of ***Defendant's Motion for Leave to File Successive Post-Conviction Petition*** and corresponding ***Notice of Filing/Notice of Hearing*** thereof, have been served via electronic mail, to all parties indicated below to the addresses delineated herein, as follows:

ASA Colleen M. Griffin
ASA Christopher Koch
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Exhibit A

IN THE THIRTEENTH JUDICIAL CIRCUIT
CIRCUIT COURT OF LASALLE COUNTY, ILLINOIS,
CRIMINAL DIVISION

People of the State of Illinois,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	No. 60-CF-00753
	)	
Chester O. Weger,	)	
	)	
Defendant-Petitioner.	)	

SUCCESSIVE PETITION FOR POST-CONVICTION RELIEF

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CASES

RULES

NOW COMES the Defendant-Petitioner CHESTER O. WEGER ("Chester" or "Petitioner"), by his undersigned attorneys, and files this Successive Petition For Post-Conviction Relief ("Petition"), based upon actual innocence pursuant to 725 ILCS 5/122-1 et. seq. In support of this Petition, Petitioner states as follows:

INTRODUCTION

1. Chester Weger's arrest and conviction for the Starved Rock murders, and his subsequent incarceration for over six decades, is one of the most outrageous and heartbreaking acts of injustice imaginable. As demonstrated below, there was no evidence linking Chester to the horrific triple murder. But, there was an abundance of exculpatory evidence, and evidence pointing to the real killers, that law enforcement and prosecutors intentionally chose to ignore. After spending over half a century behind bars for a crime he did not commit, it's truly a miracle that Chester is still alive, soon to be eighty-four years old. He awaits justice. This Petition should be promptly docketed for second-stage proceedings.

LEGAL STANDARD

2. The Post-Conviction Hearing Act provides a statutory remedy to criminal defendants who assert claims for substantial violations of their constitutional rights at trial. *People v. Edwards*, 2012 IL 111711, ¶ 21, 360 Ill. Dec. 784, 969 N.E.2d 829.

3. Although the Act contemplates only one postconviction proceeding, the bar against successive petitions will be relaxed when the petitioner asserts a fundamental miscarriage of justice based on actual innocence. *Edwards*, 2012 IL 111711, ¶ 23, 360 Ill. Dec. 784, 969 N.E.2d 829, citing *People v. Pitsonbarger*, 205 Ill.2d at 445, 275 Ill. Dec. 838, 793 N.E.2d 609, and *People v. Ortiz*, 235 Ill.2d 319, 336 Ill. Dec. 16, 919 N.E.2d 941 (2009).

4. "A request for leave to file a successive petition should be denied only where it is

clear from a review of the petition and supporting documentation that, as a matter of law, the petition cannot set forth a colorable claim of actual innocence." *People v. Robinson*, 2020 IL 123849, ¶ 44, 181 N.E.3d 37, 450 Ill. Dec. 37, citing *People v. Sanders*, 2016 IL 118123, ¶ 24, 399 Ill. Dec. 732, 47 N.E.3d 237, and *Edwards*, 2012 IL 111711, ¶ 24.

5. "Accordingly, leave of court should be granted where the petitioner's supporting documentation raises the probability that it is more likely than not that no reasonable juror would have convicted the petitioner in light of the new evidence." *Id.*

6. "At the pleading stage of postconviction proceedings, all well-pleaded allegations in the petition and supporting affidavits that are not positively rebutted by the trial record are to be taken as true." *Pitsonbarger*, 205 Ill.2d at 455.

7. "In deciding the legal sufficiency of a postconviction petition, the court is precluded from making factual and credibility determinations." *Sanders*, 2016 IL 118123, ¶ 42.

8. "To establish a claim of actual innocence, the supporting evidence must be (1) newly discovered, (2) material and not cumulative, and (3) of such a conclusive character that it would *probably* change the result on retrial." *People v. Robinson*, 2020 IL 123849, ¶ 47 (emphasis added).

9. "Newly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence." *Id.*

10. "Evidence is material if it is relevant and probative of the petitioner's innocence." *Id.*

11. "Noncumulative evidence adds to the information that the fact finder heard at trial." *Id.*

12. "Lastly, the conclusive character element refers to evidence that, when considered

along with the trial evidence, would probably lead to a different result." *Id.*

13. As the *Robinson* court explained, "[u]ltimately, the question is whether the evidence supporting the postconviction petition places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt." *Robinson*, 2020 IL 123849, ¶ 48, citing *Coleman*, 2013 IL 113307, ¶ 97, 374 Ill. Dec. 922, 966 N.E.2d 617.

14. "The new evidence need not be entirely dispositive to be likely to alter the result on retrial." *Robinson*, 2020 IL 123849, ¶48, citing *Coleman*, ¶97, and *People v. Davis*, 2012 IL App (4^{th}) 110305, ¶¶ 62-64.

15. "Probability, rather than certainty, is the key in considering whether the fact finder would reach a different result after considering the prior evidence along with the new evidence." *Robinson*, 2020 IL 123849, ¶ 48.

16. It must also be noted that Illinois Rule of Evidence 1101(b)(3)(eff. Sept. 17, 2019), specifically provides that the rules of evidence do not apply to postconviction hearings. *Robinson*, 2020 IL 123849, ¶¶ 78-80.

17. "If leave to file is granted, a successive petition is docketed for second-stage proceedings, at which the petitioner must make a substantial showing of actual innocence to warrant an evidentiary hearing." *Sanders*, 2016 IL 118123, ¶¶ 25-28, 37.

18. The *Robinson* court reversed the lower courts' dismissal of a successive innocence petition where the defendant was convicted by a jury based upon a seventy-page court-reported confession. In his successive innocence petition, the *Robinson* defendant supplied two alibi affidavits and an explanation why he gave the false confession. The trial court dismissed Robinson's innocence petition at the first stage and the Illinois Supreme Court reversed and remanded.

19. The *Robinson* court held the new evidence would probably change the outcome of the trial, considering that *"no physical or forensic evidence linked the defendant to the crimes, and no eyewitnesses identified him as being involved or even present at the time of the relevant events." Id.* at ¶ 80 (emphasis added).

20. The same is true here, as there is no physical evidence connecting Chester Weger to the crimes and there were no eyewitnesses. Here, the State withheld exculpatory evidence as demonstrated both by the State's own admission in its written objection to the defense's pretrial request for discovery and in the new, exculpatory evidence set out below.

21. The *Robinson* opinion instructs that the focus is on the State's trial evidence and the effect that the new evidence has on that trial evidence and whether the result of the trial would *probably* have been different if the jury had heard and considered the new defense evidence. *Robinson,* 2020 IL 123849, ¶ 47 (emphasis added).

22. Petitioner has no duty to offer alternative suspects or to "solve" the case in order to obtain relief.

23. Unless a criminal defendant is relying on a statutory affirmative defense, the State possesses the burden of proof.

24. The State's theory of guilt at trial cannot be changed in an attempt to explain away or negate the new evidence. "[T]he uniformly recognized purpose of the [judicial estoppel] 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, 396 Ill. Dec. 135, 39 N.E.3d 961.

25. Another inquiry applied is whether the record positively rebuts the new evidence of innocence. The Illinois Supreme Court held that "[t]o be "positively rebutted," it must be "clear

from the trial record that no fact finder could ever accept the truth of that evidence, such as where it is affirmatively and incontestably demonstrated to be false or impossible." *Robinson*, 2020 IL 123849, ¶ 60.

26. Therefore, the review of the State's trial evidence and how it would be impacted by the new evidence is the factual focus of the review.

THE CRIME

27. On March 14. 1960, Frances Murphy, Mildred Lindquist, and Lillian Oetting, three middle-aged women from suburban Chicago and guests at the Starved Rock Lodge, had lunch and then left the Lodge for a hike in beautiful Starved Rock State Park. They were found dead two days later in a shallow cave in St. Louis Canyon. They had been brutally beaten about the head, and some of their clothing had been removed, exposing the lower portions of their bodies.

28. Eight months later, Chester Weger, a twenty-one-year-old dishwasher at the Starved Rock Lodge was arrested and wound up confessing to the crimes. Just a few months later he was tried and convicted and sentenced to life in prison.

THE CRIMINAL TRIAL

29. The State elected to proceed to trial only as to the murder of Lillian Oetting.[1]

30. Defense counsel had less than two months to prepare, had no discovery, was not allowed to view the evidence, was not given notice of the State's experts, had no co-counsel or other assistance, and was defending his client in a capital case.

31. The trial testimony began with Lodge employees detailing the women's arrival,

[1] At a Illinois Continuing Legal Education Seminar on Law & The Media in 2010 that focused on the Starved Rock Murders, former prosecutor Anthony Raccuglia admitted that Petitioner was only tried for the murder of Lillian Oetting because the State was concerned that Petitioner's confession would be barred as involuntary and Petitioner could be acquitted. As Mr. Raccuglia explained, if that were to happen, the State wanted to be able to try Petitioner again for the murders of Frances Murphy and/or Mildred Lindquist.

check-in, and lunch at the dining room. The women went for a hike and were last seen leaving the Lodge grounds between 1:30 and 2:00 p.m.

32. When the women's families did not hear from the women, they contacted the Lodge. By the evening of March 15th, concern had grown but the area was hit with a heavy snowfall and the searches did not begin until the following day.

33. Witnesses described the search, the weather conditions, and the discovery of the women's bodies in a small, shallow cave in St. Louis Canyon, which was located four-to-five feet up a canyon wall.

34. Photos of the crime scene were entered into evidence showing that the lower garments of the women had been pulled off and the women's bodies had been staged or displayed.

35. The injuries were horrific. The women's skulls had been crushed. Their faces were beaten beyond recognition.

36. Officers testified as to the details of the crime scene. A camera, a pair of binoculars, and a frozen log were lying nearby and had blood smears on them. Testimony demonstrated the officers and others took great care to package and protect the evidence.

37. Testimony showed the women were taken to a local funeral home and their twine bindings and clothing were processed. Autopsies were conducted. The women died due to the devastating head injuries and the fatal, related damage.

38. There was no evidence that the women had been raped.

39. Testimony was elicited regarding the type of twine used in the Lodge's kitchen, where it was purchased, and manufactured.

40. Several Lodge employees testified that Petitioner had bruises and scratches on his face, but the descriptions and time frame varied.

41. The testimony then focused on the time period approximately six months after the murders.

42. Testimony briefly touched upon the surveillance conducted of Petitioner but focused primarily on the night of Petitioner's arrest when he was taken into custody and later taken to the courthouse that evening.

43. The State's case continued with testimony of Petitioner's court-reported confession, finally achieved in the early morning hours of November 17, 1960, at approximately 2:00 a.m.

44. The State's case ended with testimony from a local, amateur pilot who testified that he believed he reserved and flew a small, red and white plane on the afternoon of March 14, 1960.

45. The defense case initially presented Nicolas Spiros who posted a $5000 reward for information leading to a conviction and was aware that there was another $30,000 reward offered from Chicago but Mr. Spiros did not know the details.

46. The defense then presented Lodge employees who did not see any injury to Petitioner's face or whose timing did not corroborate the State's theory.

47. William Morris, the Superintendent of the Illinois State Police, testified that Illinois State Police agents were not allowed to accept rewards.

48. Mr. Morris further testified that Petitioner served the Illinois State Police task force with coffee during the initial weeks of the investigation and that he fully cooperated with all requests.

49. Illinois State Police agents testified that all male Lodge employees were interrogated and subjected to polygraph exams. Petitioner was not singled out in any way.

50. Petitioner's jacket was examined and returned by the Illinois State Police task force,

but Deputy Hess testified that they seized the jacket again after their trip to John Reid & Associates offices in Chicago.

51. Illinois State Police agents testified about their surveillance of Petitioner.

52. Illinois State Police Sergeant Hall testified that he, along with Petitioner and others, examined St. Louis Canyon and crime scene area and Petitioner showed them an area of accessibility behind the cave and waterfall.

53. Stanley Tucker testified he was a busboy at the Lodge and that while he was friends with Petitioner, he could not remember seeing Petitioner the week of the murders. Tucker and Petitioner would go into the town of Utica on occasion but, again, he could not remember anything about the relevant week although he thought Petitioner had a black eye around that time.

