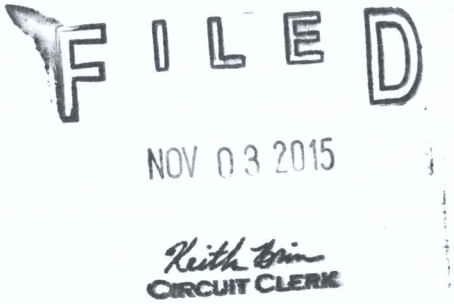
IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Case No. 00 CF 1920
Respondent-Plaintiff	)	
v.	)	
	)	
MARVIN WILLIFORD,	)	Hon. Judge Bridges, Presiding
	)	
Petitioner-Defendant.	)	

PETITION FOR RELIEF FROM JUDGMENT & AMENDED POST-CONVICTION PETITION



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Now comes Marvin Williford, Petitioner, through counsel, and petitions this Court for Relief From Judgment and a New Trial pursuant to 735 ILCS 5/2-1401, and, alternatively, for relief under the Post-Conviction Hearing Act 725 ILCS 5/122-1. In support, Petitioner states:

INTRODUCTION

1. Marvin Williford was convicted of first-degree murder and other charges related to the January 2000 beating of Delwin Foxworth. At trial, the evidence was that three assailants entered Mr. Foxworth's North Chicago home and beat him numerous times both with their fists, feet, and a wooden 2x4. One perpetrator, identified as Williford at trial, also duct-taped Foxworth's wrists and ankles, picked up a gas can, and sprinkled Foxworth with gasoline. The room then caught fire. Foxworth was badly burnt, and died over 2 years later.

2. Marvin Williford is innocent. And, he is now armed with powerful evidence that illustrates his innocence: DNA results from extensive testing performed on the items involved in the crime. Testing was recently completed on very items that the perpetrators used in the commission of the offense: the 2x4, the gas can, and the duct tape. A number of other items from the crime scene were also tested for both DNA and fingerprints. Williford is **c**ompletely excluded from being a contributor to any of this evidence.

3. But, there is more: the recent testing revealed three unknown male profiles DNA profiles on the very items the Mr. Williford was specifically alleged to have used in the offense—the 2x4, the gas can, and the duct tape. One unknown profile was found on the handle of the gas can. Another unknown profile, intermingled with Foxworth's blood, was deduced from a stain—"Stain D"—on the 2x4. The Stain D profile cannot be excluded

from the DNA found on the duct tape or two other stains on the board, all of which are intermingled with Foxworth's blood. The third profile, from an extract of a DNA on the 2x4 and intermingled with Foxworth's DNA, was not completely "unknown." Instead, when uploaded into the CODIS database, the third profile linked to another unsolved crime: the rape and murder of 11-year-old babysitter Holly Staker. See People v. Rivera, 2011 Ill App. 2d 091060, at ¶¶ 2, 4-6 (Dec. 9, 2011), attached as Exhibit 1. Thus, as a result of recent testing, we now know that the same person whose DNA was mixed with Foxworth's blood on the 2x4 used to beat Foxworth in 2000 is "Unidentified Male #1," who raped and killed Holly Staker in 1992.

4. These results are monumental. Indeed, before this DNA "hit" no one suspected that there was any link whatsoever between the individual(s) involved in the Staker murder and those who attacked Foxworth. There is absolutely no evidence that Williford had anything to do with raping and killing Holly Staker—another crime where extensive forensic testing was conducted. And, Williford's jury never heard the heinous facts of the Staker case—where "the victim had suffered 27 stab wounds, had been strangled, and had incurred massive injuries as a result of having been sexually assaulted vaginally and anally prior to her death"—which provide the foundation behind the significance of "Unidentified Male #1." Id. at ¶6. Nor, before the testing, did authorities ever suspect that the same individual who raped and killed an 11-year old in Waukegan in 1992 also beat and burnt Foxworth at his North Chicago home in 2000.

5. Put differently, the testing results completely change the landscape of this case—they substantially corroborate Williford's consistent claim of innocence and

undermine the State's contention that he was involved in the crime. Tellingly, as the Court is aware, the DNA testing that revealed the "Unidentified Male #1" ultimately led to Juan Rivera's conviction being overturned. See generally id. The same should be true here.

6. Separately, violations of Mr. Williford's constitutional rights at trial warrant relief under the Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq. ("PC Act"). First, Williford's constitutional right to due process was violated by the introduction of unreliable identification evidence. Neil v. Biggers, 409 U.S. 188 (1972). Second, Williford's right to a fair trial was violated due to the ineffectiveness of his defense counsel. Strickland v. Washington, 466 U.S. 668 (1984). Third, Williford's right to due process was violated by North Chicago detectives' suppression of material information. Brady v. Maryland, 373 U.S. 83 (1963). Last, the cumulative effect of these errors warrants relief.

