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

People of the State of Illinois,	)	
	)	
Plaintiff-Respondent,	)	
	)	No. 60-CF-753
v.	)	
	)	Honorable Michael C. Jansz
Chester O. Weger,	)	
	)	
Defendant-Petitioner.	)	

CHESTER WEGER'S RESPONSE TO THE STATE'S MOTION TO DISMISS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

ILLINOIS STATUTES

ILLINOIS SUPREME COURT RULES

Petitioner-Defendant Chester O. Weger ("Weger"), by his undersigned attorneys, hereby responds to the State's motion to dismiss his successive post-conviction petition as follows:

INTRODUCTION

The State's motion to dismiss mischaracterizes the facts, misapprehends the law, and repeatedly makes improper credibility, hearsay, and admissibility arguments that the State knows are improper at this second-stage proceeding. Indeed, the State's 78-page diatribe is more of a filibuster than a proper legal motion to dismiss. The State takes a desperately distorted view of Weger's newly discovered evidence. As to the DNA result that excludes Weger, the State claims Weger relies on "one hair" as if this "one hair" is meaningless. The State mocks the testimony of Roy Tyson, mischaracterizes Mr. Tyson's testimony as to the role of Smokey Wrona, denies that the "murders" a telephone operator overheard two men discussing were the Starved Rock murders, feigns confusion as to what Lupe "the Chief" Cardenas has to do with Weger's theories of the case, expresses incredulity at the whole notion that the Chicago mafia may have been involved, and falsely claims that Weger's evidence is inconsistent and should be completely disregarded by this Court. When confronted with evidence that exculpates Weger, the State even goes so far as to claim that perhaps Weger had accomplices. Finally, when assessing the conclusive character of Weger's newly discovered evidence, the State fails to analyze Weger's newly discovered evidence collectively, as it must. As shown herein, Weger's evidence is newly discovered, material, not cumulative and, when compared to the weak case that the State presented at the criminal trial, would likely change the result at a retrial. The State's motion to dismiss falls woefully short and should be denied in its entirety and Weger's innocence claim should be promptly set for a third-stage evidentiary hearing.

ARGUMENT

I. WEGER'S INNOCENCE CLAIM SHOULD PROCEED TO A THIRD-STAGE EVIDENTIARY HEARING (CLAIM I)

A. Legal Standard.

"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.

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

"Evidence is material if it is relevant and probative of the petitioner's innocence." *Id*. Stated another way, "[t]o be material, the evidence 'need not, standing alone, exonerate the defendant; rather it must tend to 'significantly advance' his claim of actual innocence." *People v. Fields*, 2020 IL App (1st) 151735, ¶ 32, quoting *People v. Stoecker*, 2014 IL 115756, ¶ 33, 381 Ill.Dec. 434, 10 N.E.3d 843.

"Noncumulative means the evidence adds to what the jury heard." *People v. Fields*, 2020 IL App (1st) 151735, ¶ 32, quoting *People v. Coleman*, 2013 IL 113307, ¶ 96, 374 Ill.Dec. 922, 996 N.E.2d 617.

"Lastly, the conclusive character element refers to evidence that, when considered along with the trial evidence, would probably lead to a different result." *Robinson*, ¶ 47. 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.

Significantly, "[t]he new evidence need not be entirely dispostive to be likely to alter the result on retrial." *Robinson*, 2020 IL 123849, ¶ 48, citing *Coleman*, ¶ 97, and *People v. Davis*, 2012 IL App (4th) 110305, ¶¶ 62-64. The new evidence "need only be *conclusive* enough to *probably* change the result upon retrial." *People v. Class*, 2023 IL App (1st) 200903, ¶ 56 (emphasis added), quoting *People v. Davis*, 2012 IL App (4th) 110305, ¶ 62, 359 Ill.Dec. 249, 966 N.E.2d 570. As the court noted in *Class*, "[a]s we are dealing with probabilities, the task of the court is essentially to make a prediction about "what another jury would likely do, considering all the evidence, both new and old, together." *Class* at ¶ 56, quoting *People v. Coleman*, 2013 IL 113307, ¶ 97, 374 Ill.Dec. 922, 996 N.E.2d 617. *See also People v. Martinez*, 2021 IL App (1st) 190490, ¶ 115 (internal citations omitted)("New evidence need not be entirely dispositive for a court to find it is likely to alter the result on retrial. . . An actual innocence claim does not require a defendant to show total vindication or exoneration.").

Importantly, "[t]he evidence must be considered together, and not in isolation." *People v. Velasco*, 2018 IL App (1st) 161183, ¶ 92.[1] The *Class* court explained the process as follows:

> Making such a prediction requires what our supreme court has referred to as a 'comprehensive approach.' The purpose of this holistic analysis is not to 'redecide the defendant's guilt,' but to determine whether all the facts and surrounding circumstances should be 'scrutinized more closely.' (quoting *People v. Molstad*, 101 Ill.2d 128, 136, 77 Ill.Dec. 775, 461 N.E.2d 398 (1984)). This entails looking at all of the new evidence cumulatively and then weighing it against the strength of the evidence at trial. *See, e.g.*, *People v. Ayala*, 2022 IL App (1st) 192484, ¶ 150 (concluding that 'affidavits from over half a dozen witnesses who contradict[ed] elements of [the State's witness's] account [were] sufficiently conclusive to alter the result on retrial, particularly given the weakness of the State's case at trial'); *People v. Serrano*, 2016 IL App (1st) 133493, ¶¶ 37-41, 404 Ill.Dec. 189, 55 N.E.3d 285 (petitioner's new evidence, which demonstrated some "consistency on the key details" weighed against "flimsy" trial evidence).

Class at ¶ 57.

[1] The State agrees, stating "The evidence must be considered together, and not in isolation." *People v. Gonzalez*, 2016 IL App (1st) 141660, ¶ 28. (MTD at p. 8). However, the State fails to do so.

"Where the State seeks dismissal of a post-conviction petition instead of filing an answer, its motion to dismiss assumes the truth of the allegations to which it is directed and questions only their legal sufficiency." *People v. Ayala*, 2022 IL App (1st) 192484, ¶ 97. At the second stage of proceedings under the Act, "courts must take all well-pleaded allegations as true, unless positively rebutted by the trial record." *People v. Martinez*, 2021 IL App (1st) 190490, ¶ 57, citing *People v. Sanders*, 2016 IL 118123, ¶ 42, 399 Ill.Dec. 732, 47 N.E.3d 237. The allegations in the petition are "liberally construed in favor of the petitioner." *People v. Fields*, 2020 IL App (1st) 151735, ¶ 35, quoting *People v. Sanders*, 2016 IL 118123, ¶ 31, 399 Ill.Dec. 732, 47 N.E.3d 237. "Evidentiary questions are not to be resolved at the second stage" as the second stage "does not call for fact-finding or credibility determinations." *Martinez* at ¶ 58.[2]

B. <u>Weger's Evidence Is Newly Discovered, Material And Not Cumulative</u>.

1. Forensic Tests/Examinations

a. Bode Technology's DNA Testing

Weger submitted a hair found on Frances Murphy's glove for DNA testing. That DNA testing by Bode Technology showed that the hair came from a male and Weger is excluded as the source of that hair. (Petition, p. 23, ¶ 41, Ex. 18). Weger explained how this hair would have come from one of the killers. (See Petition, p. 24, ¶ 145). This DNA result is powerful evidence that Weger is innocent. Thus, the DNA result is newly discovered, material, and not cumulative. The State does not argue otherwise.[3] Thus, any such arguments should be considered waived.

[2] The State argues "the People would submit that, if defendant's allegations in the petition specifically rebut each other, as they do here, they are not well-pleaded, and can be dismissed at the second stage." (MTD at p. 7). This is utter nonsense.

[3] Analogous to Illinois Supreme Court Rule 341(h)(7), points not argued should be deemed forfeited and should not be allowed to be raised in a reply brief or at oral argument. *See also People v. Fields*, 2020 IL App (1st) 151735 ("In addition, the State did not argue in its brief to this court that Johnson's affidavit was not newly discovered or that the trial court was incorrect in finding that it was. Again, points not argued are waived.").

In a desperate effort to diminish the significance of this DNA result, the State argues "that defendant was excluded as the source of the hair on the glove, does not show that defendant *was not a participant* in the crime." (MTD at p. 23)(emphasis added).[4] This is truly a remarkable statement. At the 1961 criminal trial, the State embraced Weger's confession, a confession where Weger, and Weger alone, allegedly murdered the three women. At the criminal trial the State never argued that perhaps other individuals participated in the murders as well.

The doctrine of judicial estoppel bars the State from conveniently changing its position now. In *Seymour v. Collins*, 2015 IL 118432, the Court stated that "[j]judicial estoppel is an equitable doctrine invoked by the court at its discretion." *Id*. at ¶ 36, citing *New Hampsire v. Maine*, 532 U.S. 742, 750, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001); *People v. Runge*, 234 Ill.2d 68, 132, 334 Ill.Dec. 865, 917 N.E.2d 940 (2009); *People v. Jones*, 223 Ill.2d 569, 598, 308 Ill.Dec. 402, 861 N.E.2d 967 (2006); *People v. Caballero*, 206 Ill.2d 65, 80, 276 Ill.Dec. 356, 794 N.E.2d 251 (2002).

The court explained the purpose of judicial estoppel as follows:

> "As the Supreme Court has observed, the uniformly recognized purpose of the doctrine is to protect the integrity of the judicial process by prohibiting parties from 'deliberately changing positions' according to the exigencies of the moment. (Internal quotation marks omitted.) *New Hampshire*, 532 U.S. at 749-50, 121 S.Ct. 1808. Judicial estoppel applies in a judicial proceeding when litigants take a position, benefit from that position, and then seek to take a contrary position in a later proceeding. *Barack Ferrazzano Kirschbaum Perlman & Nagelberg v. Loffredi*, 342 Ill.App.3d 453, 460, 277 Ill.Dec. 111, 795 N.E.2d 779 (2003).