54. A local truck driver testified that he saw a gray 1953 Oldsmobile in the St. Louis Canyon parking lot on the afternoon of the crimes.

55. The LaSalle County Auditor testified that Sheriff's Deputy William Dummett received over $1400 as compensation for taking photos of the crime scene. Dummett had testified on direct examination to receiving substantially less money.

56. Sheriff's Deputy Wayne Hess testified that in late September they again seized Petitioner's fringed jacket, as well as a cloth jacket, pieces of string, paint covered shoes, and a green Army fatigue Jacket. Hess gave the items to Deputy Dummett but did not know what Dummett did with the items.

57. Petitioner testified, first giving a brief biography, history of his employment, his Marine Corps service, and a description of his family.

58. Petitioner further testified that on the afternoon of March 14, 1960, he had a break between shifts from 3:00 p.m. to 5:00 p.m. and that he remained at the Lodge, wrote a letter, and

played pinball in the Pow Wow Room bar which was closed to the public that afternoon.

59. Petitioner further testified that he added coal to the furnace and washed up in an employee bathroom where he shaved off his sideburns and cut his face with a dull razor blade. He also bent down to retrieve a dropped item and struck his face on the medicine cabinet when he straightened up.

60. Petitioner testified that he worked the same 7:00 a.m. to 8:00 p.m. shift on Tuesday, March 15th and had Wednesday off.

61. Petitioner testified that on Thursday, March 16th, he was questioned after breakfast, as were other Lodge employees.

62. Petitioner testified that during the following week, Lodge employees were questioned again. On Thursday of the following week, the officers entered the Lodge kitchen and asked if the employees knew of a shortcut or alternate entry into St. Louis Canyon.

63. Petitioner testified that he responded affirmatively and that on Saturday he was taken into the park with Illinois State Police Sergeant Hall and a game warden. The three men walked through the park, including the area outside the cave where the women were found. Some of the evidence markers were still present on tags stuck in the ground.

64. Petitioner testified that Sergeant Hall instructed Petitioner not to tell anyone what they had seen or discussed on their trip to the canyon.

65. Petitioner described interrogations in April by the Illinois State Police task force and his polygraph examinations.

66. Petitioner testified that his fringed jacket was examined by the Illinois State Police Laboratory and then returned to him.

67. Petitioner testified regarding his interrogation in November.

68. Petitioner described being served with warrants for the three murders.

69. Petitioner testified he was told of the charges of two additional felony crimes, split into three different cases, that his situation was extremely dire, and not only would he never be with his family again, but his family would suffer greatly if he did not confess.

70. Petitioner testified regarding the circumstances that lead to him providing a confession at approximately 2:00 a.m.

71. The defense case closed with Assistant State's Attorney Craig Armstrong testifying regarding Deputy Dummett's death penalty threats to Petitioner on the drive home from Chicago on September 27, 1960. Deputy Dummett had denied making any such threats during his testimony.

72. In the State's rebuttal, over the defense objection that the State's evidence was not "rebutting" the defense evidence, the State re-introduced the confession testimony through several witnesses.

73. State's Attorney Harland Warren testified to being present at an interrogation at a cabin in September and to being present at John Reid's Chicago office for Petitioner's interrogation and polygraph session.

74. State's Attorney Warren also testified to his participation in determining whether Petitioner was entitled to appointed counsel after the murder warrants issued and Petitioner requested a preliminary hearing.

75. Polygraph examiner Stephen Kindig testified to conducting the polygraph exams of Petitioner in September, first at a Lodge cabin and later at John Reid's Chicago office.

76. A Department of Conservation employee testified to being present when Sergeant Hall and Petitioner walked through St. Louis Canyon in late March.

77. Donald Cila, a guard at the LaSalle County Jail, testified Petitioner made an inculpatory statement to him.

78. The State called Illinois State Police agents Lowthrup and Raisens to deny Petitioner's testimony that he was shown scene photographs during interrogations by the Illinois State Police.

79. The State also called James Christianson, then an investigator for the Sheriff of Sangamon County, and formerly employed by Illinois State Police in 1960, who testified that he was present for one of the Illinois State Police's interrogations of Petitioner.

80. Polygraph examiner John Reid testified and denied making any threats or promises to Petitioner.

81. Julius Corsini testified that he managed the Ottawa Airport and that Homer Charbonneau rented a plane on March 14, 1960 and that the pilot intended to fly over St Louis Canyon.

82. The State then rested and closing arguments were held after a jury instruction conference.

83. The jury returned a guilty verdict on the only charge before it: the murder of Lillian Oetting.

84. The jury imposed a life sentence and rejected the State's request to impose the death penalty.

OVERVIEW OF THE STATE'S EVIDENCE AT TRIAL

85. A review of the State's trial evidence is the first step in evaluating the new exculpatory evidence presented in this Petition.

86. Defense counsel first appeared on December 12, 1960, and filed motions for discovery, to inspect physical evidence, as well as motions to quash the arrest and suppress the confession. All were denied.

87. It is important to remember that the State sought the death penalty. Before executions were stopped in 2000 and the death penalty was abolished in 2011, the legislature had instituted extra precautions requiring early notice, expanded discovery that included depositions, separate discovery provisions, and requirements that attorneys for both sides be qualified to handle the extra demands of litigating a capital murder case.

88. Petitioner received none of those extra precautions, as he had a single attorney who was given no discovery, was not allowed to view the evidence, and was expected to go to trial within a few months after Petitioner's arrest. The only information given to defense counsel were the dates, times, and persons present for the confession and numerous pages of single-spaced lists of the names and addresses of the State's witnesses, with no disclosure as to why the witnesses possessed relevant information.

89. The concept of trying any felony criminal case with no discovery is simply inconceivable today.[2]

I. <u>This Was A Confession-Only Case.</u>

90. Even after the six-month investigation by the Illinois State Police task force and the subsequent investigation spearheaded by State's Attorney Warren and Deputies Dummett and Hess, where they spent nearly two months targeting Petitioner with a concerted, illegal, and

[2] The criminal discovery rules were effective in 1971 and *Brady v. Maryland*, requiring the State to disclose exculpatory evidence, was issued in 1963. Shortly afterwards, the State vacated the Frances Murphy murder case which had been set for trial. The State also dismissed the Mildred Lindquist murder indictment and the tacked-on 1959 cases.

unethical campaign of aggressive, lengthy interrogations, intimidation, harassment, and round-the-clock surveillance, no evidence was obtained implicating Petitioner in the murders.

91. Rather, the "confession" was the only evidence the State had that connected Petitioner to the murder of Lillian Oetting.

92. As soon as Petitioner was allowed to consult with an attorney on November 18, 1960, after his *pro se* in court arraignment, Petitioner immediately recanted his confession and proclaimed his innocence.

93. Even with a confession in hand, no one in Illinois can be convicted based solely upon a confession or admission. *People v. Pecoraro*, 144 Ill.2d 1, 10 (1991). Rather, a conviction founded upon a confession must be "corroborated by some evidence, exclusive of the confession, tending to show that a crime did occur, and that the defendant committed it." *Id.*, quoting *People v. Neal*, 111 Ill.2d 180, 194 (1985).

II. The Confession Was Illogical.

94. It is important to note that the State never contested or challenged the details of Petitioner's "confession." The State's case totally and completely adopted the statements allegedly provided by Petitioner and the State attempted to corroborate his confession.

95. Similarly, the State never argued that Petitioner may have described his actions incorrectly, attempted to mitigate his actions, had accomplices, or left details out of his confession. Therefore, any supposition or reliance on arguments not made at trial is prohibited. *People v. Palmer*, 2021 IL 125621, 182 N.E.3d 672, 450 Ill. Dec. 860 (2021).

96. Plaintiff's "confession" was illogical from start to finish.

97. Decades later, during an interview with the *Chicago Tribune*, one of the jurors admitted as much: "But, the only juror known to be still alive told the Tribune she regrets her

decision to convict Weger. In what she called her first interview since the trial, 92-year-old Nancy Porter said she found the confession implausible and the idea that Weger – who stood a thin 5-foot-8 – could overpower three women unlikely." (*See* Ex. 1).

98. She further stated, "I was the holdout (juror),' said Porter, of LaSalle, a recently retired hospital billing clerk. 'Everyone else wanted to go home and I finally said, Oh, OK, I didn't change my mind, but I was getting pretty dirty looks so I gave in. I've been sorry ever since."' (*Id.*).[3]

99. First, the purported motive for Petitioner's encounter with the three women was robbery. Yet, it made no sense that Petitioner, while on his work break, would seek to commit a robbery, let alone a robbery of three, middle-aged, well-dressed women who were presumably guests at the Lodge and whom Petitioner would likely encounter again while working at the Lodge.

100. Moreover, an analysis of the crime scene revealed that nothing had apparently been taken from the women. They were all found still wearing their watches and jewelry. (*See* Ex. 2).

101. Second, after allegedly grabbing what he thought was a purse strap but turned out to be a camera strap, the confession discusses how Petitioner felt he needed to bind the women with twine to ensure that he could get back to the Lodge before they did. This makes no sense, as Petitioner, a young, fit, twenty-one-year-old man, would undoubtedly be able to return to the Lodge quicker than three middle-aged women.

102. But, more importantly, the timing was irrelevant. Simply binding the women together would not prevent them from subsequently being able to return to the Lodge, report their encounter and potentially identify Petitioner.

[3] Ms. Porter also revealed the presence of jury tampering, as the article continues "Porter also said a sheriff deputy in charge of sequestered female jurors broke the rules in sharing incriminating information about Weger's past and other details not allowed into evidence at trial." (*Id.*).

103. Third, while allegedly binding the women with twine, Petitioner's confession states that a white-haired woman (presumably Frances Murphy), attacked *him*. This too makes no sense. There would be no reason for any of the women to physically assault Petitioner and escalate the situation. Robert Murphy, Frances Murphy's husband, would later tell investigators that his wife was not the aggressive type. (*See* Ex. 3).

104. Fourth, the confession states that Petitioner, in an effort to defend himself, picked up a log off the ground and struck the white-haired women, who then fell to the ground, while Petitioner attempted to bind the other two women. Yet, the white-haired woman was not deterred and, miraculously, she was able to get back up and start attacking Petitioner again. Petitioner then states that he had to, again, defend himself and struck the white-haired woman with the log again. None of this makes any sense.

105. Fifth, now thinking that he had killed the white-haired women, the confession states that Petitioner felt he had to kill the other two women to prevent them from being witnesses to his murderous assault. However, this scenario is at odds with the devastating injuries suffered by the three women. Under Petitioner's story, there was no need to brutally, violently, and repeatedly bash the women's skulls and faces as occurred. The women's injuries were consistent with a crime of vengeance, not the tale told in Petitioner's confession.[4]

106. Sixth, as the story goes, Petitioner saw a plane flying overhead and, inexplicably fearing that it was a police plane, felt the need to hide the women's bodies so he then carried the women, one-by-one, into a shallow cave that was four to five feet up the canyon wall. Presumably with a fear of someone else walking into scenic St. Louis Canyon, and time being of the essence, it makes no sense that Petitioner would feel it necessary to go through the struggle that would have

[4] Indeed, William Jansen, an investigator for the Illinois State Police, concluded that this was a crime of "vengeance." (*See* Ex. 4).

ensued to somehow carry three women four to five feet up the canyon wall and into a shallow cave. Further, the plane had already flown overhead, so it hardly mattered whether Petitioner moved the women's bodies or not.

107. Finally, Petitioner had been a model employee at the Starved Rock Lodge and his arrest shocked Lodge operator Nick Spiros, who was quoted in a November 19, 1960 newspaper article as follows: "Spiros also said that the arrest of Weger was a shock to him and the employees of the Starved Rock Lodge where the young man worked as a dishwasher. 'We can't believe it. We had no reason to suspect him. He never bothered anyone here nor did he use foul language. He was a nice young man. He worked with us for six weeks after the murders.'" (*See* Ex. 5).

III. The Confession Was Inconsistent With The Physical Evidence.

108. Under the confession, the main murder weapon was the log that Petitioner conveniently found at his feet and used to beat the women. But, there was a big problem with Petitioner's story. That log had been ruled out as the murder weapon by the Illinois State Police Crime Laboratory within days of the women being found.