7. In short, this Court should easily conclude that Williford's conviction, a miscarriage of justice, cannot stand. Mr. Williford therefore respectfully requests his conviction be vacated and a new trial ordered under §2-1401, or, alternatively, the PC Act.

PROCEDURAL POSTURE

8. On April 26, 2004, following a jury trial, Mr. Williford was convicted of first-degree murder and other crimes and sentenced to 80 years imprisonment. Williford's conviction was affirmed on appeal, People v. Williford, No. 2-04-1057 (Ill. App. 2 Dist. 2006) (C. 400-404), and the Illinois Supreme Court denied his Petition for Leave to Appeal.[1]

9. Mr. Williford filed a timely petition for post-conviction relief on September,

[1] Citations to the record are as follows: "C" refers to the common law record, as marked in the Court's file for this case. "R." citations are to the Report of Proceedings and transcripts, a copy of which have been submitted in electronic form along with this Petition.

26, 2007. This Court summarily dismissed that petition on December 21, 2007 (C.664), and Williford timely appealed. On November 6, 2009, the Second District revered, remanded, and advanced Mr. Williford's post-conviction petition to the second stage under the PC Act. People v. Williford, 2-08-0068 (Ill. App 2 Dist. 2009) (Williford II), attached as Exhibit 2.

10. On December 3, 2012, counsel filed a Motion for Forensic Testing pursuant to 725 ILCS 6/166-3, seeking DNA and fingerprint analysis on items recovered at the crime scene. This Court granted this Motion on July 16, 2013, allowing DNA and other forensic testing to begin. Forensic testing completed in the Spring of 2015.

FACTUAL BACKGROUND & EVIDENCE IN THE RECORD

A. The Home Invasion And Battery of Delwin Foxworth

11. On January 20, 2000, Delwin Foxworth was at his home on 1810 16th Street in North Chicago with his then-girlfriend, Delia Conners. See generally Exhibit 3 (Police Reports, Initial Response). Conners had been at the house for about fifteen minutes watching television in Foxworth's bedroom when there was a knock at the door. Id. at 9. Foxworth answered, returned to his bedroom to get a shirt, and told Conners that he would be "taking care of something." Id.

12. Soon after, Conners heard sounds like individuals were wrestling, and heard the sounds of grunting and moaning. Id. at 9; see Exhibit 4, at 4 (Grand Jury Testimony of Delia Conners (June 7, 2000) ("And then I heard a lot of ruckus, like somebody was wrestling."). Moments later, a black male (later referred to as "T" by Foxworth) opened the door to the bedroom with a short-barreled rifle in hand, and directed Conners to a chair in the kitchen. Conners later described the individual referred to a "T," as a light-skinned black

male in his late thirties to early forties. See Ex. 4, at 4.

13. While "T" was getting Conners from the bedroom, two other offenders were hitting and kicking Foxworth on the back porch. Conners described the second subject as a darker-skinned black male who was short (approximately 5 feet 7 inches) and about 160 pounds. Ex. 3, at 9. This shorter man carried an Uzi," watched over Conners throughout the remainder of the incident, fondled Conners, and even stole her jewelry. See generally Ex. 4. The third offender was another black male who was approximately 6 feet 2 inches and 260 pounds. He carried a pistol grip shotgun. Id. A

14. At some point, "T" and the third offender (the "big black male") kicked and beat Foxworth with a 2x4 on the back porch. Id. at 8. Foxworth was then dragged into the kitchen, where the beating continued. The third offender also set out and searched the house for valuables, while the shorter man with an Uzi continued to watch over Conners. Meanwhile, "T" again grabbed the 2x4 and beat Foxworth. Ex. 3, at 9. "T" eventually left the kitchen and returned with a red gas can and duct tape. Id. "T" then bound Foxworth's hands and feet with the duct tape and doused gas from the red container on Foxworth. Ex. 3 at 9; Ex. 4 at 12. The gasoline ignited and Foxworth caught fire. Ex. 3, at 9. Everyone fled the house.

15. Delia Conners was interviewed briefly at the scene, Ex. 3 at 8, but later went to the North Chicago Police Department, where she gave a tape recorded accounting of events to Detective Lawrence Wade. Id. at 8-9. In that interview, Conners apparently described the perpetrator as "clean shaven" and "yellow skinned." (R. 684, 86-87).