Seymour at ¶ 36.

The party to be estopped must have (1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) have succeeded in the first proceeding

[4] If the State now believes that there was more than one killer, the State should immediately vacate Weger's conviction.

and received some benefit from it. *Seymour* at ¶ 37, citing *Runge*, 234 Ill.2d at 132, 334 Ill.Dec. 865, 917 N.E.2d 940; *Jones*, 223 Ill.2d at 598, 308 Ill.Dec. 402, 861 N.E.2d 967; *Caballero*, 206 Ill.2d at 80, 276 Ill.Dec. 356, 794 N.E.2d 251.

Here, the State, at Weger's trial, took the position that Weger, and Weger alone, committed the murder. Now, the State is contending that there may have been other participants. Thus, the State has taken two positions that are factually inconsistent in separate judicial proceedings. The State is intending for this Court to accept the truth of its facts alleged. Finally, the State succeeded in the first proceeding and received a benefit from it by convicting Weger as charged. Thus, the State is now judicially estopped from arguing before this Court that Weger may not have acted alone. *See People v. Palmer*, 2021 IL 125621 (Court held that trial court abused its discretion by rejecting petitioner's argument that State's attempt to raise new theory of petitioner's guilt during proceedings on petition for certificate of innocence was barred by doctrine of judicial estoppel).[5]

The State also argues that "the results of this hair evidence could never be introduced at a new trial, as a foundation could never be laid for its admission." (MTD at p. 23). This is not a proper argument at this second-stage proceeding and should be stricken and disregarded.[6]

The State's reliance on *People v. Grant*, 2016 IL App (3d) 140211 is misplaced. In that case, the court simply noted that a hair found on the vagina of a sexual assault victim would not "completely exonerate" the defendant. But, complete exoneration is not the standard at this second-state proceeding. *See People v. Class*, 2023 IL App (1st) 200903, ¶ 83 ("While Mr. Class has not conclusively established his innocence, he has made a substantial showing that his case merits

[5] *See also People v. Davis*, 2012 IL App (4th) 110305 where the court held "Taking all of the evidence at trial together with the newly discovered DNA evidence, and viewing it in the light of the State's claim before the jury as to how this crime occurred and the necessity to change that theory now due to DNA evidence, we find the trial court abused its discretion in finding the DNA evidence was not sufficiently conclusive to undermine confidence in the outcome of the trial." *Id.* at ¶ 64.

[6] Nonetheless, the State is wrong. Weger will be able to lay a proper foundation for admission of this hair evidence at a third-stage evidentiary hearing.

further scrutiny, which is what is demanded of him at this stage. We therefore reverse the circuit court's judgment dismissing Mr. Class's postconviction claim of actual innocence and remand for a third-stage evidentiary hearing on that claim."); *People v. Ayalya*, 2022 IL App (1st) 192483, ¶ 146, citing *People v. Robinson*, 2020 IL 123849, ¶ 55, 450 Ill.Dec. 37, 181 N.E.2d 37 (quoting *People v. Savory*, 197 Ill.2d 203, 213, 258 Ill.Dec. 530, 756 N.E.2d 804 (2001))("Our supreme court has 'specifically rejected the total vindication or exoneration standard' and has explained that 'evidence which is 'materially relevant' to a defendant's claim of actual innocence is simply evidence which tends to significantly advance that claim.").

b. Othram's Genetic Genealogy Testing

The State also argues that "No one knows where that hair came from." (MTD at p. 23) But, we do know, due to cutting edge genetic genealogy testing. According to Othram, the hair came from one of three local brothers: (1) Leo Bray (1892-1972), (2) Charles Bray (1894-1981), or (3) Edward Bray (1900-1960)(*See* Othram Report dated January 16, 2024, Ex. A, attached hereto). There is no reasonable explanation for how one of these Bray brother's hairs got on Frances Murphy's glove other than he was involved in the murders. This genetic genealogy result is powerful evidence of Weger's innocence.

c. The Crime Lab's Forensic Examination Of The Twine

Weger noted that the Illinois State Crime Laboratory reported that the twine around the women's wrists had been cut with two different types of knives, one serrated and the other non-serrated, indicating the presence of more than one attacker. (Petition at p. 33, ¶ 189, Ex. 9). The State does not address this evidence, but simply states, with no explanation, that "None of this is 'newly discovered evidence. It is also not material evidence." (MTD at p. 36). These handwritten notes were never produced to Weger and he had no knowledge that the notes existed until the notes

were produced as part of a FOIA response. Thus, the notes should be considered newly discovered evidence. This evidence is also material and not cumulative, as it provides information that is inconsistent with Weger's confession, indicates that the murders were committed by multiple attackers, and is probative of Weger's innocence.

d. Forestry Expert's Forensic Examination Of The Log

Weger has submitted a report detailing a meeting with a forestry expert who was unable to match the log claimed to be the murder weapon to any trees in St. Louis Canyon. (Petition at ¶¶ 209-216, Ex. 42). The State does not argue that this report is not newly discovered evidence, is not material, or is cumulative. Thus, any such arguments should be deemed waived.

The State argues that "simply because no trees in the vicinity matched the log, does not mean that the log was not there." (MTD at p. 44). Weger is not arguing that the log was not recovered at the crime scene. The issue is how the log got to the crime scene. Since the log did not match any trees in the area, one of the killers must have brought the log with him. Indeed, that is exactly what Smokey Wrona told Roy Tyson. (*See* Ex. 20 at pp.40-41). Thus, this evidence is material as it is probative of Weger's innocence.

The State also argues that "[t]hat the source of the log was not in the immediate vicinity does not mean it was not the murder weapon." Although not a very persuasive argument, the State is free to make this argument at a third-stage evidentiary hearing.[7]

[7] The handwritten notes from the meeting with the Illinois Crime Lab indicate that the log was ruled out as the murder weapon, as the Crime Lab found that the "limb was old," bark was soft & spongy – high moisture content," and " and the "blood did not result on limb from hitting." (*See* Ex. 6).

2. Evidence That The Chicago Mafia Was Involved

a. Roy Tyson

Weger cites to the sworn testimony of Roy Tyson, taken on July 20, 2022. (Petition, pp. 25-26, ¶¶ 152-156, Ex. 20). Mr. Tyson recounts how Smokey Wrona told him that he had organized the murders for a man affiliated with the Chicago mafia and how several men came to Starved Rock from Chicago and they were the ones who committed the murders.[8] This evidence is newly discovered and not cumulative. Mr. Tyson's testimony is also material as it is probative of Weger's innocence. The State does not argue otherwise.

The State makes several improper credibility attacks. (See MTD at p. 25, fn 14; p. 26, fn 15; and p. 27, fn 17). "At this stage of the postconviction process, however, prior to a third-stage evidentiary hearing, the court does not consider credibility." *People v. Class*, 2023 IL App (1st) 200903, ¶ 75, citing *Domagala*, 2013 IL 113688, ¶¶ 34-35, 370 Ill.Dec. 1, 987 N.E.2d 767 (explaining that the third stage, not the second stage, is when the court must 'determine witness credibility, decide the weight to be given testimony and evidence, and resolve any evidentiary conflicts.'). *See also People v. Ayala*, 2022 IL App (1st) 192483, ¶ 148 ("The possibility that [affiants] might not be credible as the State's witness is simply not a basis for dismissal at the second stage." *People v. Wilson*, 2022 IL App (1st) 192048, ¶ 76, 460 Ill.Dec. 464, 201 N.E.3d 122). All of the State's improper credibility arguments and sarcastic comments should be stricken and disregarded.[9]

[8] The State's summary of Mr. Tyson's testimony takes an offensive mocking and sarcastic tone. The State places certain statements in quotation marks, like "no way!" and "What luck!," despite the fact that Mr. Tyson did not actually make those statements in his testimony. The State uses exclamation marks for drama and phrases "is like" ("Smokey is like that's great") to highlight its sarcasm. The State ends its summary by stating "Tyson came up with this story in 2022." (MTD at p. 28). Shame on the State.

[9] Nonetheless, it must be noted that at the hearing on Weger's motion to appoint a new special prosecutor, the State argued the opposite. This Court specifically asked Ms. Griffin "what about [Mr. Hale's] argument that your office should at least be sizing up these individuals to determine whether their testimony is even worthy of credibility without

The same is true as to the State's improper hearsay and double hearsay arguments. (*See* MTD at p. 27, fn 16). "At the second stage, the court cannot disregard evidence merely because it is hearsay." *People v. Class*, 2023 IL App (1st) 200903, ¶ 74, citing *People v. Velasco*, 2018 IL App (1st) 161683, ¶¶ 117-119, 430 Ill.Dec. 817, 127 N.E.3d 53 (explaining that unlike a third-stage evidentiary hearing, where a defendant no longer enjoys the presumption that the allegations in their petition and accompanying affidavit are true, at the second-stage, hearsay evidence is admissible and 'must be taken as true'). The State's improper hearsay objections should be stricken and disregarded as well.

b. Ms. Smith

Weger has submitted the sworn testimony of Ms. Smith, whose grandfather, a member of the Chicago mafia, told her that he handpicked the men who traveled to Starved Rock and killed the three women. (Petition at pp. 28-29, ¶¶ 166-169, Ex. 28). This evidence is newly discovered, not cumulative, and also material as it is probative of Weger's innocence. The State does not argue otherwise. Thus, any such arguments should be deemed waived.