109. Notes of a March 20, 1960 meeting between law enforcement and the Illinois State Police Crime Laboratory indicated that the log was "old" and the "bark was soft" and "spongy" with a "high moisture content." (*See* Ex. 6).

110. More importantly, the Crime Laboratory meeting notes also stated that the "blood did not result on limb from hitting." (*Id.*) In other words, the log was *not* used to beat the women.

111. The Crime Laboratory meeting notes stated that, as to Mrs. Oetting (Victim C), there were "2 small splinters of wood in hair towards crown." (*Id.*). This finding, as well, proves that the log was *not* the murder weapon, because if the log really was used to repeatedly and severely beat Mrs. Oetting about the head and face, there were would have been a substantial

amount of bark and debris from the log found embedded in her face and head, not two small splinters.

112. Consistent with these Crime Laboratory meeting notes, on March 24, 1960, the Chicago Tribune reported: "Another startling development in the murder inquiry is a report from the state police crime laboratory that has convinced state police that a 3-foot, 10 pound tree limb found near the murder scene *was not used to bludgeon the women*." (*See* Ex. 7)(emphasis added).

113. This was, indeed, a startling development and a significant forensic finding. Yet, as discussed below, it was a forensic finding that law enforcement and prosecutors would continually ignore in dereliction of their duties as set forth in then-existing Supreme Court precedent.

114. In *Napue v. People of the State of Illinois*, 79 S.Ct. 1173, 1177, 360 U.S. 264, 269 (1959), the court held: "First, it is established that a conviction obtained through the use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. [ciatations omitted]. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears [citations omitted]."

115. The *Napue* court further held "[t]he principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness testifying falsely that a defendant's life or liberty may depend." *Id.*

116. Second, as discussed more fully below as new evidence, forensic pathologist David Fowler has opined that the murder weapon would have had to have been a heavy object like a baseball bat or tire iron. (*See* Ex. 8).

117. Third, contrary to State's Attorney Harland Warren's persistent claims, the twine found around the women's wrists could not be uniquely matched to the Lodge. The Crime Laboratory notes indicated that 20-strand twine was found around the women's wrists (*See* Ex. 6), and, as the criminal trial evidence revealed, 20-strand twine was common twine.

118. More importantly, the Crime Laboratory meeting notes also indicated that 10-strand twine was found at the crime scene. (*See* Ex. 6). There was no evidence that the Lodge used 10-strand twine. This State conveniently ignored this important forensic finding.

119. Further, when authorities searched Petitioner's house in late September, they only found 12-strand twine, and it was undisputed that there was no 12-strand twine recovered at the crime scene.

120. Fourth, the Crime Laboratory meeting notes reported that the twine found around Mrs. Murphy's wrist and Mrs. Oetting's wrist had been cut. This information was shared with reporters, as on March 21, 1960, the Chicago Tribune reported on the Crime Laboratory's findings and stated: "One important factor in Schaich's report was that the twine on the wrists of the two victims appeared to have been cut. One segment appeared to have been severed with a sharp knife, and another segment appeared to have been sawed and then pulled apart." (*See* Ex. 9). Petitioner's confession made no mention of him having a knife, let alone two different types of knives, one with a serrated blade and one without.

121. Fifth, and perhaps the most stunning revelation from the crime scene, was the fact that Frances Murphy was missing the tip of her left index finger. The autopsy report noted this peculiar finding and concluded that the removal occurred postmortem. (*See* Ex. 10). Petitioner's confession makes no mention of cutting off Mrs. Murphy's fingertip and there would be absolutely no reason for him to do so.

122. Sixth, Frances Murphy's autopsy report also indicates that she had "soiled" clothing. (*See* Ex. 10). At first blush, one could assume that Mrs. Murphy soiled her own clothing, but Petitioner's interrogation shows that the was not the case. Rather, Petitioner was specifically asked *"Did you take a crap on them?"* and *"Did you piss on them?"* and *"You didn't shit on any of their clothing.?* (*See* Ex. 11).

123. Clearly, the authorities had a reason to ask Petitioner such otherwise outlandish questions and the fact that Mrs. Murphy was noted to have soiled clothing leads to the logical conclusion that one of the killers had urinated and defecated upon her.

124. Petitioner's confession makes no mention of urinating or defecating on any of the women and, again, there would be absolutely no reason for him to do so.

125. Seventh, Frances Murphy's autopsy report also revealed that she suffered vaginal bruising. (*See* Ex. 10). During his interrogation, Petitioner was asked if he had kicked any of the women in the "crotch." (*See* Ex. 11). Clearly, the authorities were aware of Mrs. Murphy's vaginal injuries. Petitioner's confession makes no mention of kicking any of the women in the groin and, again, there would be absolutely no reason for him to do so.

IV. Petitioner's Buckskin Jacket Was Simply A Red Herring.

126. Petitioner's buckskin fringed brown jacket was a favorite exhibit used by the State at trial. Yet, there was no evidence whatsoever connecting the jacket to the murders. During closing arguments, the State enthusiastically argued that the jacket was evidence of guilt but this was simply untrue.

127. First, Petitioner's jacket was initially examined by the Illinois State Police in April of 1960. The Illinois State Crime Laboratory apparently found nothing incriminating and the jacket was returned to Petitioner. (*See* Ex. 12).

128. Second, if Petitioner had actually committed the murders, and had an incriminating bloody jacket in his possession, one would have expected Petitioner to simply have disposed of the jacket. But he did no such thing. Indeed, when the Illinois State Police officers asked to inspect the jacket, they found Petitioner's wife wearing the jacket while doing laundry at the local laundromat. (*See* Ex. 12).

129. Third, the Illinois State Police found that there was no evidence that attempts had been made to clean the jacket. (*See* Ex. 12).

130. Fourth, several months later, after State's Attorney Warren and Sheriff's Deputies Dummett and Hess were targeting Petitioner, the jacket was sent to the FBI laboratory for analysis. What the FBI lab found was simply that the jacket contained "minute" spots of blood, that ranged in size from that of a pinpoint to spots the size of the head of a straight pin. This forensic finding of only "minute" spots of blood on the jacket was inconsistent with the horrific and bloody crime scene. (*See* Ex. 13).

131. Fifth, the forensic finding of "minute" spots of blood was also inconsistent with the confession, wherein Petitioner described using a "fireman's carry" to haul at least one of the women into the shallow cave. It would have been impossible for Petitioner to have done so without getting blood all over his jacket.

132. Sixth, nor was there any evidence that Petitioner had gotten blood on his shirt, pants, or shoes.

133. Seventh, and perhaps most importantly, the State never established the source of these "minute" spots of blood. These tiny spots could have come from anyone who wore the jacket, which included Petitioner, his cousin, and his wife, amongst others.

134. The jacket was simply one of the red herrings improperly used by the State to convict an innocent young man.

V. The State's Evidence Regarding Petitioner's Alleged Scratches Was Highly Suspect.

135. The State called numerous witnesses to testify that Petitioner allegedly had visible scratches on his face at the time of the murders.

136. The State did not seek to obtain that evidence until *seven months* after the women's bodies were recovered and the State did so by interviewing Lodge employees and asking leading and badgering questions.

137. For example, on October 12, 1960, ASA Craig Armstrong interviewed Lodge employee Victoria Hobneck. (*See* Ex. 14). ASA Armstrong attempted to dig up dirt on Chester and also refused to take no for an answer when Ms. Hobneck told him she did not recall seeing any scratches on Chester's face:

Q: Do you remember seeing Chester that week, say on Thursday or Friday?

A: If he was here, I suppose I seen him.

Q: Do you remember if he had any scratches on his face?

A: I couldn't tell you, it is so far away.

Q: Do you remember hearing any talk about his having scratches on his face?

A: No, sir.

Q; Not a word?

A: No.

Q: So you couldn't recall whether or not he had any scratches on his face?

A: I couldn't remember, it is a long time ago. I don't remember.

****

Q: He has never made any passes at you?

A: No, he is quite reserved. I have known Chester and he always has been. He has offered to pay me but I know he was married, had one kid and another one on the way. I said "you need the money, take it." He has always been a gentleman.

Q: We are just curious about those scratches. He has told us about them?

A: If anyone would have said anything, I would have looked for them.

****

Q: You don't think he would be capable of doing a thing like this?

A: No, I couldn't picture him doing anything like this. He is just another man as far as I'm concerned. I have known him for a long time.

****

Q: Chester drinks too?

A: I couldn't tell you that. His father is a very good person when he is sober. As far as Chester drinking, I have never seen Chester take a drink. I have never seen Chester drunk. I have known him even when he was going to school. (*See* Ex. 14).

138. Shame on ASA Armstrong for interrogating Ms. Hobneck in such a bullying manner.

139. Moreover, it should have been no surprise to law enforcement or the State's Attorney's Office that Ms. Hobneck – or anyone else, for that matter - did not recall seeing any scratches on Chester's face, as they were all informed by the Illinois State Crime Laboratory within days of the women being found that: (1) the women were found wearing gloves and (2) there was "nothing under the fingernails" of the women. (*See* Ex. 6).[5]

140. Further, as discussed more fully below, forensic pathologist David Fowler has opined that the women's injuries were caused by a heavy object swung with force, such as a

[5] Specifically, notes from the Crime Laboratory meeting indicate that Mrs. Murphy and Mrs. Oetting were found with gloves on both their hands and Mrs. Lindqist was found with a glove on her right hand but not her left hand. (*See* Ex. 6 at p. 2).

baseball bat or tire iron. (*See* Ex. 8). In such a case, it is extremely unlikely that the women would have been able to inflict any injuries upon their attackers.

VI. The State's Evidence Regarding The Twine Was Misleading And Incomplete.

141. At trial, the only evidence the State offered regarding twine from the crime scene was that Mrs. Oetting was found with 20-strand twine tied around her wrist.

142. The State called Glen Comatti, the chef at the Starved Rock Lodge, to testify that he would order 20-strand twine for use in the kitchen. (*See* Ex. 15). Mr. Comatti was allowed to testify on direct examination, over a strenuous defense objection, that he had seen twine "similar" to the 20-strand twine found around Mrs. Oetting's wrist in the kitchen at the Starved Rock Lodge.[6]

143. However, on cross-examination, Mr. Comatti admitted that he could not personally say that the 20-strand twine found on Mrs. Oetting's wrist came from the kitchen at the Lodge and further admitted that the 20-strand twine found around Mrs. Oetting's wrist was a very common type of twine that could be purchased from several sources. (*Id.*).

144. The State intentionally chose not to inform that jury that investigators had also found a piece of 20-strand twine knotted to a piece of 10-strand twine in the cave. The State omitted this key finding from its case while at the same time making the argument that the twine found at the crime scene came from the Lodge. This was very misleading.

145. Assistant State's Attorney Craig Armstrong testified that he went to Chester Weger's house looking for 20-strand twine but only found 12-strand twine, which Chester told him belonged to his uncle. (*See* Ex. 16). There was no claim by ASA Armstrong, or any other witness, that 12-strand twine had been found at the crime scene.

[6] During the side bar conference with the Court, defense counsel argued that Mr. Comatti was not qualified to render an opinion as to the source of the twine and stated, "If they want to bring in an expert to compare the two kinds of string, that is another matter." The State offered no such expert testimony during the trial.

THERE IS AN ABUNDANCE OF NEW EXCULPATORY EVIDENCE

I. The Results Of Recent DNA Testing Exclude Petitioner.

146. As discussed, when the crime scene was examined and processed, the Illinois State Police made a startling discovery. The tip of Frances Murphy's left index finger was missing. The medical examiner conducting the autopsy determined it had been cut off postmortem. (*See* Ex. 10). Mrs. Murphy had been wearing gloves but the glove tip was cut and the fingertip was nowhere to be found.[7]

147. The crime scene investigators noted hairs present on the gloved finger that had been cut, and those hairs were packaged and preserved.