16. Throughout, the perpetrators referred to an apparent debt Foxworth owed,

repeatedly asking Foxworth for "the money or the work." Id. At some point, "T" suggested the amount owed was $30,000. Id. According to Conners, Foxworth pleaded with "T" that he thought he had until February 8th to pay. Id. Indeed, at one point during the incident, Conners offered to pay, and was asked if she had $30,000. Id. at 9-10; Ex. 4, at 10.

B. North Chicago Police Officers Settle on Williford as the Perpetrator

17. North Chicago detectives investigating the Foxworth battery quickly settled on Williford as the primary perpetrator, and did not consider any other individuals as suspects. The account provided by Detectives Lawrence Wade and Orlander Warner regarding how they came to identify Williford as a suspect is contradictory.

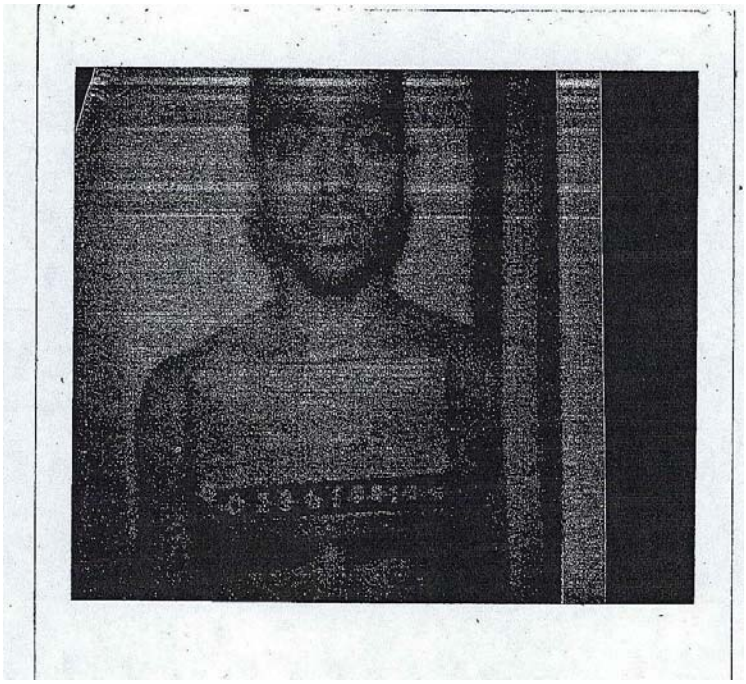
18. From reports, on January 26th, 2000—four days after the crime—Detective Warner met with Detective Wade to discuss information from "the streets" via a "confidential source" that allegedly had information about the case. Exhibit 5, at 1 (Confidential Informant Reports). This conversation revealed only the "first name and relationship" of the suspect. According to the report, on January 26th, while the informant gave the suspect's first name—Terrell—he claimed that he did not know "anything else" about the individual. Then, four days later—which would have been January 30th—Detective Warner again met with the informant, who provided Marvin Williford's full name and date of birth. Id. In other words, Detective Warner's reports indicate that the first time the North Chicago Police Department investigators obtained Williford's name was on January 30th.

19. Contrary to the foregoing, North Chicago Police Department officers had Marvin T. Williford's full name on January 27th, and even obtained Williford's booking

information from the Cicero Police Department that day—three days before they purportedly obtained his last name from the "confidential informant." Exhibit 6 (Supp. Report (Jan. 27, 2000).

C. Investigators Used Highly-Suggestive Identification Techniques

20. Over five months after the incident, June 7, 2000, Delia Conners testified before the Grand Jury. See generally Ex. 4. In so doing, Conners described the events she witnessed on January 22, 2000. In addition, just before she entered the Grand Jury, Detective Wade showed Conners a single, black-and white photograph of Williford. (R. 698). The photo itself, sent to North Chicago investigators from the Cicero Police Department, looks as follows:



21. From viewing this photo, Conners then believed she had identified "T," the lead perpetrator in the Foxworth home invasion. Id.

D. Detective Wade Testifies Before the Grand Jury

22. Following Conners, Detective Wade testified at the Grand Jury proceedings. In so doing, Detective Wade testified that he obtained Williford's name after interviewing Foxworth at a nursing home, and then obtaining a photograph from Secretary of State records. Exhibit 7, Grand Jury Testimony of Lawrence Wade, at 9 (June 28, 2000). Wade's reports indicate that he interviewed Foxworth in late March and April of 2000—some he had received Williford's identifiers from the Cicero Police Department, and after he had obtained the information about the car. See generally Exhibit 8 (Detective Wade Reports).