The State improperly attempts to attack the credibility of Ms. Smith's testimony by claiming it is inconsistent with what Smokey Wrona told Roy Tyson. The State quibbles with the fact that Ms. Smith stated that her grandfather told her that "one" of the husbands wanted his wife killed whereas Smokey Wrona told Roy Tyson that all three of the husbands were in on the plan. The State notes that Ms. Smith's grandfather told her that the husband who wanted his wife killed was in "communications" and that "the State does not believe that Mr. Murphy was in communications." (MTD at p. 30, fn. 18). Again, at this second-stage proceeding, the State is not

regard to anything else?" Ms. Griffin responded – in the context of Mrs. Smith – stating "Well, I would respond that we don't take issue with whether she's telling the truth or not" and then later in her argument made the broader statement "Again, the State does not necessarily disbelieve these witnesses." (See Ex. B at pp. 37-38, attached hereto).

permitted to make credibility arguments and must accept Ms. Smith's testimony as true. Thus, the State's improper credibility arguments must be stricken and disregarded.[10]

c. The Attorney

Weger attaches the testimony of an attorney who testified that Ms. Smith told him this same information decades earlier. (Petition at p. 29, ¶ 170, Ex. 29). Thus, his testimony is newly discovered, material and not cumulative. The State does not argue otherwise. Thus, any such arguments should be deemed waived.

The State's sole argument is that "this is not corroboration that the grandfather actually told Ms. Smith this information, it is corroboration that Ms. Smith said her grandfather told her that one of the husbands put a Mafia hit on the women." (MTD at p. 31). That is true, but that does not render the testimony immaterial. The testimony is still material as it lends credibility to Ms. Smith and shows that Ms. Smith's testimony is not a recent fabrication.

d. ISP Interview Of Glen Palmatier

Weger attaches the transcript of an ISP interview of Glen Palmatier. The State argues that "This document, made in 1960, could have been discovered prior to Setember 2022." (MTD at p. 32). The State is wrong. Unbeknownst to Weger, this document had been in the possession of third-party Steve Stout. Weger's counsel only learned of this document when he received a tip that Mr. Stout had anonymously donated documents to the LaSalle County Historical Museum and counsel then reviewed those documents. Thus, this transcript is newly discovered evidence.

The State naively claims that the information contained in the transcript of the interview with Glen Palmatier "is not material, as it adds nothing to defendant's claim of innocence, except

[10] It should be noted, nonetheless, that according to both Ms. Smith's grandfather and Smokey Wrona, at least one of the husbands wanted his wife killed, the murders were premeditated, and carried out by several members of the Chicago mafia. These are some eye-opening consistencies.

to say that Mr. Palmatier talked to someone who had a criminal background, who he thought was an Indian Chief." (MTD at p. 32). The State is wrong. Law enforcement traced the telephone call that telephone operator Lois Zelensek overheard. That call was placed at a tavern in Aurora owned by Glen Palmatier. The call was received at the house of William Palmatier (Glen's brother) in Peru. The two men were discussing the Starved Rock murders. The transcript shows that while conducting surveillance, the Illinois State police observed Glen Palmatier frequently talking with a known criminal named Lupe "the Chief" Cardenas. Further research has shown that Lupe "the Chief" Cardenas had ties to the Chicago mafia. All of this information points to a crime of premeditation committed by others – not Weger – and possibily members of the Chicago mafia. Thus, the information is material as it is probative of Weger's innocence.

e. Lupe Cardenas' Ties to the Chicago Mafia

Once Weger's counsel learned of the Glen Palmatier transcript, and the reference to Lupe "the Chief" Cardenas, counsel conducted research regarding Mr. Cardenas and discovered newspaper articles showing Mr. Cardenas' link to the Chicago mafia. The State argues that these newspaper articles "are neither new nor material," citing to the dates of the articles. (MTD at p. 33). The State is wrong. It is not the date of the articles that controls in assessing whether the information is "newly discovered." As the *Class* court explained:

> The court also rejected Mr. Stanley's testimony on the separate basis that, in its view, it was not technically newly discovered evidence because he was known to Mr. Class at trial and could have been produced with due diligence. The court noted that '[t]he record is devoid of any efforts to find him and bring him to court except the phrase 'diligent efforts.' We do not think, however, that the record supports this determination. In advancing an actual innocence claim, it is the *evidence* in support of the claim that must be 'newly discovered,' not necessarily the source. (emphasis in original). *People v. Fields*, 2020 IL App (1st) 151735, ¶ 48, 448 Ill.Dec. 221, 175 N.E.3d 1131. Thus, 'an affidavit from a witness may be newly discovered, even when the defense knew of the witness prior to trial.' *Id*. (citing *People v. White*, 2014 IL App (1st) 130007, ¶ 20, 388 Ill.Dec. 250, 24 N.E.3d 158).

Class at ¶ 76.

Here, Weger had no idea who Lupe "the Chief" Cardenas was until his name came up during his review of the interview of Glen Palmatier, which Weger's counsel was unaware of until he received the tip that documents were at the LaSalle County Historical Museum. Thus, these newspaper articles are "newly discovered" evidence.

As to the newspaper articles describing Lupe "the Chief" Cardenas' links of the Chicago mafia, the State – incredibly – states "The People are unsure what this has to do with defendant's theories of the case." (MTD at 32). Seriously? It is hard to believe the State does not understand the significance of this evidence but, in any event, Weger will indulge the State's claim of confusion: Two separate witnesses – Roy Tyson and Mrs. Smith – have come forward with evidence that these murders were premeditated and carried out by several people affiliated with the Chicago mafia. Telephone operator Lois Zelensek overheard two men talking about the Starved Rock murders and how a person still had bloody overalls in the trunk of a car. That call was placed from a pay phone at a tavern in Aurora owned by Glen Palmatier and the call was placed to the residence of William Palmatier in Peru. Clearly, the two people on that telephone call had knowledge of who had committed the murders. Illinois State Police troopers conducted undercover surveillance at the Aurora tavern and learned that a man named Lupe "the Chief" Cardenas frequented that bar and that Mr. Cardenas had a criminal background. Weger has now learned, through these newspaper articles, that not only did Mr. Cardenas have a criminal background, but he had ties to the Chicago mafia. It seems quite likely that Mr. Cardenas – a man with ties to the

Chicago mafia – was the person on the telephone talking with William Palmatier about the murders.[11]

The State also seeks to downplay Lupe "the Chief" Cardenas' affiliation with organized crime and notes that his lawyer called him "small potatoes." (MTD at p. 33). This is an improper credibility argument that should be stricken. [12]

f. James Delorto

In his Petition, Weger includes the testimony of investigator James Delorto, who attempted to interview Cora Gasca, the sister of Lupe "the Chief" Cardenas. The State does not argue that Mr. Delorto's testimony is not newly discovered, is not material, or is cumulative. Thus, any such arguments should be deemed waived. As to the testimony of Mr. Delorto, the State misses the point. According to the Mr. Delorto, whose testimony must be accepted as true at this second-stage proceeding, he made no reference to the Starved Rock murders to Ms. Gasca. Instead, she immediately volunteered that she could not provide any information about the ladies in the park. This indicates that she is aware that perhaps her brother Lupe *did indeed* have some role in the Starved Rock murders.

g. The ISP Believed The Chicago Mafia Was Involved.

Weger cites to a newspaper article wherein Harland Warren admits that the Illinois State Police thought the Chicago mafia was involved in the murders. (Petition at p. 32, ¶ 184, Ex. 36).

[11] The ISP trooper interviewing Glen Palmatier (who was also one of the ISP troopers conducting surveillance inside Glen's tavern) obviously felt Lupe "the Chief" Cardenas was significant, as he specifically interrogated Mr. Palmatier about Mr. Cardenas.

[12] However, the State ignores the most important newspaper article of the group which shows that 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. (Group Ex. 31). Several other members of the Chicago mafia were arrested for that same hijacking. Weger would also note that there is an entire chapter devoted to Lupe "the Chief" Cardenas in the book "Capone's Cornfields – The Mob in the Illinois Valley" by local author Dan Churney, Chapter 31 is titled "The Chief" and recounts how Mr. Cardenas worked for William "Willie Potatoes" Daddano, a notorious member of the Chicago mafia. (*See* Ex. C attached hereto).

Again, Weger had no reason to investigate the potential role of the Chicago mafia until Roy Tyson and Ms. Smith came forward. Thus, this newspaper article is newly discovered evidence and the State does not argue otherwise. Thus, any such argument should be deemed waived.

The State's sole argument is to materiality: "Defendant does not even attempt to explain the materiality of this newspaper article. Is defendant saying that the Illinois State Police once thought the Mafia was involved, therefore they must have been?" (MTD at p. 35). Yes! Precisely. In other words, Weger has learned of newly discovered evidence (Mr. Tyson, Mrs. Smith) that shows the Chicago mafia was involved in the murders. This new evidence is corroborated by the fact that Harland Warren has admitted that the Illinois State police also believed the Chicago mafia was involved as well. Thus, this evidence supports Weger's theory that the Chicago mafia was involved and therefore is material as probative of Weger's innocence.

h. A Possible Moline Gangland Connection / Someone In The "Rackets"

Weger cites a newspaper article wherein an investigator stated that the murders may have had a Moline gangland connection and could have involved someone "mixed up in the rackets." (Petition at pp. 32-33, ¶¶ 185-186, Ex. 37). Weger noted that Robert Murphy, the husband of Frances Murphy, previously lived in Moline, Illinois. (*Id*. at ¶ 186).

The State argues that this newspaper article, dated September 15, 1960, "is not newly discovered, as it could have been discovered previously and is evidence of nothing." Again, Weger did not have a reason to suspect the Chicago mafia, and that one of the husbands may have ordered a hit on his wife, until Roy Tyson and Ms. Smith came forward. Thus, this newspaper article is newly discovered evidence.