148. The State clearly believed the hairs on Mrs. Murphy's glove belonged to the killer (or one of the killers), as the State sent one of those hairs to the Washington University School of Medicine to be compared to hair standards from Chester Weger and the three victims. A November 23, 1960 Report of that forensic examination concluded that the hair found on Mrs. Murphy's glove was "dissimilar" to Chester Weger and the three victims. (*See* Ex. 17).

149. This was extremely powerful exculpatory evidence that was received just days after Chester's "confession," yet the State refused to share that evidence with him. Thus, the jury heard nothing about this exculpatory forensic result.

150. Petitioner's current counsel were allowed to inspect the physical evidence that has been preserved and maintained and determined that additional hairs found in the same location,

[7] By first trying Mrs. Oetting's case and only her case, the State was able to avoid the large problem they had in explaining why an unarmed purse snatcher was able to, or would want to, laboriously saw through a victim's finger and carry it away.

i.e., on the gloved finger of Mrs. Murphy, still exist. Petitioner's current counsel were then allowed to conduct forensic testing on those hairs, as well as other evidence.[8]

151. Petitioner retained Bode Technology to conduct DNA testing and the STR nuclear DNA results of a hair found on Mrs. Murphy's glove was determined to be a male who was *not* Chester Weger. (*See* Ex. 18).

152. This STR nuclear DNA exclusion of Petitioner (and the victims) as the source of the hair on the cut-off finger of Mrs. Murphy's glove was achieved with state-of-the-art genetic testing.

153. This evidence is undeniably greater and stronger exculpatory evidence than the weak and impeached physical evidence that the State offered at trial.

154. Since the State, itself, sought to test these same hairs, and sought to prove that the hairs originated from Chester Weger, there can be no argument today that the hairs found on Mrs. Murphy's glove have no evidentiary value.

155. Nor can there be any reasonable argument that the hairs found on Mrs. Murphy's glove did not originate from one of the killers. This was a brutal attack, with Mrs. Murphy being brutally beaten, bound, dragged into a shallow cave, her clothing pulled apart, and her the tip of her index finger cut off. Any hairs found on Mrs. Murphy's glove after such a sustained assault would surely have been deposited by one of the killers.

156. Nor can there be any argument that Petitioner may have had an accomplice and these hairs could have come from a second killer. The State never claimed Petitioner had an accomplice and cannot now do so.

[8] The Will County State's Attorney's Office objected to Petitioner's request to simply inspect the evidence and further objected to Petitioner's request to forensically test some of that evidence.

157. Also, at trial, the State improperly elicited from Dr. Kivela that a few hair strands caught in the broken camera belonged to Mrs. Oetting and that hair in the binoculars "could" have come from another victim. (*See* Ex. 19).

158. It has long been established that microscopic comparison of hairs cannot determine a "match" and a series of reports from national forensic academies and a presidential commission has conclusively determined that this is flawed forensic science. Therefore, the jury relied upon false forensic evidence.

159. The hairs examined by Dr. Kivela could have just as easily come from the heads of the victims' attackers if the victims were able to get a few blows in before they were overwhelmed.

160. It is a significant factor that the State only offered speculation as compared to the exclusion of Petitioner (and the victims) using advanced genetic STR nuclear DNA testing.

II. New Evidence Shows The Murders Were The Result Of A Mafia Contract.

161. Conclusive, highly persuasive, newly discovered evidence, from several sources, shows that the murders were the result of a mafia contract.

A. January 2022: A Witness Comes Forward And Implicates The Chicago Mafia.

162. In January 2022, an individual named Roy Tyson reached out to Petitioner's counsel and stated that he had information relating to the Starved Rock murders. Petitioner's counsel subsequently met with Mr. Tyson in person and thereafter took a court-reported statement under oath from him. (*See* Ex. 20). Mr. Tyson's statement is lengthy and detailed. Some of the key details are as follows:

163. Growing up, Mr. Tyson was friends with a boy named Bobby Wrona. Through his friendship with Bobby Wrona, Mr. Tyson met Bobby's father, Harold "Smokey" Wrona. "Smokey" Wrona was well-known to the local community, and he was no stranger to law

enforcement. (*See* Ex. 21). When he was in his twenties, Mr. Tyson would often see "Smokey" Wrona in local taverns and the two men became good friends.

164. One day, while sitting on the front porch of "Smokey" Wrona's house, "Smokey" proceeded to tell Mr. Tyson about the Starved Rock murders. What he revealed was astonishing. Mr. Wrona had been approached by someone in Chicago affiliated with the Chicago mafia. A man had hired the Chicago mafia to kill his wife and they needed a local person to help them plan the murder.

165. Mr. Wrona ultimately agreed to participate in planning the murder and, as it turned out, three women were going to be visiting the Starved Rock Lodge and all three women were to be killed. Several men came down from Chicago and they wound up bludgeoning the women to death in St. Louis Canyon.

166. At the time of his statement, Mr. Tyson provided a few details that seemed innocuous at the time, but have since taken on a much bigger significance, as explained below. For example, Mr. Wrona mentioned that he brought a log with him when all the men met up at the Starved Rock State Park prior to the women being murdered. Mr. Wrona had also mentioned that after the men had murdered the three women, the men changed clothes and Mr. Wrona had a bag of bloody clothes in the trunk of his car. Mr. Wrona at first was not sure how to dispose of the clothes and they remained in his car for a short period of time. Shortly thereafter, Mr. Wrona decided to burn the clothes at a burn pit in Bureau County. These details align *precisely* with other newly discovered evidence, as discussed below.

B. March 2022: A Newly Discovered Police Report Shows A Massive Break In The Murder Investigation When A Telephone Operator Overhears Two Men Discussing Bloody Overalls In The Trunk Of A Car.

167. In March of 2022, *after* Petitioner's counsel had met Mr. Tyson, Petitioner's counsel was reviewing his file again and came across a document he did not recall seeing previously. It was an Illinois State Police report dated April 20, 1960 regarding an interview with a telephone operator named Lois Zelensek. (*See* Ex. 22).

168. The report recounted how on March 21, 1960 (just days after the women's bodies were found), the operator overheard two men talking on the telephone. The first man stated that there had been a big write up on the murders in the paper, and the kid still had bloody overalls in the trunk of the car and was getting anxious and afraid of getting caught and didn't know what to do with them. The second man replied that the kid should get rid of the bloody clothes and burn them. (*Id*.).

169. The operator's account of what she overheard was extremely detailed and the Illinois State Police agents who interviewed her concluded that she was a most sincere witness. (*Id.* at p. 2).

170. After finding this stunning report, Petitioner's counsel searched his file again but there was no other information about the telephone operator or the two men that she overheard discussing the bloody overalls in the trunk of a car.

171. Thereafter, a search was conducted on Newspapers.com (a historical database of digitized newspapers from across the country) and was able to find several local articles regarding this topic. (*See* Group Ex. 23).

172. Those articles revealed that the Illinois State Police had traced the telephone call and determined that the call was placed at a payphone in a tavern in Aurora, Illinois owned by a

man named Glen Palmatier. The call had been received at the residence of Glen's brother, William Palmatier, in Peru, Illinois. (*Id*.). The newspaper articles further revealed that the two brothers had denied having any such conversation and Assistant State's Attorney Craig Armstrong was quoted as stating that it was a "1000 to 1" shot that the brothers had anything to do with the Starved Rock murders. (*See* Ex. 24).

C. The Statements Of Marsha Minott And Glady Brummel Show That Lois Zelensek Was Honest And Sincere And A Highly Credible Witness.

173. Unfortunately, Lois Zelenek passed in 2015 (*See* Ex. 25) and Petitioner's counsel was unable to interview her. However, court-reported witness statements have recently been obtained from Marsha Minott and Glady Brummel and those witness statements show that Ms. Zelensek was an honest and sincere person and she would have been a very credible witness. (*See* Exs. 26, 27).

174. Marsha Minott was the daughter of Lois Zelensek and testified regarding her late mother's character for honesty and how her mother took her job very seriously and became president of the telephone operator's local union. (*See* Ex. 26 at pp. 6-7, 11).

175. Glady Brummel was a good friend and neighbor of Lois Zelensek in 1960 and also described Mrs. Zelensek as being an honest person. (*See* Ex. 27 at p. 5). Mrs. Brummel testified how she recalled, back in 1960, Mrs. Zelensek telling her that Mrs. she had overhead something on the telephone that was very important. Mrs. Brummel asked her husband, Jim, an Aurora police officer, to talk to Mrs. Zelensek and Mr. Brummel, after hearing what Mrs. Zelensek had described, told her that she needed to report the information to the Aurora police. (*Id.* at pp. 6-7).

D. June 2022: Another Witness Comes Forward And Implicates The Chicago Mafia.

176. In June of 2022, another new witness contacted Petitioner's counsel. This new witness, who will be referred to as "Ms. Smith," had some significant information to share.[9] Petitioner's counsel subsequently met Ms. Smith in person and obtained a court-reported statement under oath. (*See* Ex. 28). Like Mr. Tyson, Ms. Smith's statement is lengthy and detailed. Some of the key details are as follows:

177. When in high school, Ms. Smith lived with her grandparents in the Chicago area. Her grandfather had been in the Chicago mafia but he was now older, in is seventies, and was dying of lung cancer. One day her grandfather told her about the Starved Rock murders and that the guy who was in prison was actually innocent and had nothing to do with the murders. (*Id.*).

178. Her grandfather knew this because back in 1960, he had been approached by one of his associates in the Chicago mafia to hand-pick the five or six men who would be going to Starved Rock State Park to murder three women. Her grandfather told her that one of the husbands had hired the Chicago mafia to kill his wife and that all three of the women would have to be killed. (*Id.*).

179. Her grandfather further told her that he did not know what this poor woman had done to deserve this, but the husband was mad and wanted his wife to suffer. (*Id.*).

E. Ms. Smith's Account Has Been Corroborated By Another Witness.

180. Petitioner's counsel subsequently took a court-reported statement under oath of an experienced and highly regarded attorney in Chicago. (*See* Ex. 29). The attorney testified that decades earlier, Ms. Smith had worked at his law firm as a legal assistant, and she had also revealed

[9] Petitioner is protecting Ms. Smith's identity and has filed her statement under seal as she is concerned as to her safety.

to him the information that her grandfather had told her about the Chicago mafia being hired by one of the husbands to kill his wife and the other women at Starved Rock State Park.[10]

F. September 2022: Newly Discovered Documents Show That The Illinois State Police Was Investigating Glen Palmatier And His Ties To A Man Named Lupe "The Chief" Cardenas.

181. In September 2022, Petitioner's counsel received a tip from a local civilian that the LaSalle Historical Society had recently come into possession of numerous original case documents pertaining to the Starved Rock Murders.[11] Thereafter, Petitioner's counsel visited the LaSalle Historical Society and reviewed a large cache of *original* case documents. These documents appeared to be the file of former LaSalle County State's Attorney Harland Warren.

182. Among these documents was a never-seen-before transcript of an August 30, 1960 Illinois State Police interview of Glen Palmatier. (*See* Ex. 30). This transcript provided some significant new information. Some key details are as follows:

183. The Illinois State Police confronted Glen Palmatier with the report of telephone operator Lois Zelensek, who overheard the two men discussing the kid who had bloody overalls in the trunk of a car. Mr. Palmatier denied being the person who placed that telephone call.

184. But, more importantly, the Illinois State Police advised Mr. Palmatier that they had been conducting surveillance inside his tavern and that they had frequently seen him talking to a known criminal named Lupe "the Chief" Cardenas. Mr. Palmatier admitted to speaking to Mr. Cardenas, but denied knowing that he had a criminal history.

[10] Likewise, Petitioner has filed the attorney's statement under seal to protect Ms. Smith's identity and safety.
[11] Specifically, Petitioner's counsel was advised that a man named Steve Stout had recently "donated" the documents to the LaSalle Historical Society and that he wanted the donation to be labeled as "anonymous."

G. Recently Discovered Newspaper Articles Show That Lupe "The Chief" Cardenas Had Ties To The Chicago Mafia.

185. Thereafter, Petitioner's counsel searched Newspapers.com for any articles regarding Lupe "the Chief" Cardenas and found several articles relating to his criminal history. (*See* Group Ex. 31). In one of those articles, the government referred to Lupe Cardenas as having "crime syndicate connections." (*Id.*). Other articles discussed how Mr. Cardenas received a fifteen-year prison sentence in 1967 for his role in the hijacking of a truck containing a multimillion-dollar load of silver. (*Id.*).

186. Petitioner was also able to determine that Lupe "the Chief" Cardenas had a sister, Cora Cardenas Gasca, who was still alive. Petitioner's investigator, James Delorto, a retired ATF agent, spoke to Ms. Gasca on October 7, 2022 and has testified in a recent court-reported statement under oath that without any prompting, or prior mention of the Starved Rock murders, Ms. Gasca said to him: "I can't tell you about the ladies in the park because whatever you say, whatever I say, they're going to say something was wrong and they're going to come after me." (*See* Ex. 32 at p. 5).

H. Newly Discovered Documents Show That Glen Palmatier Knew Robert Murphy.

187. Also amongst the Harland Warren files at the LaSalle Historical Society was an August 30, 1960 transcript setting forth discussions between Harland Warren and the Illinois State Police officers involved in interviewing Glen Palmatier earlier that day. (*See* Ex. 33). At the end of that transcript, an Illinois State Police officer stated that while talking to Mr. Palmatier prior to Mr. Palmatier's attorney arriving for the interview, Mr. Palmatier mentioned that he knew Robert Murphy, the husband of Frances Murphy.

188. This should have been an enormous red flag to the murder investigation.

189. Even without the personal connection between Glen Palmatier and Robert Murphy, the potential that one of the husbands may have played a role in the murders is hardly novel. In virtually any case where a wife is murdered, some part of the investigation will focus on whether the husband may have been involved. That is standard procedure. Indeed, here, on April 27, 1960, Sheriff Ray Eutsey received a letter from a colleague suggesting areas that needed to be investigated, including the following: "4. Were any of the husbands running around with some other babe who wanted at least one of the wives out of the way, and had to kill all of them to get the one." (*See* Ex. 34).

190. Yet, in this case, Petitioner has seen no evidence that the husbands were ever considered suspects. Petitioner, for example, has not seen any investigative interviews of the husbands or any polygraph examinations administered to the husbands.

I. Newly Discovered Documents Show That Polygraph Examiner Stephen Kindig Was Friends With Robert Murphy.

191. In conducting further research on this case, Petitioner's counsel came across a November 18, 1960 newspaper article that reported that polygraph examiner Stephen Kindig was friends with Robert Murphy, the husband of Frances Murphy. (*See* Ex. 35). That article stated, in part: "It was a link of friendship between Murphy and Stephen J. Kindig, Chicago lie detector operator, that brought decisive action in the case. Kindig had known Murphy from his time he lived in York, PA, where he had become acquainted with the former Moline man, during the latter's business trips to York. Because of this friendship, Kindig was intent upon solution and administered the second lie test of Weger." (*Id.*).

192. The personal relationship between polygraph examiner Stephen J. Kindig and Robert Murphy, and resulting conflict of interest, should have disqualified Mr. Kindig from working on the Starved Rock murders case at all. Yet, not only did Mr. Kindig fail to recuse

himself, he apparently took the lead and was the person who, suspiciously, claimed that Chester Weger had failed his seventh polygraph exam (when passing the first six), and that telephone operator Lois Zelensek had failed her polygraph exam.

J. A Newly Discovered Newspaper Article Shows That The Illinois State Police Believed The Chicago Mafia Was Involved In The Murders.

193. In conducting further research on this case, Petitioner's counsel came across a March 13, 2000 newspaper article regarding the Starved Rock murders that quotes former LaSalle County State's Attorney Harland Warren as follows: "I had confidence that the state police would know how to investigate it," Warren continued. "Of course, as it turned out, they didn't know where to begin. They thought the Mafia in Chicago was involved." (*See* Ex. 36).

K. A Newly Discovered Newspaper Article Shows That An Illinois State Police Report Suggested That The Murders Could Have A Moline Gangland Connection.

194. In conducting further research on this case, Petitioner's counsel came across a September 15, 1960 newspaper article that stated, in part: "Rock Island and Moline police chiefs have scoffed at a suggestion by a 25-year-old criminology graduate that the triple Starved Rock Park slayings last March have a Moline gangland connection. The suggestion came from William Jansen, Pekin, who in a 40-page report mentioned the Moline area and said 'someone mixed up in the rackets' may be involved in the case. He mentioned revenge as a possible motive rather than lust as suggested by others. Jansen said a husband of one of the victims once served as an attorney and had lived in Moline." (*See* Ex. 37).[12]

195. Robert Murphy, the husband of Frances Murphy, previously lived in Moline, Illinois.

[12] Petitioner was never given access to Mr. Jansen's 40-page report back in 1960, and Mr. Jansen's report is missing from the Illinois State Police files.

L. The Crime Scene Evidence Was Consistent With There Being Multiple Attackers.

196. There were several signs that pointed to the murders being carried out by more than one individual.

197. First, there was the simple fact that it would have been extremely hard for one unarmed person, especially of Petitioner's size and build, to subdue and restrain three adult women. It would have also been difficult for one just one person to somehow hoist the three women, one-by-one, up a canyon wall and into a shallow cave.

198. Second, the Illinois State Crime Laboratory reported that the twine around the women's wrist had been cut with two different types of knives, one serrated and the other not serrated, indicating the presence of more than one person. (*See* Ex. 9).

199. Third, and perhaps most importantly, as discussed below, forensic pathologist David Fowler notes how the women suffered severe injuries, some caused by a cylindrical object, such as a baseball bat, and others caused by a heavy pointed object, like a tire iron, suggesting that there was more than one killer. (*See* Ex. 8).

200. Further, an eyewitness named John Kovalik told police he saw the women talking to a man on the side of the road while two or three other men were present in a nearby car. (*See* Ex. 62).

201. Similarly, George Spiros had told the police that he had seen the women talking to five men next to two cars. (*See* Ex. 63).

M. The Injuries To Frances Murphy Are Consistent With The Testimony Of Ms. Smith.

202. As discussed above, Ms. Smith testified that her grandfather told her that the husband who wanted his wife killed was very upset and wanted his wife to suffer.

203. That testimony is consistent with the horrible beating that all the women endured. But, in addition, Frances Murphy appeared to have been singled out for unusual abuse. As discussed, Mrs. Murphy had her fingertip cut-off postmortem, she suffered vaginal bruising, and her clothing appeared to have been urinated and defecated upon.

III. Dr. Brian Cutler's Expert Report Demonstrates That The Improper Tactics Used Against Petitioner in Extracting His Confession Have Led to Both False Confessions and Wrongful Convictions.

202. Dr. Brian Cutler has highly impressive qualifications, provides a thorough analysis of the relevant science and supporting studies, but does not attempt to invade the province of the jury but to illustrate what science has revealed about confessions obtained as they were obtained here. (*See* Ex. 38).

203. Dr. Cutler stresses that the purpose of his expert report on false confessions is to educate the factfinder about false confessions in general and risk factors that give rise to them.

204. Dr. Cutler's report notes that John Reid himself was involved in aggressively interrogating Petitioner for hours as were his staff.

205. Starting at paragraph 57, Dr. Cutler recounts John Reid's history and how he focused on developing new ways to extract confessions after the Wickersham Presidential commission set up by Herbert Hoover put an end to the use of physical abuse.

206. The U.S. Supreme Court in the *Miranda* decision specifically and negatively discusses John Reid and his techniques with more details that are not only extremely informative and scholarly but are chilling when reviewing the uncontroverted facts of Petitioner's interrogations.

207. Finally, Dr. Cutler's report discusses known, proven factors of false confessions that are present in this case.

IV. Forensic Pathologist David Fowler's Expert Report Invalidates The State's Trial Theory And The Details of Petitioner's Purported Confession.

208. As set out in the review of the State's trial evidence, the State's theory is highly flawed as the rotten log and the flimsy objects that the victims carried could hardly have caused the devastating injuries suffered by the victims.

209. It should be noted that the doctor who conducted the autopsies stated at trial that he was not qualified to give testimony about the weapons used to inflict those skull fractures. (*See* Ex. 39).

210. Today, however, forensic pathologists are trained based on years of studies, in how to determine features and types of murder weapons.

211. Dr. David Fowler is an expert in forensic pathology and has the requisite training and experience to describe the features of the weapons that would have caused the types of injuries suffered by the three victims in this case. (*See* Ex. 8).

212. Dr. Fowler's conclusions state:

> The amount of force to cause these injuries is substantial. For example, the base of skull fractures is more commonly seen in high-energy head impacts such as a fall from a height or in a motor vehicle collision. They can also occur with heavy solid objects applied at high speed.
>
> The only defining features described are the cylindrical injury 3-5 inches in diameter and the squared-off or pointed injury. These would be consistent with an object of similar size and hardness to a baseball bat or steel pipe. The rectangular or pointed object would be something similar to a tool, such as a tire iron, the end of a 2x4 (lumber), or a hammer with a square head, such as a mallet or sledgehammer. These examples are not an exhaustive list and are illustrative only. The cylindrical object and the description, "an essentially rectangular object or a pointed object," are consistent with two different objects causing these wounds.

> The pointed or squared object is most consistent with a human-made object with that external format and meets the hard, solid, heavy criteria described above.
>
> These objects must be solid, hard, and structurally sound. Hollow or light objects would not be sufficient to cause the severe skull fracturing seen in these cases. The camera and binoculars may be consistent with some of the superficial injuries but not with the severe skull fractures to the base of the skull. The considerable energy used to cause these injuries would also be applied to the object that caused these injuries. This would very likely result in damage to the object if it is not similar to steel or rock.
>
> The hand injuries are consistent with defense posturing. Defense injuries are those seen when a part of the body is used to ward off blows. (*Id*.)

213. Mr. Fowler's expert opinions invalidate the State's trial theory and the details of Petitioner's purported confession.

V. Dean Esserman's Expert Report Details The Authorities Failure To Conduct A Proper Investigation.

214. Dean Esserman, a police practices expert, has submitted a report that opines: (1) authorities failed to properly investigate the potential murder weapon(s); (2) authorities failed to properly investigate Frances Murphy's missing fingertip and the women's husbands; (3) authorities failed to conduct proper witness follow-up, particularly as to the issue of their potentially being multiple attackers; (4) authorities failed to properly investigate the Palmatier brothers; (5) State's Attorney Harland Warren misrepresented the twine evidence to justify re-examining Lodge employees, including Chester Weger, and (6) investigators conducted improper interrogations of Petitioner. (*See* Ex. 40).

VI. John Palmatier's Expert Report Details Improprieties With John Reid & Associates' Polygraphs Exams.

215. Polygraph Expert John Palmatier has submitted a report wherein Mr. Palmatier opines that: (1) the claim that Petitioner failed what would have been his seventh polygraph examination, after passing the first six, is suspect; (2) John Reid's examination of Petitioner on

September 27, 1960 was excessive and "the length of this all-day, multi-hour, multiparticipant interrogation had an unacceptably high likelihood of leading to the solicitation of facts that were at best arguable and more probably the basis for a false confession;" (3) based on his personal relationship with Robert Murphy, it was improper for Stephen Kindig to be professionally involved in this case and he should have recused himself; (4) the language used to describe the findings from Lois Zelensek's polygraph exam is simply innuendo and shows her examination was at best "inconclusive;" (5) Mr. Kindig's collection of reward money was "ethically and professionally repugnant" and calls his credibility into question. (*See* Ex. 41).

VII. A Recently Discovered Report Shows That A Forestry Expert Was Unable To Match The Log To A Tree In St. Louis Canyon.

216. When reviewing the newly discovered original case files at the LaSalle Historical Society, Petitioner's counsel came across a November 29, 1960 Memorandum that discussed the State's attempt to find the source of the log that the State was falsely claiming was the murder weapon. (*See* Ex. 42).

217. As explained in the Memorandum, in late November 1960, less than two weeks after Petitioner had allegedly confessed to using the log to kill the three women, Harland Warren requested Dr. B.F. Kukachka of the Madison, Wisconsin U.S. Forestry Service Office, an expert from the United States Department of Agriculture, Forestry Service Division, to accompany him to St. Louis Canyon in an effort to match the log to a tree in the area.