As to materiality, the State argues "Is defendant now abandoning the theory that Mr. Murphy hired the Chicago mob and instead the murderers are now the Moline area mob? In any

event, this is simply evidence of nothing, and thus cannot be material evidence." (MTD at p. 36). Evidence of nothing? Again, the State again adopts an overly simplistic and naïve view of the evidence. This newspaper article shows that an investigator back in 1960 believed there may be a connection to the mafia, someone involved in the "rackets," and Moline. Robert Murphy had previously lived in Moline. In other words, the murders were committed by someone else, not Weger. This evidence is also consistent with Weger's other evidence of the potential role of a husband and the Chicago mafia. A person with ties to the Moline area mafia may very well have had ties to the Chicago mafia as well. For all these reasons, this evidence is material as it is probative of Weger's innocence.

i. The Unique Injuries to Frances Murphy

Weger noted that Frances Murphy, unlike the other two victims, had her fingertip cut-off postmortem, she suffered vaginal bruising, and her clothing appeared to have been urinated and defecated upon. (Petition at ¶ 194). Those injuries are consistent with Ms. Smith's testimony that her grandfather told her that the husband who wanted his wife killed was very upset and wanted his wife to suffer. (Petition at ¶ 193). This evidence is newly discovered because Weger, until Ms. Smith came forward with her testimony, had no reason to investigate the issue of whether one of the women suffered unique injuries. This evidence is also material, as it supports and corroborates the testimony of Ms. Smith and is probative of Weger's innocence. The State does not argue that this evidence is not newly discovered, is not material, or is cumulative. Thus, any such arguments should be deemed waived. The State's improper credibility arguments should be stricken and disregarded. (*See* MTD at p. 37).

3. A Telephone Operator Overheard Two Men Discussing The Murders

a. The ISP Interview of Telephone Operator Lois Zelensek

Weger cites to an Illinois State Police interview of telephone operator Lois Zelensek. (Petition at pp. 26-27, ¶¶ 157-162, Ex. 22). That report shows that there were *at least* three people involved in the planning and killing of the three women – the two men on the telephone and the person who had bloody overalls in the trunk of a car. Weger's counsel discovered this document in 2022. This report was never produced to Weger. As such, it should be considered newly discovered evidence.

The State argues that this report is not newly discovered evidence as "There is nothing to suggest that previous counsels were not, or could not have been, aware of this report." (MTD at p. 28). The fact that this two-page report was part of hundreds of pages recently produced pursuant to a FOIA request does not change the fact that the document was never produced to Weger and he was unaware of it. Further, "[t]he 'due diligence' requirement for newly discovered evidence applies to the diligence shown before trial." *People v. Ayala*, 2022 IL App (1st) 192484, at ¶ 134, citing *People v. Smith*, 2015 IL App (1st) 140494, ¶ 19, 398 Ill.Dec. 540, 44 N.E.2d 569.

The State also claims the report is not new because "the telephone operator talked to the police about the conversation on April 20, 1960, and the Palmatier brothers were questioned, and gave their statements in 1960." (MTD at p. 29). But, Weger was not aware of the Palmatier brothers until (1) counsel found the Lois Zelensek report in 2022 and (2) counsel conducted further research on the issue.

The State argues the report is not material because "there is no corroboration that this call occurred, and even if it did occur, it is inconsistent with Smokey's story, and there is nothing to tie this conversation with the murders in this case." (MTD at p. 29). The State is wrong. The report

does not need to be corroborated to be considered material. The information in the report is material as it indicates that there were at least two men aware of a third person who had bloody overalls in the trunk of his car, and those two men had no connection to Weger. Further, the information is consistent with this being a crime of premeditation and therefore material as it is probative of Weger's innocence.

The State also attempts to argue that the men's discussion of having the kid burn the bloody overalls is inconsistent with Mr. Tyson's testimony about Smokey Wrona burning the bloody clothes. This is an attack on the credibility of the evidence which, again, is not permitted. Thus, the State's argument should be stricken and disregarded.[13] Similarly, the State's argument that "there is nothing to tie this conversation with the murders in this case" is an improper credibility attack on the evidence that should be stricken and disregarded. The information in the report must be taken as true at this stage.[14]The State claims that Mrs. Zelensek's information "was discounted after the police spoke with the Palmatier brothers and they passed a polygraph examination." (MTD at p. 30). This is yet another improper credibility argument that should be stricken and disregarded. The same is true as to the State's argument that "a polygraph examination was administered to Ms. Zelensek on November 29, 1960, which concluded that Ms. Zelensek was not

[13] Nonetheless, the State is wrong again. The two pieces of evidence are stunningly consistent. The two men talk about a person having bloody overalls in the trunk of a car. According to Mr. Tyson, Smokey Wrona told him that he had bloody clothes in the trunk of his car. (*See* Ex. 20 at 44:14-15; 56-57). At the time the two men were talking, which was March 21, 1960, five days after the women's bodies were found, the kid had not yet disposed of the bloody overalls and still had them in the trunk of his car. According to Mr. Tyson, Smokey Wrona told him that he did not immediately dispose of the bloody clothes, as he still had the bloody clothes in the trunk of his car. (Ex. 20 at p. 65). During the men's discussion, one of the men stated that the kid should be told to burn the bloody clothes. And, according to Mr. Tyson, that's exactly what Smokey Wrona did, he wound up burning the bloody clothes. (Ex. 20 at p. 66). It must also be stressed that Mr. Tyson provided his testimony *before* Weger's counsel had found the Lois Zelensek report. Thus, Mr. Tyson could not have been influenced by that report. The fact that these two versions of events match up so closely is incredibly powerful.

[14] In any event, the State is wrong. Ms. Zelensek first heard one of the men state "there sure was a big write up on the murders in tonight's paper. You know the kid has bloody overalls in the trunk of the car and is afraid of getting caught." This conversation took place on March 21, 1960, less than a week after the women's bodies were found. Clearly the two men were discussing the Starved Rock murders.

being truthful in this particular instance…" (MTD at p. 30). Although not the best of arguments, the State, nonetheless, will be free to make all these credibility arguments at a third-stage evidentiary hearing.

b. Marsha Minott

Weger has included the sworn testimony of Marsha Minott, the daughter of telephone operator Lois Zelensek. (Petition at pp. 27-28, ¶¶ 163-164, Ex. 26). Ms. Minott testified that her mother was a person known for her honesty. This evidence is newly discovered, is material as it supports the Illinois State Police report interview of her mother, and is not cumulative.

The State does not argue that Ms. Minott's testimony is not newly discovered, is not material, or is cumulative. Thus, any such arguments should be deemed waived. The State merely argues, without explanation, that Ms. Minott's testimony "does not change the fact that [Ms. Zelensek's] information she provided the police in 1960 was neither new nor material." (MTD at p. 30). As discussed above, Mrs. Zelensek's information is newly discovered and material.

c. Glady Brummel

Weger has included the sworn testimony of Glady Brummel, the friend to whom Mrs. Zelensek first reported what she had overhead on the telephone. (Petition at pp. 27-28, ¶¶ 163, 165, Ex. 27). Ms. Brummel testified that she had Lois Zelensek repeat what she had heard the men discussing on the telephone to her husband, an Aurora police officer. Mr. Brummel then advised Ms. Zelensek that she needed to immediately report this important information to the police. Mrs. Brummel's testimony is material as it corroborates what telephone operator Lois Zelensek reported to the Illinois State Police. The State does not argue that Ms. Brummel's testimony is not newly discovered, is not material, or is cumulative. Thus, any such arguments should be deemed waived. The State merely argues, without explanation, that Mrs. Brummel's testimony "does not change

the fact that [Mrs. Zelensek's] information she provided the police in 1960 was neither new nor material." (MTD at p. 30). As discussed, Mrs. Zelensek's information is newly discovered and material.

4. The Potential Involvement Of Robert Murphy

a. Glen Palmatier Knew Robert Murphy

Weger submitted the transcript of an Illinois State Police trooper stating that while talking to Glen Palmatier prior to Mr. Palmatier's attorney arriving, Mr. Palmatier mentioned that he knew Robert Murphy, the husband of Frances Murphy. (Petition at p. 31, ¶¶ 177-181, Ex. 33). The State argues that "this evidence is not 'new' nor is it material." (MTD at p. 34). Again, the State misapprehends the law on newly discovered evidence. Weger has noted how this document had been in the possession of third-party Steve Stout and then Mr. Stout anonymously donated his documents to the LaSalle Historical Museum and Weger's counsel received a tip that documents relating to the Starved Rock Murders had been received. The State argues "[t]his does not make the evidence 'new.'" (MTD at p. 32). Yes it does. This was an original document from former LaSalle County State's Attorney Harland Warren's files. Weger had no idea such a document existed until his counsel reviewed the files at the LaSalle Historical Museum in 2022. The State also argues that "This document, made in August 1960, could have been discovered prior to September 2022," but the State fails to explain how this document could have been discovered earlier. As explained, the State is wrong.

The State also argues this evidence is not material because "[t]his is a claim of actual innocence, not a claim that the investigation should have been focused on someone else, and defendant does not explain what this adds to his claim of actual innocence." (MTD at p. 34). Yes,

Weger contends the investigation should have focused on someone else, including the Palmatier brothers! That evidence is probative of Weger's innocence.

The State is also improperly analyzing each piece of evidence in isolataion. Weger's Petition makes the case that the three women were murdered as part of an organized premeditated plot carried out by members of the Chicago mafia at the request of one of the husbands. This evidence shows that Robert Murphy, the husband of victim Frances Murphy, knew Glen Palmatier, and the evidence in the Petition also shows that Glen Palmatier was seen frequently speaking with Lupe "the Chief" Cardenas, a known criminal with ties to the Chicago mafia. Thus, this evidence is material, as it is probative of Weger's innocence.

b. Polygraph Examiner Stephen Kindig Was Friends With Robert Murphy

Weger cites a newspaper article reporting that polygraph examiner Stephen Kindig was friends with Robert Murphy. (Petition at pp. 31-32, ¶¶ 182-183, Ex. 35). The State argues "this is not newly discovered 'evidence' as it was included in a November 18, 1960 newspaper article." The State is wrong. Again, it is not the date of the newspaper article that controls. Weger did not learn about the issue of one of the husbands hiring the Chicago mafia until Mr. Tyson and Mrs. Smith came forward in 2022.