218. The men spent hours searching St. Louis Canyon and the area, attempting to match up the log with a tree in the vicinity of the crime scene. The searchers, under the guidance of Dr. B.F. Kukachka, were unable to find any tree living or dead in the area that was the source of the log that had been found at the crime scene.

219. This was a significant development and it proves that State's Attorney Harland

Warren and the other prosecutors knew, from the onset of the proceedings, that Petitioner's alleged confession about finding a log at his feet and then beating the three women with it was false.

220. Yet, prosecutors knowingly presented this false evidence to the jury.

221. Not only did they withhold exculpatory evidence as to the log not being the murder weapon, but they presented false evidence to the jury.

222. As discussed earlier, presenting false evidence to the jury has never been allowed or acceptable under any twisted interpretation of constitutional law and discovery law. See *Napue v. People of the State of Illinois,* 79 S.Ct. 1173, 1177, 360 U.S. 264, 269 (1959).

223. It has long been noted that when government prosecutors resort to such criminal tactics themselves that the justice system suffers its paramount violation.

224. The withholding of evidence and knowingly presenting extremely important but false evidence to the jury requires a new trial in and of itself. It is plainly indefensible.

VIII. New Affidavits Demonstrate Petitioner Had a Corroborated Alibi.

225. In 2004 and 2005, an appointed attorney from the Office of the State Appellate Defender's Office investigated, filed a clemency petition, and filed a Motion for Post-Conviction Genetic Testing but withdrew it based upon the mistaken belief that the chain of custody had been broken, a belief readily discredited by a detailed examination including over 2000 photographs of the evidence by the Microtrace Laboratory in 2021.

226. The 2005 clemency petition included an alibi affidavit from Petitioner explaining where he was the afternoon of the murders and why he felt he could not raise his alibi at trial. Petitioner has also set forth a new Affidavit affirming his prior alibi and proclaiming his innocence. (*See* Group Ex. 43).

227. Petitioner also submits an affidavit from Mary Pruett, Petitioner's sister,

corroborating Petitioner's alibi. (*See* Ex. 44).

228. Further, Petitioner submits the 2004 Affidavit from Steven Spearie, a former investigator with the Office of the State Appellate Defender, regarding an interview he conducted of Stanley Tucker with Petitioner's former counsel. (*See* Ex. 65). That interview also corroborates Petitioner's alibi.

229. It is reasonable and understandable that Petitioner did not trust the authorities and the system to objectively consider his alibi in 1960 and 1961.

230. This is true considering the extremely aggressive and lengthy coercion and intimidation Petitioner suffered as well as the fact that he did not receive any of the benefits of *Miranda* warnings and myriad other constitutional and statutory protections that are now routinely administered to suspects.

231. *People v. Robinson*, relied on throughout the present filings, is factually analogous and the Illinois Supreme Court reversed and remanded the first stage dismissal of Robinson's successive petition based upon an innocence claim.

232. The defendant in *Robinson*, like Petitioner, gave a lengthy confession culminating in a 70-page court-reported statement.

233. In his successive innocence petition, the defendant in *Robinson* disavowed his confession and submitted his own alibi affidavit as well as an affidavit of a witness corroborating the new alibi.

234. In both these cases the lack of State evidence such as occurrence witnesses is noted.

235. Here, the State admitted from the onset that it was aware of and withholding exculpatory evidence.

236. Despite the destruction and improper dissemination of discovery, case files, lab

reports, expert reports, and evidence inventories, the defense has been able to gather an overwhelming amount of new, conclusive, exculpatory evidence.

237. Based upon the analogous nature of the *Robinson* decision alone, this matter must be docketed for second stage proceedings. But there is much, much more.

IX. New Evidence Reveals Sheriff Deputies William Dummett And Wayne Hess' Pattern And Practice Of Misconduct.

238. Petitioner has obtained a court-reported statement under oath from eighty-four-year-old Robert Harris, who grew up in Ottawa, Illinois (*See* Ex. 45). In his statement, Mr. Harris testified that around 1970, there had been a robbery of platinum from an industrial plant. Deputies Bill Dummett and Wayne Hess arrested Harris and enticed another individual (whom Harris had never met) to fabricate a story that Harris had been involved in the robbery. Basically, Deputies Dummett and Hess tried to pin this platinum robbery on Harris, who would have been facing sixty years in prison had he been convicted. Fortunately for Mr. Harris, he was able to expose the fraud and the charges were dropped.

239. An Affidavit from Daniel J Bute, a former public defender in LaSalle County, Illinois, states that in 1981, Mr. Bute was representing a man named Steve Broadus who had been charged with first degree murder of a tavern owner. (*See* Ex. 46). Prior to trial, public defender Bute had asked the State for autopsy photographs that Mr. Broadus said Deputy William Dummett had shown him to induce him to confess. (*Id.* at ¶ 5). Dummett had denied under oath taking any such photographs or showing any such photographs to Mr. Broadus. (*Id*.). During the cross-examination of the pathologist during the jury trial, it was revealed that Dummett had indeed taken photographs during the autopsy. (*Id.* at ¶ 6). Subsequently, the judge ordered that Dummett's office be searched and the autopsy photographs were discovered in Dummett's office. (*Id.* at ¶ 7).

240. Attorney Bute also states in his Affidavit that "Dummett was nicknamed by

members of the defense bar in LaSalle County as "Dishpan Dummett" because of his uncanny ability to rehabilitate defects in the State's case. (*Id.* at ¶ 9).

241. Further, Attorney Bute states that he had been a visitor inside Deputy Dummett's house and that Dummett had the log that was allegedly the murder weapon in the Starved Rock murders case shellacked and displayed on his fireplace mantle. (*Id.* at ¶ 10). Attorney Bute also recalled Dummett presenting a slide show of crime scene photographs from the Starved Rock murders case. (*Id.* at ¶ 11). Deputy Dummett's treatment of this evidence is both improper and outrageous.

242. An Affidavit from Gary R. Garretson, a former Assistant State's Attorney of LaSalle County, Illinois, states that in the *Steven Broadus* case, he was the person who pried open Dummett's desk and found photographs of the crime scene and deceased victim that had never been disclosed. (*See* Ex. 47).

243. An Affidavit from Edward J. Kuleck, Jr., a former Assistant State's Attorney of LaSalle County, and thereafter a former criminal defense attorney, states that in 1979 or 1980, he defended a man named Linwood Sluder who was charged with aggravated kidnapping of Marseilles teenager Joseph Ernst. (*See* Ex. 48). The complaining witness had alleged that Mr. Sluder had held him at gunpoint, forced him to drive around and threatened to kill him. (*Id.* at ¶ 3). Attorney Kuleck recounts how during trial, no law enforcement officer had testified that Mr. Sluder admitted to using such force. (*Id.* at ¶ 4).

244. When Dummett, then a Captain with the LaSalle County Sheriff's Department, was called to the stand, he testified that Mr. Sluder admitted he held a gun to Mr. Ernst's head and forced him to drive. (*Id.* at ¶ 5). Attorney Kuleck moved for a mistrial and the judge later struck Dummett's statement. (*Id.* at ¶¶ 6-7).

245. Also, the court held that investigator Thomas Templeton and Captain William Dummett had improperly questioned defendant Sluder after he expressed an intention to retain an attorney. See *People of the State of Illinois v. Sluder*, 97 Ill.App.3d 459, 462, 423 N.E.2d 268, 270 (3d Dist. 1981)(court noted that "Dummett testified at a suppression hearing that he was unaware that defendant had requested an attorney and, after *initially contending* defendant's statement had been volunteered, *admitted* that a police report indicated that defendant had been asked where he had gotten the gun.")(emphasis added).

246. Attorney Kuleck also states that Dummett's nickname was "Dustpan Dummett" and that "[i]n situations when Sheriff's investigators were attempting to get a statement out of a defendant, Captain Dummett was often brought in to glean a verbal confession." (*Id.* at ¶ 8).

X. New Evidence Reveals That Sheriff's Deputy Wayne Hess Admitted That Petitioner Was Innocent.

247. Petitioner has obtained a court-reported statement under oath from James Woods, who lives in Princeton, Illinois. (*See* Ex. 49). Mr. Woods has provided a lengthy statement, but the key details are as follows:

248. Mr. Woods' father, James Frances Woods, was good friends with former LaSalle County Sheriff's Deputy Wayne Hess, who was actively involved in investigating the Starved Rock murders. Mr. Woods recalls that sometime around 1978-79, he was present in the family's kitchen when the following conversation transpired between his father and mother: "my father started to tell my mother mostly, with me present, but the conversations were between those two, about him asking about the Starved Rock murders. And he said Wayne turned to him and looked him in the eye, and he said, 'Jimmy, what we did to that kid was not right.' That I remember verbatim, that statement." (*Id.* at p. 7, lines 11-17).

249. Mr. Woods added "But I know my father to be very truthful, very forthright, and I

see no reason why he would offer up that as conversation without it being, you know, complete truth to the statement." (*Id.* at p. 21, lines 21-24).

XI. Evidence That Warren, Dummett, Hess, and Kindig All Received Substantial Financial Rewards Created A Strong Bias, Interest, and Motive to Lie that Was Never Revealed to the Jury.

249. In 1963, after five of the six indictments brought on November 17, 1960 were all dismissed, the corporations who employed the three husbands of the victims decided to distribute a reward created during the investigation that with interest totaled $38,500.

250. The reward was distributed for the successful prosecution of Petitioner.

251. The custodians of the husbands' employers picked four people to receive the lion's share of the money: Harland Warren, William Wayne Hess, and Stephen J. Kindig, the polygraph examiner who claimed that Chester Weger and Lois Zelensek had failed their polygraph exams. (*See* Group Ex. 50).

252. The sheer hubris and impropriety of giving these men monetary is stunning.

253. State's Attorney Warren, who lost his election in November of 1960, received the largest amount, double that given to the other men. Mr. Warren received $11,550. (*Id.*). Today that same money, adjusted for inflation, would amount to $116,094.

254. William Dummett, Wayne Hess, and Stephen Kindig each received $5500, equivalent to $55,523 today. (*Id.*).

255. When custodians of Borg-Warner, Illinois Bell, and Harris Bank were asked why Mr. Warren received so much, they stated that the former prosecutor headed the successful investigative team and was "primarily responsible for the satisfactory conclusion in the arrest, confession, and conviction of Weger." (*Id.*).

256. State law prohibits prosecutors from receiving rewards.

257. Sheriff Ray Eutsey testified during the trial that he would not permit Sheriff's Office employees to receive monetary rewards but Eutsey's replacement apparently had no such policy.

258. At trial, the Illinois State Police Chief testified that agents cannot accept money.

259. It is well-accepted law that benefits, financial and otherwise, must be disclosed to the jury as benefits for testimony favoring the State is a strong indicator of bias, interest, and motive to lie. See *People v. Ellis*, 315 Ill.App. 3d 1108 (1st Dist. 2000).

260. Admittedly, these types of issues implicate the Due Process Clause but here, the four men who received the largest rewards were individually and collectively responsible for multiple in-custody interrogations without any probable cause and responsible for months of harassment and other tactics solely designed to extract a coerced confession from Petitioner.

261. The other major issue is that the Illinois State Police was actively investigating Chicago mafia leads and links to the three husbands, who most certainly had influence as to which individuals would receive the $38,000 posted by the corporations where they all held top management positions.

XII. Newly Discovered Documents Show Harland Warren's Illegal Plan Of Coercion.

262. Newly discovered documents confirm State's Attorney Harland Warren's plan to get Petitioner to confess, at all costs.

263. Petitioner has obtained handwritten notes from former State's Attorney Harland Warren and his notes detail his plan of intimidation, harassment, and coercion. (*See* Ex. 51).

264. Mr. Warren's notes specifically state his scheme to "commence psychological warfare" and "get man to confess." (*Id.*).

THE NEW EVIDENCE DEMONSTRATES PETITIONER WAS FRAMED

265. The newly discovered evidence demonstrates that Petitioner's case should have never gone to trial and should have been dismissed by the State's Attorney's Office.

266. The day after the women's bodies were found, LaSalle County State's Attorney Harland Warren, who was a prosecutor and not a trained detective or crime scene investigator, claimed the log found at the crime scene was positively the death weapon. (*See* Ex. 52). State's Attorney Warren had absolutely no foundation to make such a bold and decisive determination.

267. Not surprisingly, within days, State's Attorney Warren's conclusion was proven false, when the Illinois State Crime Laboratory's analysis concluded that the log could not have been the murder weapon and, more importantly, that the blood on the log did not result from hitting. (*See* Ex. 6).

268. The Illinois State Police were in charge of the ensuing investigation and as part of that investigation, numerous individuals, including Lodge employees, were administered polygraph exams. Petitioner was given three polygraph exams in March and found to have been truthful. (*See* Ex. 53). Petitioner was given three more polygraph exams in April and was, again, found to be truthful. (*See* Ex. 54).

269. In late April, less than a month after the women's bodies had been discovered, the Illinois State Police received a *massive* break in the case. A telephone operator named Lois Zelensek had overhead two men talking about the murders and a third individual who had bloody overalls in the trunk of a car and was afraid of getting caught. One of the men on the call told the other to have the third individual get rid of the incriminating evidence by burning it.

270. The telephone operator was conflicted about what to do as, on the one hand, this telephone call was supposed to be treated as confidential but, on the other hand, she knew the

details of what she overheard were important and related to the Starved Rock murders. The telephone operator first told her neighbor, James Brummel, an Aurora police officer about the conversation and he, in turn, advised her she needed to report the conversation to the Illinois State Police.

271. During Mrs. Zelensek's subsequent interview with the Illinois State Police, she provided the details of the conversation she had overhead, which included not only the portion about the murders and bloody overalls in the trunk of a car, but also that the two men were discussing automobiles. The report of her interview states: "In further conversation which I didn't listen very closely to, I gathered the impression that the LaSalle party was an auto dealer. They were talking about a business deal pertaining to cars and the LaSalle party said he had the money to go ahead with the deal. It gave me the impression that it was a bigger deal than just the purchase of one car; more like the purchase of a business or business location pertaining to cars." (*See* Ex. 22).

272. She further provided details as to the accents and speaking characteristics of the two men. The report of her interview states: "The Aurora voice I can't forget. It was a voice that gave the impression of an uneducated person. Harsh, deep, voice, no softness in it at all. Limited vocabulary. No pronounced characteristic such as dis, dose, dem. No foreign or nationality traits or hillbilly tones. Gave impression that might be big, burly man. Talked like a man who wouldn't care much or think about anything too deeply. Gave impression that he was reporting to the boss, not nervous or worried." (*Id.*).

273. The Illinois State Police officers who interviewed Mrs. Zelensek noted in their report that she was "most sincere" (as had the Aurora police officers who spoke with her) and there

was absolutely no reason to doubt anything she had said. (*Id.*). Indeed, it is hard to imagine a more credible witness.

274. Again, this was a massive break in the case whose significance cannot be overstated.

275. The Illinois State Police wound up successfully tracing the telephone call and learned that the call had been placed from a payphone at a tavern in Aurora, Illinois owned by a man named Glen Palmatier and the call had been received at the residence of Glen's brother, William Palmatier, in Peru. (*See* Group Ex. 23). William Palmatier, it turns out, owned a car dealership in Peru, Illinois, which was exactly what Mrs. Zelenesk had surmised based on the conversation she had overheard.

276. On August 30, 1960, the Illinois State Police conducted a transcribed interview of Glen Palmatier in Aurora, who had counsel present and was aware that he was going to be questioned regarding the telephone operator's report. (*See* Ex. 30).[13] Mr. Palmatier denied making the telephone call, claiming that anyone could have used the public telephone in his tavern. But, Mr. Palmatier was not pressed on who else at the tavern where he worked would likely have been calling his brother William on the date in question.

277. After Glen Palmatier denied making the telephone call at issue, the Illinois State Police officers told Mr. Palmatier that they essentially been conducting surveillance inside the tavern and they would frequently see Mr. Palmatier talking to a big, burly man named Lupe "the Chief" Cardenas, who had a criminal record. Mr. Palmatier admitted to speaking with Mr. Cardenas, but denied knowing anything about is criminal record. (*Id.*).

[13] It is unclear why it took four months from the time Ms. Zelensek was first interviewed for law enforcement to interview Glen Palmatier.

278. At this point during the interview, it sure appeared that the Illinois State Police were wondering if the caller had actually been Lupe "the Chief" Cardenas, who the Illinois State Police specifically described as a big, burly guy and who likely spoke the way Ms. Zelensek described.

279. One thing was clear, at this point in time, the Illinois State Police was conducting an active investigation into the subject telephone call, as well Glen and William Palmatier's potential involvement.

280. Petitioner has not seen any other documents discussing Lupe "the Chief" Cardenas, but surely such documents existed at one time. The Illinois State Police were able to not only determine the name of the man they had seen speaking to Glen Palmatier every day in the tavern, but they had also been able to determine his criminal history.

281. Petitioner has learned that Lupe "the Chief" Cardenas was a person described as having crime syndicate connections and in 1968 was convicted as being part of a group that hijacked a truck containing a multimillion-dollar load of silver. (*See* Group Ex. 31). Thomas Daniel Bambulas and John Borsellino were given twenty-year sentences for their role in the hijacking, and fifteen-year sentences were given to Rocco "Big Rocky" Infelice (who newspaper articles described as a "crime syndicate figure"), Roy Nielsen, Emil Crovedi, John "Johnny the Bug" Varelli, and Lupe "the Chief" Cardenas. (*Id.*).

282. There was nothing Glen Palmatier said during his interview that would have removed any suspicion of him having knowledge of, at the very least, an individual who had bloody overalls in the trunk of a car, and perhaps more.

283. Yet, astonishingly, the very next day, on August 31, 1960, Assistant State's Attorney Craig Armstrong was quoted in the newspaper stating "It's a thousand-to-one shot that

he had anything to do with the crime, Armstrong said, but it's just one of the hundreds of things we have to check out." (*See* Ex. 24).

284. On August 31, 1960, Assistant State's Attorney Armstrong sent a letter to Glen Palmatier's attorney, enclosing a copy of the transcribed interview from the day before. In his letter, Mr. Armstrong stated, "It is regrettable that the newspaper, particularly the Chicago Tribune have created such a furor over this *insignificant lead* in the Starved Rock murder case." (*See* Ex. 55)(emphasis added). It is puzzling and suspicious that Mr. Armstrong would characterize this massive break in the case as a mere "insignificant lead."

285. Just a few days later, on September 2, 1960, State's Attorney Harland Warren followed suit and sent a letter to William Palmatier, stating, in part: "The publicity given your name in connection with the *very nebulous and remote possibility* that a telephone call was made to your home from the telephone located in your brother's tavern in Aurora, Illinois, and its possible connection with the 'Starved Rock murder case,' is very regrettable." (*See* Ex. 56)(emphasis added). Again, it is puzzling and suspicious that State's Attorney Warren would characterize this massive break in the case as a "nebulous and remote possibility."

286. One could argue that, perhaps, State's Attorney Warren and Assistant State's Attorney Armstrong were keeping their cards close to their vest and they were, in reality, hot to trot to pursue an investigation into the two brothers and their connection to Lupe "the Chief" Cardenas. But, other evidence in the case refutes that notion.

287. For example, years later, as part of a story on the forty-year anniversary of the Starved Rock murders, State's Attorney Warren mocked the Illinois State Police, stating "I had confidence that the state police would know how to investigate it,' Warren continued. 'Of course,

as it turned out, they didn't know where to begin. They thought the Mafia in Chicago was involved." (*See* Ex. 36).

288. There is no evidence that State's Attorney Warren conducted any legitimate further investigation into the potential role of the Palmatier brothers. Instead, the evidence suggests that State's Attorney Warren, and others, curiously attempted to steer the investigation away from Glen and William Palmatier.

289. State's Attorney Warren arranged for the two brothers to take polygraph exams, and he arranged for telephone operator Lois Zelensek to take a polygraph exam as well. And, rather than have the polygraph exams administered by the Illinois State Police, who had given all the polygraph exams in the case to date, State's Attorney Warren used his hand-picked polygraph examiner, John Reid & Associates, based in Chicago.

290. These polygraph exams were not arranged as a good-faith investigatory tool. Rather, these polygraph exams were specifically arranged as a ruse to improperly clear the two brothers as suspects.

291. Newly discovered evidence shows that John Reid & Associates claimed that Glen and William Palmatier were being truthful in their polygraph exams. (*See* Ex. 57). But, as to telephone operator Lois Zelensek, John Reid & Associates polygraph examiner Stephen J. Kindig stated: "The polygraph charts of this subject indicate that she is not telling the whole truth in this case. There are general indications of deception throughout her charts. However, they are not consistent enough for the examiner to be able to indicate specifically in which areas, in his opinion, she is being untruthful. It would appear that these test results could be due either to the subject's fabrication of facts or her not being sure what she actually overheard, and quite possibly a combination of both of these." (*See* Ex. 58).

292. Polygraph examiner Kindig's findings are ludicrous.

293. Even more ludicrous, these purported polygraph exam results were used to clear the Palmatier brothers as suspects in the case.

294. With the Palmatier brothers now given a free pass, State's Attorney Warren and his cohorts had to find someone else to take their place and he decided to focus on employees of the Starved Rock Lodge. State's Attorney Warren did so by creating a false narrative that twine from the crime scene was connected to the Starved Rock Lodge.

295. To recap, within days of the women's bodies being found, the Illinois State Crime Laboratory briefed law enforcement and reported that 20-ply twine was found around the wrists of Frances Murphy and Lillian Oetting and there was also a piece of 20-ply twine knotted to 10-ply twine found in the cave. (*See* Ex. 6).

296. A newly discovered report dated September 16, 1960, details State's Attorney Warren's visit to the kitchen of the Starved Rock Lodge and his inspection of the twine there. (*See* Ex. 59).

297. In the report, Mr. Warren claims to find both 20-strand twine and 12-strand twine and claims an "aha" moment, as the report states: "I then left, and as soon as Tom and I got in the car and started for Ottawa, I did the following, I counted the number of ply in the cord taken off his apron, result 20 ply. I then picked up the stray ball of cord, which differed from all the other balls of cord in the tomato can box, and said to Tom, 'If this is 12 strand we have got the case solved.' I then counted it, result – 12." (*Id.*).

298. However, as State's Attorney Warren knew, there was no 12-strand twine found at the crime scene. So even if he found 12-strand twine at the Lodge, it would have been meaningless.

But, it is extremely doubtful that State's Attorney Warren did, indeed, find 12-strand twine at the Lodge, as there is nothing in the trial testimony regarding the Lodge using 12-strand twine.

299. Nonetheless, State's Attorney Warren used this misrepresentation of the twine evidence to order new polygraph exams of some of the employees of the Lodge's kitchen, including Petitioner. And, rather than involve the Illinois State Police, State's Attorney Warren secretly decided to use his own handpicked polygraph examiners from John Reid & Associates. (*See* Ex. 64).

300. Shortly thereafter, polygraph examiner Stephen J. Kindig was ordered to give another polygraph exam to Petitioner. Bear in mind, Petitioner had already passed six (6) polygraph exams given by the Illinois State Police. After administering a polygraph exam to Petitioner, Mr. Kindig claimed that Petitioner had failed and that Mr. Kindig was sure Petitioner had committed the murders.

301. Armed with this bogus polygraph exam result, State's Attorney Warren then ordered that Petitioner be brought to Chicago for yet another polygraph exam. This too, was a ruse, because if Petitioner had truly failed the exam given by Mr. Kindig, there was no reason to bring Petitioner to Chicago for yet another exam.

302. The real purpose of this mission was to interrogate Petitioner all day and night and try to get him to confess. Petitioner was interrogated all day and night in Chicago and then, at 1:30 a.m., rather than being driven home, Petitioner was driven to the Ottawa Courthouse for additional interrogation.

303. On the car ride from Chicago to Ottawa, Petitioner claimed that Sheriff's Deputy Dummett repeatedly told him that he would "ride the thunderbolt" (a well-known euphemism for the electric chair) if he did not confess. During the subsequent criminal trial, Deputy Dummett

denied making any such threats to Petitioner, but he was impeached by Assistant State's Attorney Armstrong, who was also in the car and admitted that Dummett had, indeed, said such things. (*See* Ex. 60).