The State does not argue that this evidence is not material. Rather, the State claims it is "perplexed how this fits into defendant's claim of actual innocence." (MTD at p. 35). If the State is actually perplexed, it should not be. During the initial stages of the investigation, Weger passed six polygraph examinations administered by the Illinois State Police. But, then in late September, when State's Attorney Harland Warren started conducting his own rogue investigation, Weger was given yet another polygraph examination, this time from Stephen Kindig at John Reid & Associates. Weger contends that Mr. Kindig falsely claimed that he failed that test. Weger also

contends that Mr. Kindig falsely claimed that telephone operator Lois Zelensek failed her polygraph exam. We now know that polygraph examiner Kindig was friends with Robert Murphy. Thus, Weger contends that Mr. Kindig (either willingly or unwillingly) was part of the conspiracy to frame him. Based on all the evidence, such a scenario is not "ludicrous," as the State claims. (MTD at p. 35). To the extent the State is attacking the credibility of this evidence, such arguments should be stricken and disregarded at this second-stage proceeding. But, the State will be free to make its "ludicrous" argument at a third-stage evidentiary hearing.

5. Multiple Offenders Were Likely Involved

a. ISP Interview with George Spiros[15]

Weger cites to a police interview with George Spiros, who stated he had seen the women talking to five men next to two cars. (Petition at p. 34, ¶ 192, Ex. 63). This report was never produced to Weger. The State simply responds, "None of this is 'newly discovered' evidence." (MTD at p. 36). But, again, it is not the date of the document that controls. Weger was unaware of this report until it was produced to his counsel as part of a FOIA request. The State claims this evidence is not material but fails to offer any explanation as to why. Mr. Spiros's account of the women talking to several men next to two vehicles is consistent with the issue of there being multiple attackers. Thus, the evidence is material as it is probative of Weger's innocence. The State's argument that this evidence is inconsistent with Mr. Tyson's testimony (MTD at p. 37) is an improper credibility argument that should be stricken and disregarded.

b. Dr. David Fowler

Forensic pathologist Dr. David Fowler is discussed below under the "Expert Witness Testimony" category.

[15] Weger withdraws his claim that the police interview with John Kovalik is newly discovered evidence.

6. Expert Witness Testimony

a. Dr. Brian Cutler

Weger submits the report of Dr. Brian Cutler who illustrates what the relevant psychological research and social science research has revealed about interrogations and false confessions and the factors that lead to false confessions. Dr. Cutler also discusses how many of the proven factors leading to false confessions are present in this case. (Petition at pp. 35-36, ¶¶ 201-206, Ex. 8). The science and studies relating to false confessions was not available at the time of Weger's criminal trial in 1961. Thus, Dr. Cutler's report is newly discovered evidence. Dr. Cutler's report is also material, as at any retrial it would be evidence Weger could use to support his claim that his confession was false and coerced and would be probative of Weger's innocence.

The State argues that Dr. Cutler's report would not be admissible at a third-stage evidentiary hearing, citing an unpublished order in *People v. Harper*, 2017 IL App (1st) 152867-U, ¶¶ 53-57. (MTD at p. 38). This is an improper argument at this second-stage proceeding and it should be stricken and disregarded.[16]

The State also argues that "Dr. Cutler's expertise is in the field of eyewitness identification," cites to a district court case from Virginia where Dr. Cutler's opinions were allegedly questioned, and makes other credibility attacks. (*See* MTD at p. 41). Again, the State's improper credibility attacks that should be stricken and disregarded at this second-stage proceeding. The State will be free to make all these arguments if it so chooses at a third-stage evidentiary hearing.

[16] Nonetheless, Weger notes that Dr. Cutler testified at a third-stage evidentiary hearing in *People v. Brown*, 2020 IL App (1st) 190828. Also, Dr. Cutler's video deposition testimony was presented in court at a third-stage evidentiary hearing in *People v. Dugar*, 2021 IL App (1st) 182545-U. *See also People v. Martinez*, 2021 IL App (1st) 190490 (court held that report of expert witness regarding eyewitness identifications could be considered when evaluating defendant's claim of innocence).

b. Dr. David Fowler

Weger submits the report of forensic pathologist David Fowler. (Petition at pp. 35-36, ¶¶ 201-206, Ex. 8). Dr. Fowler opines that the women's injuries occurred from heavy solid objects applied at a high speed such as a baseball bat or steel pipe (as to the cylindrical injuries) and a tire iron, the end of a 2x4, or hammer with a square head (as to the squared-off or pointed injury). Dr. Fowler also opines that the women's camera or binoculars "would not be sufficient to cause the severe skull fracturing seen in these cases." This evidence is newly discovered, and it is also material as Dr. Fowler's opinions invalidate the State's trial theory and the details of Weger's confession wherein Weger claims he used a log, the women's camera, and the women's binoculars to kill the women.

The State argues that "seeking out new expert witnesses after the conclusion of the trial to counter evidence and testimony properly presented at trial does not qualify as 'new and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during trial,'" citing *Woodward v. State*, 276 So.3d 713, 760-61 (Ala. Crim App. 2018)(MTD at p. 42). The State is wrong. Weger is entitled to present new, advanced, scientific expertise, not available at the time of his trial, to refute the State's theory of the murder and the weapons used to kill the three women.

c. Dean Esserman

Weger submits the report of Dean Esserman, a police practices expert, who opines that law enforcement failed to conduct a proper investigation of the murder weapon; of Frances Murphy's missing fingertip; witnesses who saw the women talking to several men; and the Palmatier brothers. Mr Esserman also opines that Harland Warren misrepresented the twine evidence and investigators conducted improper interrogations of Weger. (Petition at p. 36, ¶ 207, Ex. 40). This

evidence is newly discovered, not cumulative, and material (and the State does not argue otherwise) as it is corroborates Weger's claim that Deputies Dummett and Hess, and State's Attorney Harland Warren, among others, framed him for the murders.

The State argues that "Mr. Esserman also does not opine that any of these 'flaws' resulted in the conviction of an innocent man, or that they would have led to a person other than defendant as being the murderer." (MTD at p. 43). The State misses the point. Law enforcement's numerous failures to conduct a proper investigation, and Harland Warren's misrepresentation of the twine evidence, are circumstantial evidence that a fact-finder can consider to support Weger's claim that there was a conspiracy to frame him for the murders. Thus, this evidence is material as it is probative of Weger's innocence.

d. John Palmatier

Weger submits the report of polygraph expert John Palmatier (no relation to the Palmatier brothers), who opines that: (1) the claim that Weger failed what would have been his seventh polygraph examination, after passing the first six, is suspect; (2) John Reid's examination of Weger 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 of 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;" and (5) Mr. Kindig's collection of reward money was "ethically and professionally repugnant" and calls his credibility into question. (Petition at p. 37, ¶ 208, Ex. 41).

The State does not argue that Mr. Palmatier's report is not newly discovered evidence, is cumulative or is not material. Thus, any such arguments should be deemed waived. The State's claim, without explanation, that this evidence is "irrelevant" and "immaterial" should be rejected. Mr. Palmatier's report is further circumstantial evidence that, among other things, Mr. Kindig's purported claim that Weger and Ms. Zelensek failed their polygraph examinations was highly suspect; Mr. Reid's examination of Weger was an improper attempt to get him to confess (consistent with the plan and conduct of Harland Warren, William Dummett and Wayne Hess); Mr. Kindig's failure to recuse himself can be explained by him being a part of the conspiracy seeking to frame Weger; and Mr. Kindig's collection of reward money further called his credibility into question. Thus, this evidence is newly discovered, not cumulative and material as is supports Weger's claim that there was a conspiracy to frame him and is probative of Weger's innocence.

7. Affidavits (Withdrawn)

Weger withdraws his affidavit, and the affidavits of Mary Pruett and Stanley Tucker, as part of his newly discovered evidence.

8. Deputy William Dummett's Pattern and Practice of Misconduct

a. Daniel J. Bute & Gary R. Garretson

Weger has submitted the affidavit of Daniel J. Bute, a former public defender in LaSalle County, Illinois. In his affidavit, Mr. Bute describes a case wherein Deputy William Dummett lied about showing a criminal defendant named Steve Broadus autopsy photographs to induce Mr. Broadus to confess. (Petition at pp. 40-41, ¶ 230, Ex. 46). Weger has also submitted an affidavit from Gary R. Garretson, a former Assistant State's Attorney of LaSalle County, Illinois, who 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. (*Id.* at p. 41, ¶ 233, Ex. 47).

b. Robert Harris

Weger submits the testimony of eighty-four-year-old Robert Harris, who testified that in 1970, Deputy Dummett tried to frame him for a robbery of platinum at an industrial plant. (Petition at p. 40, ¶ 229, Ex. 45).

c. Edward J. Kuleck, Jr.

Weger submits an affidavit from Edward J. Kulcek, Jr., a former Assistant State's Attorney of LaSalle County, Illinois and thereafter a criminal defense attorney, who discusses his representation of a man named Linwood Sluder in 1979/1980 and how Deputy Dummett's questionable testimony was stricken. (Petition at pp. 41-42, ¶¶ 234-235, Ex. 48).

As to the affidavits of Mr. Bute, Mr. Garretson, Mr. Harris and Mr. Kuleck, Jr., the State does not argue that this evidence is not newly discovered, is not material, or is cumulative. The State's only response to this pattern and practice of misconduct is "[a]pparenty, based on these later actions of Dummett, defendant wants this Court to believe that Smokey Wrona committed these murders and that the evidence against him is suspect." (MTD at p. 49). What? This pattern and practice of misconduct has nothing to do with Smokey Wrona.[17] Weger contends that Sheriff Deputy Dummett (and others) framed him for the murders. Weger contends, among other things, that Deputy Dummett threatened him with the electric chair (which Dummett lied about at trial),

[17] Apparently, the State has not actually reviewed Roy Tyson's testimony, as Mr. Tyson clearly states that Smokey Wrona told him that he was not involved in the actual killing of the three women, rather just the planning of the murders. (*See, e.g.,* Mr. Tyson's testimony at Ex. 20: 29:10-13: "You don't have to participate in the actual physical bludgeoning and murdering or whatever you plan. You're the planner. You're like the orchestrator;" 42:16-18: "I'm not going down there to be a part of it. You told me I didn't have to so I'm not;" 42:19-21: "So I'm going to tell you the plan, and you're going to do down there with the two other guys. There's going to be three total;" 52:24-53:3: "So Smokey stayed up there and got out of his car and was pacing back and forth by the entrance to go down or whatever. He was just walking around, making sure everything was cool. That was his job.").

coerced his confession, fed him the details to put into his confession. This pattern of practice of misconduct by Deputy Dummett supports Weger's contention of Dummett's misconduct in this case and is material as it is probative of Weger's innocence. *See People v. Almodovar*, 2013 IL App (1st) 101476, at ¶ 78 ("The allegations of Detective Guevara's pattern and practice of misconduct as presented in the instant petition are newly discovered, since, as noted, the State does not even contend that such evidence would reasonably have been available to defendant at the time of his first postconviction hearing.").