304. State's Attorney Warren and his handpicked cohorts, Deputies Dummett and Hess, were unsuccessful in their efforts to get Petitioner to confess during this marathon trip to Chicago and back. So, State's Attorney Warren decided to turn up the heat and ordered the Illinois State Police to follow Petitioner everywhere he went, literally on a 24/7 basis. Illinois State Police witnesses at the criminal trial admitted that his shocking, harassing, and intimidating surveillance lasted the entire month of October. (*See* Ex. 61).

305. Yet, Warren, Dummett and Hess still could not get Petitioner to break, so in mid-November they had Petitioner brought to the police station where they embarked on their final and most outlandish behavior. They had a Justice of the Peace issue arrest warrants for the murders of the three women and then served those warrants upon Petitioner at the start of another long interrogation session.

306. After hours and hours of aggressive interrogation, threats, and coercion, Petitioner finally gave Warren, Dummett and Hess what they wanted.

307. But, as described above, Petitioner's confession, to no one's surprise, was illogical and contradicted the evidence in the case.

308. As soon as Petitioner was allowed to see an attorney (public defender Carr) he told his attorney that he was innocent and his confession was false and the product of coercion.

309. In the week after Petitioner's "confession," the State received two significant pieces of exculpatory evidence that should have derailed Petitioner's prosecution.

310. First, a Washington University School of Medicine report concluded that a hair found on Frances Murphy was "dissimilar" to Petitioner's hair. (*See* Ex. 17).

311. Second, another report concluded that attempts to match the log to a tree in St. Louis Canyon was unsuccessful, powerfully disproving the purported confession. (*See* Ex. 42).

312. Yet, the State was undeterred and plowed ahead with its prosecution of Petitioner.

313. Despite knowing all of this overwhelming evidence that demonstrated Petitioner's innocence, the State not only proceeded to trial against Petitioner, the State asked the jury to electrocute him.

314. This is truly unfathomable.

315. Perhaps equally unfathomable is that despite all the newly discovered evidence set forth herein, Petitioner's conviction still stands over sixty years later.

PETITIONER HAS MET HIS BURDEN OF PROOF

316. Petitioner has met his burden of proof, as his supporting evidence is (1) newly discovered, (2) material and non-cumulative, and (3) of such a conclusive character that it would probably change the result on retrial. *People v. Robinson*, 2020 IL123848, ¶ 47.

I. Petitioner's Evidence Is New.

317. Petitioner has satisfied the element that his evidence be "newly discovered." Under Illinois law, "[n]ewly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence. *People v. Robinson*, 2020 IL 123848, ¶ 47.

318. For example, Bode Technology's DNA results were reported in 2022.

319. Likewise, the witness statements of Ms. Smith, Roy Tyson, James Woods, Glady Brummel, Marsha Minott and Robert Harris were all obtained in 2022.

320. The expert reports of Dr. Brian Cutler, David Fowler, Dean Esserman and John Palmatier were all obtained in 2023.

321. As to the documents set forth herein that are dated prior to Petitioner's criminal trial, which includes, but is not limited to, for example, (1) the March 20, 1960 handwritten notes from a meeting between law enforcement and the Illinois State Crime Laboratory, (2) the Illinois State Police Report detailing their interview with Lois Zelensek, (3) the transcript of the interview of Glen Palmatier, (4) the Washington University School of Medicine report regarding the hair analysis, and (5) the forest report noting that the log could not be matched to a tree in St. Louis Canyon, these documents are newly discovered because none of the documents were ever produced to Petitioner.

II. Petitioner's Evidence Is Material And Non-Cumulative.

322. Petitioner has also satisfied the element that his evidence be material and non-cumulative.

323. "Evidence is material if it is relevant and probative of the petitioner's innocence." *People v. Robinson*, 2020 IL 123849, par. 47.

324. "Noncumulative evidence adds to the information that the factfinder heard at trial." *Id.*

325. The evidence set forth herein is material because it is, indeed, probative of Petitioner's innocence. For example, Bode Technology's DNA report is strong forensic evidence of Petitioner's innocence. Likewise, the substantial evidence that the Chicago mafia was involved in the murders is powerful evidence of Petitioner's innocence.

326. The expert reports of Brian Cutler, David Fowler, Dean Esserman and John Palmatier all support a strong claim that Petitioner is innocent and none of the above evidence can be considered cumulative.

327. Rather, all the evidence set forth herein is noncumulative as it adds to the information that the jury heard at trial.

III. Petitioner's Evidence Is Of Such A Conclusive Character That It Would Probably Change The Result On Retrial.

328. Finally, Petitioner has also satisfied the element that his evidence be of such a conclusive character that it would probably change the result on retrial.

329. The "conclusive character element refers to evidence that, when considered along with the trial evidence, would probably lead to a different result." *People v. Robinson*, 2020 IL 123849, ¶ 47.

330. As the *Robinson* court explained, "[u]ltimately, the question is whether the evidence supporting the postconviction petition places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt." *Robinson* at ¶ 48, citing *Coleman*, 2013 IL 113307, ¶ 97, 374 Ill. Dec. 922 N.E.2d 617.

331. In *Robinson*, the court stated:

> "Here, no physical or forensic evidence linked petitioner to the crimes, and no eyewitness identified him as being involved or even present at the time of the relevant events. The only trial evidence directly linking petitioner to the crimes was his own inculpatory statement and the testimony of Tucker, Muhammad, and McClendon, the State's witnesses to whom petitioner allegedly confessed…Although this testimony and petitioner's lengthy, detailed statement provide evidence of his guilt, that trial evidence is directly contradicted by the affidavits of Mamon, Shaw, and Hunt-Bey, who were not involved in the crimes. Without engaging in any credibility determinations, there is no way for this court – or any court – to assess the reliability of those affidavits or the veracity of their assertions. Taking as true the allegations in the supporting affidavits, as we must at the pleading stage, we conclude that a fact finder could determine that the new evidence exculpates petitioner from any involvement in the crimes and refutes the

> State's evidence at trial. Accordingly, we find that petitioner's motion and supporting documentation contain evidence of such a conclusive character that, when considered along with the trial evidence, would probably lead to a different result. In light of our conclusion, we hold that the lower courts erred in denying him leave to file his successive postconviction petition." *Id.* at ¶¶ 82-83.

332. Here, there can be little doubt that the abundance of new evidence set forth herein would place the trial evidence in a different light and undermine confidence in the judgment of guilt.

CONCLUSION

WHEREFORE, for all the reasons set forth above, Petitioner Chester O. Weger respectfully requests that this Court: (a) enter an Order docketing this Successive Petition For Post-Conviction Relief; (b) grant discovery as necessary to prove the foregoing claim; (c) hold an evidentiary hearing where proof may be offered concerning the allegations in this Petition; and (d) vacate Petitioner's conviction and grant him a new trial.

Dated: February 17, 2023

Respectfully submitted,

/s/ Andrew M. Hale

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PEOPLE V. CHESTER O. WEGER, 1960-CF-00753
CERTIFICATE OF COMPLIANCE WITH
ILLINOIS SUPREME COURT RULE 651(C)

I, Andrew M. Hale, the attorney for the post-conviction petitioner, Chester O. Weger, do hereby certify and swear that I have consulted with petitioner by phone, mail, electronic means and in person to ascertain his contentions of deprivations of his constitutional rights, that I have examined the record of the proceedings at both the jury trial, and other proceedings, and I have drafted a successive post-conviction petition that contains claims and support necessary for an adequate presentation of petitioner's contentions.

FURTHER AFFIANT SAYETH NAUGHT

Andrew M. Hale
ARDC #6197786

Subscribed and Sworn to before me this
17th day of February, 2023

Notary Public

SAMUEL V SANKOVICH
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires
June 19, 2025

Andrew M. Hale
Hale & Monico, LLC
53 W. Jackson Blvd, Suite 334
Chicago, IL 60604
Main (312) 341-9646

PEOPLE V. CHESTER O. WEGER, 1960-CF-753

VERIFICATION AFFIDAVIT OF CHESTER O. WEGER

I, CHESTER OTTO WEGER, verify that the allegations in the February 2023 Motion for Leave to File a Successive Petition and the Successive Post-Conviction Petition based upon Actual Innocence are a true and accurate accounting of the violations of my constitutional rights that occurred in the prosecution and litigation of the case 1960-CF-753 to the best of my knowledge, recollection, and belief.

FURTHER AFFIANT SAYETH NAUGHT

Chester Weger

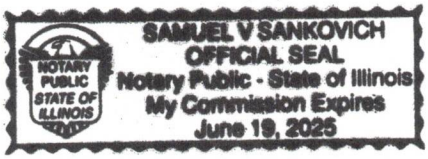
CHESTER OTTO WEGER

Subscribed and Sworn before me this

17 day of February, 2023

Samuel V. Sankovich

Notary Public



IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff-Respondent,	)	
v.	)	NO. 60-CF-0753
	)	
CHESTER O. WEGER,	)	
	)	
Defendant-Petitioner,	)	

EXHIBIT LIST

Exhibit No.	Description
1	Article re Juror Nancy Porter
2	Report re: Women's Watches
3	Report of Meeting with Husbands
4	Article re: Crime of Vengeance
5	Article re: Nicholas Spiros
6	Notes of March 20, 1960 Crime Lab Meeting
7	Article re: Log not being the Murder Weapon
8	Expert Report of David Fowler
9	Article re: Twine Being Cut
10	Frances Murphy Autopsy Report
11	Transcript of Chester Weger Interrogation
12	Report re: Illinois State Police and Chester Weger
13	FBI Witness Trial Testimony re: Chester's Jacket
14	Report re: Victoria Hobneck Interview
15	Glen Comatti Trial Testimony re: twine
16	ASA Craig Armstrong Trial Testimony
17	Washington University School of Medicine Report re: Hairs
18	Bode Technology DNA Report
19	Dr. Kivela Testimony re: Hair
20	Roy Tyson Statement
21	Harold "Smokey" Wrona Obituary
22	Report re: Telephone Operator Lois Zelensek
23	Articles re: Bloody Overralls
24	Article re: Craig Armstrong "1000 to 1" Shot
25	Lois Zelensek Obituary
26	Marsha Minnot Statement
27	Glady Brummel Statement
28	Ms. Smith Statement (FILED UNDER SEAL)
29	Attorney Statement (FILED UNDER SEAL)
30	Transcript of Glen Palmetier Interview
31	Articles re: Lupe "the Chief" Cardenas
32	James Delorto Statement
33	Transcript of August 30, 1960 Meeting

Exhibit No.	Description
34	April 27, 1960 Letter to Sheriff Ray Eutsey
35	Article re: Stephen Kindig was friends with Robert Murphy
36	Article re: Illinois State Police and Chicago Mafia
37	Article re: Moline Gangland Connection
38	Expert Report of Brian Cutler
39	Dr. Maloney Trial Testimony
40	Expert Report of Dean Esserman
41	Expert Report of John Palmatier
42	Report re: Forestry Expert
43	Chester Weger Affidavits
44	Mary Pruett Affidavit
45	Robert Harris Statement
46	Daniel J. Bute Affidavit
47	Gary R. Garretson Affidavit
48	Edward J. Kuleck, Jr. Affidavit
49	James Woods Statement
50	Articles re: Reward Money
51	Harland Warren Handwritten Notes
52	Article re: Harland Warren and Log
53	Chester Weger Polygraph Report #1
54	Chester Weger Polygraph Report #2
55	Craig Armstrong Letter to Glen Palmatier's Attorney
56	Harland Warren's Letter to William Palmatier
57	Polygraph Report re: Palmatier Brothers
58	Polygraph Report re: Lois Zelensek
59	Report re: Harland Warren and Twine
60	Craig Armstrong Trial Testimony re: Dummett's Threats
61	Illinois State Police Testimony re: Surveillance
62	John Kovalik Documents
63	George Spiros Interview
64	Article re: Harland Warren and Polygraphs
65	Stephen Spearie Affidavit