9. The Reward Money

In his Petition, Weger cites to a newspaper article showing that in 1963 – two years after Weger's trial had concluded - Harland Warren, William Dummett, Wayne Hess, and Stephen Kindig all shared in the substantial reward money. (Petition at pp. 43-44, ¶¶ 241-253). The State does not argue that this evidence is not newly discovered, is not material, or is cumulative. Thus, any such arguments should be deemed waived. The fact that these men all improperly collected reward money affects their credibility and bias and is proper evidence for this court to consider.

10. Harland Warren's Notes

In his Petition, Weger cites handwritten notes from former State's Attorney Harland Warren that detail his plan of intimidation, harassment, and coercion. (Petition at pp. 44-45, ¶¶ 254-256, Ex. 51). The State claims that "nothing in this document is 'new.'" (MTD at pp. 51-52). The State is wrong. All of it is new. Weger had never seen these notes before. This State also argues – without explanation – that "[t]his adds nothing to defendant's claim of actual innocence. If that State is arguing that Mr. Warren's notes are not material, the State is wrong. These notes show Harland Warren's shocking documented plan to "commence psychological warfare" to "get

[Weger] to confess" at all costs. This evidence is consistent with Weger's claim that he was framed for the murders and thus is material as it is probative of Weger's innocence.

11. Wayne Hess's Admission

Weger submits the testimony of James Woods. (Petition at pp. 42-43, ¶¶ 238-240, Ex. 49). Mr. Woods testified that when discussing the Starved Rock murders, he overheard former Sheriff's Deputy Wayne Hess tell his father "Jimmy, what we did to that kid was not right." (Ex. 49 at p. 7, lines 11-17). Deputy Hess's admission is circumstantial evidence that Weger is innocent. Thus, Mr. Woods' testimony is newly discovered evidence, material, and not cumulative.

The States does not argue that Mr. Woods' testimony is not newly discovered evidence, is not material, or is cumulative. Thus, any such arguments should be deemed waived. The State argues that Mr. Woods' testimony is "double hearsay" but then acknowledges that double hearsay can be considered at a second-stage proceeding. (MTD at p. 49). In any event, this improper hearsay argument should be stricken and disregarded. The State also argues, with no explanation, that "[n]one of this can be considered credible or reliable or admissible," (MTD at p. 50), but, again, such credibility arguments are inappropriate at a second-stage proceeding and should be stricken and disregarded as well. The State will be free to cross-examine Mr. Woods at a third-stage evidentiary hearing.

C. <u>Weger's Newly Discovered Evidence Would Probably Change The Trial Result</u>.

1. The State's Case Against Weger In 1961 Was Weak.

As the court stated in *People v. Velasco*, 2018 IL App (1st) 161683, ¶ 124, "We begin our analysis by briefly reviewing the evidence at trial." Here, the case that the State presented to a jury in 1961 was weak. So weak, in fact, that the State was afraid that Weger might be acquitted.[18]

[18] The jury did not appear to be persuaded by the State's case, as newspaper articles reported that the jury's first vote was 7-5 for a guilty verdict but the second vote was deadlocked at 6-6. (*See* Ex. D attached hereto).

Thus, the State elected to only proceed to trial as to the murder of Lillian Oetting so that if the jury acquitted Weger, the State could proceed to another trial as to either the murder of Frances Murphy or Mildred Lindquist.

There was no physical or forensic evidence linking Weger to the murders. This is a significant factor that is frequently cited by courts when considering whether the newly discovered evidence would probably change the result at a retrial. See, *e.g.*, *People v. Class*, 2023 IL App (1st) 200903, ¶ 65 ("There was no physical evidence inculpating Mr. Class…"); *People v. Ayala*, 2022 IL App (1st) 192483, ¶ 150 ("*There was no physical evidence linking defendants to the crimes*, and the only witness to testify regarding defendants' involvement was the highly incentivized Cruz.")(emphasis added); *People v. Ruhl*, 2021 IL App (2d) 200402, ¶ 77, 91 ("No physical or forensic evidence linked defendant to the murder. . . Looking at the trial evidence, we see that no physical or forensic evidence tied defendant to the murder."); See *People v. Velasco*, 2018 IL App (1st) 161783, ¶ 130 ("We also note that *there was no physical evidence tying defendant to the crime*, the gun was not recovered, and the witnesses who testified against him had criminal backgrounds of their own.")(emphasis added); *People v. Jones*, 2016 IL App (1st) 123371, ¶ 102 (Court held that the cumulative effect of newly discovered evidence in support of defendant's innocence claim raised the probability that it was more likely than not that he would not be convicted and noted that "there were no eyewitnesses at trial, *no physical evidence linking defendant to the murder*, and no evidence of an arrest of defendant at the crime scene.")(emphasis added). *People v. Almodovar*, 2013 IL App (1st) 101476, ¶ 79, 368 Ill.Dec. 375, 984 N.E.2d 100 (court granted the defendant leave to file a successive petition and found that the new evidence would probably change the result on retrial where *"[n]o physical evidence link[ed] the defendant to the shooting*," where the two eyewitnesses had "only a brief opportunity to see the perpetrators,"

and where the defendant attached a newspaper article concerning past misconduct by the same detective.")(emphasis added); *People v. Coleman*, 2013 IL 113307, ¶ 109, 996 N.E.2d 617, 374 Ill.Dec. 922 (Court noted the State's evidence was "far from overwhelming" and "[t]here was no forensic evidence to link defendant to the attack").

The State's case centered on a confession that was illogical, contradicted the physical evidence, was procured using methods that frequently lead to false confessions and that the State knew or should have known was false and the product of coercion. The confession, on its face, made no sense. According to Weger's story, while on his work break, he took a walk in the park and had a random chance encounter with the three women. Despite being on his work break, and knowing that the three women were likely guests of the Lodge whom he might encounter again, Weger decided he wanted to rob the three women. Weger somehow mistook a camera case for a purse and when he grabbed the strap of the case it broke. This led to a verbal altercation and rather than just leave the women and part ways, Weger decided he needed to bind the middle-aged women with twine so that he could ensure that he, a fit twenty-one-year-old, would return to the Lodge before they did. However, after taking the time to bind the women with two types of twine that he just happened to have in his possession – both 20 strand and 10 strand – one of the women somehow broke loose from her twine and began attacking him. This woman must have had two different knifes in her possession, as the twine was later determined to have been cut in two separate ways, by a knife with a sharp blade and another with a serrated blade. During his struggle with the woman who broke free from the twine and attacked him, Weger picked up a log that happened to be laying on the ground in front of him and struck the women with the log. Thinking that he had accidentally killed this woman, Weger felt he needed to now kill the other two women so that they could not identify him. Thus, Weger proceeded to beat them with not only the log, but

the women's camera and binoculars. And not only did Weger beat them enough to kill them, he beat them so viciously and so violently and repeatedly that their skulls were crushed and their faces were unrecognizable. During this brutal beating, Weger claims he saw a plane fly overhead and was worried that he and the women might have been spotted by the pilot. This, for some reason, caused Weger to believe that he needed to hide the women's bodies, so he dragged them and carried them, one by one, into a shallow cave.[19] But, rather than simply leaving the bodies be, Weger felt it necessary to stage the scene by pulling up the women's dresses and pulling off their underwear. Despite his alleged motive being robbery, Weger, curiously, did not take anything from the women, who were all found with their jewelry and rings in their possession. After taking the time to create this elaborate crime scene, Weger proceeded back to the Lodge and calmly resumed his duties as a dishwasher, with no signs from his body or clothing that he had just been involved in the bloody massacre of three women. That is the story that the State told to the jury in 1961. And that is also the story that the Will County State's Attorney's Office, as the special prosecutor in this case, continues to believe to this day, despite the newly discovered evidence set forth herein. Weger was convicted by the jury, as false confessions were a foreign concept at the time. But, tellingly, the jury rejected the State's request that Weger be put to death by electrocution.[20]

In his closing argument, Weger's attorney Robert McNamara argued "Let me say this, ladies and gentlemen: This confession is the most fantastic, improbable thing that I have ever heard of, and is capable of being thought up only by a man of Bill Dummett's caliber. This is utterly impossible and unbelievable. . . Ladies and gentlemen, this confession is the record of a deputy

[19] If Weger believed he had been spotted by the plane's pilot, it's difficult to see how putting the women's bodies in a cave would help him. He had already been seen.

[20] In the rebuttal closing argument, State's Attorney Anthony Raccuglia argued "Now, I state to you ladies and gentlemen that this man does not deserve 199 years in the penitentiary. He doesn't deserve 299 years in the penitentiary. He doesn't deserve 399 years in the penitentiary. He deserves to be electrocuted." (*See* Ex. E attached hereto).

sheriff with political aspirations who took this young American citizen, outraged his liberty, violated the laws of the land, trampled on the Constitution, and then committed the darkest and deepest perjury in this court of justice to cover up his deed." (*See* Ex. O attached hereto).

The State argues that the State's case was based on more than just the "confession," citing Weger's jacket, alleged scratches on his face, the testimony of Dr. Meyer Kruglik, and the testimony of jail guard Don Cila. However, as discussed below, this evidence was extremely weak as well. *See People v. Rosalez*, 2021 IL App (2d) 20086, ¶ 136 ("In considering the affidavit evidence alongside the trial evidence, we note certain weaknesses in the State's case.").

The State argues that Weger's buckskin jacket was also part of the evidence supporting his conviction, but the State has little to say about the buckskin jacket. The State does not address the fact that the jacket only had "minute" spots of blood on it that ranged in size from that of a pinpoint to spots the size of the head of a straight pin. (*See* Ex. V at p. 1226, attached hereto). The State never established the source of the "minute" spots of blood on Weger's jacket. These findings were inconsistent with the horrific and bloody crime scene, especially when Weger described using a "fireman's carry" to haul at least one of the women into the cave. Further, there was no evidence that Weger had gotten any blood on his shirt, pants or shoes.

The State also argues that several Lodge employees testified at trial to seeing scratches on Weger's face after the murders. Indeed, some Lodge employees presented some very dramatic testimony as to Weger's injuries. Irma Bycznski, for example, testified that "[Weger] had scratches up above the eye and some on the face, and on the neck and quite a bruise under the right eye. It was yellow." (*See* Ex. F attached hereto). Louise Reeves testified that "Chester had scratches all up and down his face, he had a bruise, a bad bruise" . . . "all up and down his cheek" . . . "they just looked like long scratches." (*See* Ex. G attached hereto). Mattie Robinson testified on cross-

examination that she did not notice any injuries to Weger when she saw him on March 14th and claims she did not notice any injuries until a week later on March 21st. (*See* Ex. H attached hereto). Glen Comatti testified that he saw "a large bruise or scratch high on his cheek bone and several small scratches." (*See* Ex. I attached hereto). However, in his prior interview with ASA Armstrong, Mr. Comatti stated that he never saw any scratches on Weger. (*See* Ex. I at pp. 563-564).

The testimony of these Lodge employees is quite dubious. First, curiously, these Lodge employees were not event interviewed until *seven months* after the murders. Second, If Weger actually had all these obvious scratches and bruises that these Lodge employees described at trial, Weger would have stood out like sore thumb. At trial, several Illinois State Police troopers testified to talking to Weger in the days after the women's bodies were found. *See, e.g.*, Carl Raisens – spoke to Weger on March 18, 1960 and interrogated Weger on March 20, 1960 (*See* Ex. J attached hereto); Richard Lowthorp – interrogated Weger on March 20, 1960 (*See* Ex. K attached hereto); Sergeant William Hall – interrogated Weger on March 20, 1960 (*See* Ex. L attached hereto). If Weger actually had all these cuts and bruises his injuries would have surely been contemporaneously noted by law enforcement, especially when they were interrogating Weger.[21] But, there are no such reports.[22] Hmm.

Another problem with the State's "scratches" evidence is that the women were wearing gloves when they were found and there was no skin found under their fingernails. (*See* Ex. 6). The State tries to get around this problem by now speculating that maybe Weger injured himself with

[21] Weger notes in his Petition that Nick Spiros was quoted in a November 19, 1960 newspaper article stating: "Spiros said 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)(emphasis added). Thus, Mr. Spiros never noticed any injuries to Weger.

[22] As to Lodge employee Victoria Hobneck, the State does not seek to defend ASA Armstrong's relentless badgering of her. Also, the State claims that the interview "reveals no such attempt to dig up dirt on Chester." (MTD at p. 18). However, ASA Armstrong asked Ms. Hobneck, among other things, "Has he ever made any passes at you? . . . Chester drinks too?" (*See* Ex. 14).

the murder weapon. Not the best argument, but the State is free to make it at a third-stage evidentiary hearing.

The State also introduced certain "twine" evidence at trial, but that evidence was misleading and incomplete. As set forth in the Petition, there was no twine found at the crime scene that was linked to Weger or the Starved Rock Lodge's kitchen. Glen Comatti admitted on cross-examination that the 20-strand twine found around Lillian Oetting's wrist was a very common type of twine that could be purchased from several sources. (*See* Ex. 15).[23]

The State cites to the testimony of Dr. Meyer Kruglik, who testified that Weger also confessed to him in the LaSalle County Jail on November 17, 1960. (MTD at pp. 4-5)(*See* Ex. M attached hereto). But, the fact that Weger, who confessed to save his life, would have repeated his false confession later that same day to Dr. Kruglik is hardly surprising. On November 19, 1960, Weger was appointed a public defender and once he had an opportunity to meet with an attorney he promptly recanted his confession. (*See* Ex. N attached hereto).[24]

The State argues that "Defendant's statements regarding the red plane flying overhead were corroborated." (MTD at p. 5). Yes, but there's more to the story. Weger only mentioned the red and white plane in his "confession" because Deputy Dummett told him to. At the criminal trial, Homer Charbonneau, Jr. testified that on March 14, 1960, he flew a red and white plane "in the local area." (*See* Ex. P attached hereto). Julius Corsini, the airport operator, testified at the criminal

[23] Investigators also found a piece of 20-strand twine knotted to a piece of 10-strand twine at the crime scene, but there was no evidence that the Lodge used 10-strand twine, and when ASA Armstrong went to Weger's house looking for twine, he only found 12-strand twine. (*See* Ex. 16). The State did not inform the jury of this 10-strand twine, as it exculpated Weger. This should have been another red flag to law enforcement and prosecutors that Weger was not the offender.

[24] Chester's attorney, Robert McNamara, noted this in his closing argument to the jury: "Then will you tell me at the very first chance he got away from the watchful eye of Deputies Dummett and Hess and the law enforcement officers when at the very first human voice that could give him any help, which was the public defender, Joseph D. Carr and incidentally, if he hadn't been indicted so promptly, he was the next day, there might be ten more confessions. . . Didn't Chester reach out for the very first hand that reached out to him and say, 'This confession is a lie?,' 'This confession is wrong.'" (*See* Ex. O attached hereto).

trial that the red and white plane was owned by the Ottawa Airmen's Club. (*See* Ex. Q attached hereto). In 2004, Weger's prior counsel obtained an Affidavit from Homer Charbonneau wherein he states, among other things, that: Deputy William Dummett was a member of the Ottawa Airmen's Club at some point but he did not know if Deputy Dummett was a member in 1960; the sign-out sheet for the airplane was visible to anyone who walked into the airport, as it was affixed to a wall; and it is possible that prior to November 16, 1960, Deputy Dummett could have checked the sign-out sheet on the wall and determined that Mr. Charbonneau flew the red and white airplane on March 14, 1960 at a particular time. (*See* Ex. R attached hereto).

Finally, the State cites to the testimony of jail guard Don Cila (MTD at p. 5), who testified in the State's rebuttal case that on November 23, 1960, Weger allegedly told him that he had made two mistakes: "One, taking the six lie detector tests in Chicago; secondly, going out to Starved Rock and putting all the pieces together for the dumb cops." (*See* Ex. S attached hereto). Mr. Cila's testimony is highly suspect.[25] As noted, once Weger obtained a public defender on November 18, 1960, he recanted his confession. It would have been extremely unlikely that Weger would have made an inculpatory statement to a jail guard sitting outside his cell just days after recanting his confession. The timing of Mr. Cila's employment with the LaSalle County Sheriff's Office is also interesting, as he admits that he came on board on November 17, 1960, the same date that Weger "confessed." (*See* Ex. S at p. 2135).

[25] In his closing argument, attorney McNamara stated: "I just want to comment in passing that Chester had a 24-hour guard, and one of these guards came in here and alleged that Chester made some admissions to him regarding the fact that he made two mistakes. I had never heard this Chester denied it on the stand, and I suppose then dollars a day is good pay for a stool pigeon, and I don't think, however, that this man should be a jury guard." (*See* Exhibit O attached hereto).

Factually, it makes no sense as well, as Weger did not take *six* polygraph examinations in Chicago. In any event, this questionable evidence, along with all the other flimsy trial evidence, would not have been enough to overcome Weger's mountain of new evidence discussed below.

2. Weger's Newly Discovered Evidence Places The Trial Evidence In A Different Light, Undermines The Court's Confidence In The Judgment Of Guilt, And Would Probably Lead To A Different Result.

Weger's newly discovered evidence is powerful. First and foremost, Weger has forensic evidence supporting his claim of innocence. In his Petition, Weger explains the significance of DNA testing that excludes him. (Petition at ¶¶ 136-150). There can be little doubt that the hair found on the gloved finger of Frances Murphy (the same finger that had the tip cut-off post-mortem) was from one of the killers. This was not just a single random hair. Contemporaneous newspaper articles reported that nine strands of hair were recovered from Mrs. Murphy's finger. (Ex. U). The hair that Weger had tested for DNA had a root (*See* Ex. T attached hereto), which is exactly why Bode Technology was able to obtain a DNA profile. The fact that the hair had a root is consistent with the hair being yanked out during a violent struggle. Weger has been excluded as the source of that hair.

But there is more. Due to cutting edge genetic genealogy testing, Othram has determined that the hair came from one of three local brothers, Leo Bray, Charles Bray, or Edward Bray. Thus, this eliminates the argument that the hair could have come from a family member, someone in law enforcement, or someone who processed the crime scene. It also eliminates the ridiculous argument that perhaps Weger had accomplices, as Weger has no connection to these Bray brothers. Simply put, the Bray brother whose hair was found on Frances Murphy was involved in the killings in some way.

Additional forensic examinations of the evidence are probative of Weger's innocence. As discussed, the Illinois Crime Lab determined that the twine that had been used to bind the women had been cut with two different types of knives, one with a sharp blade and one with a serrated blade, which is consistent with there being multiple attackers. Also, the Illinois Crime Lab determined that there was 10-strand twine found at the crime scene and there was no 10-strand twine recovered from Weger's house or from the Starved Rock Lodge. The Illinois Crime Lab also determined that the log could not have been the murder weapon, as the bark was soft and spongy and the blood found on the log did not result from hitting. These forensic results completely contradict Weger's "confession" and are probative of Weger's innocence.

Weger has also submitted an abundance of newly discovered evidence that supports his contention that the murders of the three women were premeditated and possibly organized and committed by members of the Chicago mafia who were hired by one of the women's husbands. (See Ex. 21: Sworn testimony of Roy Tyson; Ex. 28: Sworn testimony of Ms. Smith).[26] Mr. Tyson and Ms. Smith both testified that at least one of the husbands wanted his wife killed, and Weger has developed evidence that Glen Palmatier was friends with Robert Murphy, the husband of victim Frances Murphy. Weger has also learned that Robert Murphy was friends with polygraph examiner Stephen Kindig, who suspiciously claimed that Weger failed his seventh polygraph exam and that Ms. Zelensek allegedly failed her polygraph exam as well. Further, the unique injuries suffered by Frances Murphy are consistent with Ms. Smith's testimony that the husband was mad at his wife and wanted her to pay.

[26] The State may attempt to argue that the hair from one of the Bray brothers is inconsistent with the Chicago mafia theory. It is not. The Bray brother may or may not have had connections to the Chicago mafia. Even if he did not, he could have been recruited (likely by Smokey Wrona) to assist in the murders.

The Illinois State Police report summarizing an interview with telephone operator Lois Zelensek also supports such a theory. Mrs. Zelensek overheard two men talking about the Starved Rock murders and how the "kid" still had bloody overalls in the trunk of a car and did not know what to do with them and was afraid of getting caught. The call was determined to be placed from a tavern in Aurora, Illinois owned by Glen Palmatier and received at the residence of William Palmatier (Glen's brother) in Peru, Illinois. Weger had no connection to Glen Palmatier or William Palmatier. This evidence supports the theory that the murders were premediated and that there were several individuals involved and with knowledge. Lupe "the Chief" Cardenas, whom the Illinois State Police troopers observed frequently talking with Glen Palmatier, was known to have Chicago mafia connections. Finally, the Chicago mafia evidence cannot be dismissed as folly, as Harland Warren has admitted that the Illinois State Police believed the Chicago mafia was involved in the murders.

Weger has also submitted expert testimony supporting his innocence claim. Dr. Brian Cutler's report provides a thorough analysis of the relevant science and supporting studies regarding false confessions and the false confession factors that are present in this case. In 1960, false confessions were a foreign concept. Forensic pathologist David Fowler provides a new scientific analysis of the types of weapons that could have caused the women's horrific injuries. His report essentially rules out the log, camera and binoculars as murder weapons, thus casting doubt on the veracity of Weger's confession. He discusses two types of injuries (a cylindrical injury and a squared or pointed injury) that would have been caused by two different objects, which is consistent with the theory that there was more than one offender. Police practices expert Dean Esserman outlines the several flaws in the investigation, which are consistent with Weger's contention that rather than conduct a proper investigation, certain members of law enforcement

engaged in misconduct in an effort to frame him. Finally, polygraph expert John Palmatier notes the questionable conduct of polygraph examiners John Reid and Stephen Kindig, which is consistent with Weger's contention that their polygraph results were not legitimate.

Weger has uncovered a pattern and practice of misconduct by Deputy William Dummett, which supports Weger's contention that Dummett engaged in several forms of misconduct in this case which led to Weger's false confession. Weger has uncovered notes from Harland Warren that outline his plan to "commence psychological warfare" in an effort to get him to confess at all costs. And Weger has uncovered evidence that Wayne Hess admitted to the mistreatment of Weger.

Despite noting that "[t]he evidence must be considered together and not in isolation," citing *People v. Gonzalez*, 2016 IL App (1st) 141660, ¶ 28, (MTD at p.8), the State ignores that legal standard and improperly analyzes Weger's evidence individually. See *People v. Class*, 2023 IL App (1st) 200903, ¶ 58 ("The fundamental problem with the trial court's analysis in its order granting the State's motion to dismiss Mr. Class's petition is that, rather than employing the comprehensive review described above – an analysis that considers *all* of the evidence, 'both new and old together'- it employed a piecemeal approach, assessing each of the affidavits individually and finding that none of them, standing alone, was sufficient to make the necessary showing of actual innocence."). When Weger's newly discovered evidence is analyzed together, it is overwhelming.

Weger's newly discovered evidence, taken as true and considered collectively, would support the defense theory that Weger is innocent, the murders were premeditated by several individuals, the women were killed by multiple offenders, using more than one murder weapon, and the Chicago mafia was likely involved. *See People v. Velasco*, 2018 IL App (1st) 161683, ¶ 126 ("The new testimony provided on postconviction, taken as true at the second stage (*id.* ¶ 48),

and considered collectively (*Gonzalez*, 2016 IL App (1st) 141660, ¶ 28, 410 Ill.Dec. 568, 70 N.E.3d 695), would provide the evidence (lacking at trial) to support the defense theory.").

Weger has met his burden as the newly discovered evidence places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt. *Robinson*, 2020 IL 123849, ¶ 48. Weger's newly discovered evidence, when considered with the weak trial evidence, would probably lead to a different result. *Id.* ¶ 47. Weger's newly discovered evidence would be a tsunami at a retrial that would completely overwhelm the State's case built around this nonsensical false confession.

II. WEGER'S CONSTITUTIONAL CLAIMS SATISFY THE CAUSE AND PREJUDICE TEST AND THIS COURT MUST INDEPENDENTLY MAKE THOSE DETERMINATIONS FOR THE CONSITUTIONAL CLAIMS TO PROCEED

Weger has previously and once again acknowledges that this Court must find that each of the individual "non-innocence" claims (claims II through VI) meet the cause and prejudice test. This does not affect this Court's determination to advance the actual innocence claim to the second stage. Successive petitions are allowed on two possible bases. First, successive claims may be based upon actual innocence and, second, successive legal claims may be reviewed if they first satisfy the cause and prejudice test.

Gray areas exist regarding supplemental successive claims and procedure. It appears that only the Court can decide whether the cause and prejudice test is met and that this must be done without input from the State. Thus, Weger will be resubmitting his constitutional claims (claims II through VI) via a separate, newly-filed motion for leave to file a successive postconviction petition, to which claims now designated II through VI will be set forth in a separate petition.

This Court has already determined that the innocence claim in the main successive postconviction petition met the standards to move the innocence claim to the second stage. The

Court will now be asked to make the requisite cause and prejudice determinations for each individual constitutional claim. *See People v. Thames*, 2021 IL App (1st) 180071 (where the circuit court did not rule on whether a claim met the cause-and-prejudice test, the matter was remanded for the circuit court to conduct an independent analysis). *See also People v. Lee*, 344 Ill. App. 3d 851, 853 (2003).

Further, the Post-Conviction Hearing Act expressly grants this Court discretion to determine additions and amendments via section 122-5:

> Within 30 days after the making of an order pursuant to subsection (b) of Section 122-2.1 [725 ILCS 5/122-2.1], or within such further time as the court may set, the State shall answer or move to dismiss. In the event that a motion to dismiss is filed and denied, the State must file an answer within 20 days after such denial. No other or further pleadings shall be filed except as the court may order on its own motion or on that of either party. *The court may in its discretion grant leave, at any stage of the proceeding prior to entry of judgment, to withdraw the petition. The court may in its discretion make such order as to amendment of the petition or any other pleading, or as to pleading over, or filing further pleadings, or extending the time of filing any pleading other than the original petition, as shall be appropriate, just and reasonable and as is generally provided in civil cases.*

The trial court possesses discretion in presiding over its call and in managing the filings of post-conviction parties pursuant expressly to section 122-5. On September 1, 2023, this Court granted Weger's Motion for Leave to File a Successive Postconviction Petition after the Court reviewed Weger's claim of actual innocence. This Court then granted Weger time to file to make supplemental claims. (*See* Court Tr. dated September 1, 2023, at pp. 10-11). This Court properly exercised its discretion pursuant to section 122-5. Therefore, Weger has properly supplemented his innocence claim and the State has filed its motion to dismiss the innocence claim.

Claims II through VI, however, must be reviewed separately and independently by the court under the cause and prejudice test in a first stage filing. The cause and prejudice determination is a question of law to be decided only by the Court and is based on the pleadings and supporting

documentation submitted to the court by the defendant-petitioner. *See People v. Thames*, 2021 IL App (1st) 180071; *People v. Lee*, 344 Ill.App.3d 851, 853 (2003); *People v. Tidwell*, 236 Ill.2d 150, 161 (2010). The State is not allowed to participate in the court's evaluation of cause and prejudice; instead, the circuit court must make an independent determination without the State's input. *Id. See also People v. Montanez*, 2023 IL 128740, ¶ 78.

Finally, Weger will be making the following addition to his constitutional claims: According to the published opinion of the direct appeal, trial counsel McNamara was also Weger's counsel for the direct appeal. *People. Weger*, 25 Ill.2d 370 (1962). Therefore, McNamara was the only attorney reviewing errors in the trial for the three most important proceedings in which Weger could assert his constitutional rights: the trial, the direct appeal, and the first post-conviction petition. *See People v. Flores*, 164 Ill.2d 426 (1992). This is a very important fact as defense counsel are not required to raise their own incompetence. *People v. Mahaffey*, 165 Ill.2d 445, 458-59 (1995)(We recognize that "it would be fundamentally unfair to expect * * * counsel to raise and argue convincingly his own incompetence."); *People v. Flore*s, 153 Ill.2d 426 (1992).

Again, Weger will be filing a separate motion for leave to file a successive postconviction petition for the non-innocence claims (II-VI). Weger is filing a response to the State's motion to dismiss his innocence claim. But, Weger will not be filing a response to the State's dismissal motion as to current claims II through VI. Only this Court may apply the requisite cause and prejudice test and it appears that the test should be applied at a first stage preceding and should be entered prior to second stage proceedings.

CONCLUSION

For all the reasons discussed herein, Petitioner Chester O. Weger respectfully requests this Honorable Court enter an Order (1) denying the State's motion to dismiss his innocence claim, (2) setting this case for an evidentiary hearing, (3) expediting the scheduling of the evidentiary hearing, and (4) for such other and further relief that this Court deems appropriate.

Dated: March 8, 2024

Respectfully submitted,

/s/ Andrew M. Hale
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