E. Investigators Use Unnecessarily Suggestive Techniques To "Confirm" Conners Identification of Williford

23. Over two years after the incident, in September of 2002, another North Chicago Police Department officer, Commander Walter Holderbaum, met with Delia Conners to "review" the statement gave Detective Wade the night of the home invasion. Exhibit 9, at 1 (Holderbaum Array Reports). In so doing, Conners apparently told Commander Holderbaum she had previously identified a photograph of the "offender." Id.

24. Nonetheless, Commander Holderbaum showed Ms. Conners a six-photograph array, and included the very same picture of Williford from the Cicero Police Department that Conners had been shown in June of 2000. Id. Unsurprisingly, Conners did not select any of the other photographs; she again identified the same picture she had seen before—the old, black and white Cicero Police Department booking photograph. Id.

F. Mr. Foxworth Passes Away, Williford's Charges are Upgraded

25. In August of 2002, some 2 and-a-half years after being burnt, Delwin Foxworth passed away. (R. 947). In the course of the time between the incident in January of

2000 and August of 2002, Mr. Foxworth was discharged from the hospital and spent the majority of his time in outpatient, nursing home services. (R. 948, 1284-85).

26. Thereafter, the Grand Jury was reconvened and Williford's charges were upgraded from, among others, attempted murder to first-degree murder. Possibly with other witnesses, Scott Henderson and Commander Holderbaum testified.[2]

G. After Williford is Arrested, Conners Is Shown Another Photo Array

27. Williford was not arrested until February of 2003, after he was pulled over for driving too slow in South Carolina and a background check revealed his arrest warrant. Exhibit 11, at 1 (Marvin Williford Arrest Reports). Once extradited to Illinois, on February 7, 2003, Williford was booked and photographed by Commander Holderbaum. Id. at 2.

28. Thereafter, Commander. Holderbaum showed Conners yet another photo array. This array again included a picture of Mr. Williford. In administering the photo array, Holderbaum used Mr. Williford's more recent booking photograph, rather than the 1990 picture from Cicero. (R. 698-99, 857); see also Exhibit 7, at 2.

29. Conner's selection was not immediate. Instead, Conners said that both photos number four and five looked like "T."(R. 699, 708, 710, 857). Ultimately, Conners settled on the photo of Williford as "T" (R. 708, 857). Williford was the only person in both photo arrays Holderbaum showed Conners, and she was never asked to identify the other two men involved in the offense. (R. 695-96).

[2] Petitioner's counsel may not be in possession of all of the Grand Jury transcripts. Detective Wade appears to have testified in 2003, see Exhibit 10 (True Bill Indictment, Mar. 26, 2003), but counsel is not in possession of any such transcript.

H. Trial Counsel Fails Seek Suppression Of Conners' Identification

30. In advance of trial, both the State and defense filed several motions in limine addressing various evidentiary issues including objections by the defense regarding a number of topics. (R. 185-89); see (C. 192-98) (defense motions in limine). However, trial counsel never moved to suppress Conners' identification of Williford as "T."

I. Evidence At Trial

31. The matter proceeded to a jury trial on August 23-27, 2004.

1. The State's Case

32. The State's case rested most significantly on the testimony of Delia Conners—the sole eyewitness. The basic account Conners provided the night of the incident, as well as at the grand jury was repeated to the jury, with some inconsistencies, was presented to the Jury. See generally Williford II, at 2-7 (summarizing the trial testimony)

33. Pertinent here, Conners described the altercation between the perpetrators and Foxworth, which involved him being beaten in several rooms of his house, ending in the kitchen. (R.640-42). Conners identified Williford as the individual referred to as "T.," whom she described as holding a sawed-off shotgun (R.638, 640). Conners testified that the other two individuals had an "Uzi or an automatic with the clip on the bottom and the other guy had a revolver," but did not notice any of the perpetrators wearing gloves. (R.643). Conners testified that all three perpetrators beat Foxworth by "kicking him and … with a two by four, hitting him with it" in the "head and body." (R.643-44). Conners specifically testified that Williford was participating in this, and struck Foxworth with the two by four, and then went outside to get the "red bucket." (R. 643, 648). The individual referred to as "T."

returned with "a red gasoline can and some duct tape," taped Foxworth's hands with his wrists and his ankles and "started throwing gas on him." (R. 652). Conners testified that the last place she saw the 2x4 was in Williford's hands. (R. 664). Thereafter, Conners testified that she looked down, heard a "poof" that ignited the room and she fled. (R. 656-58). Conners testified that the 2x4, the gas can, and the duct tape collected by North Chicago investigators (and later forensically tested) were the ones used in the offense. (R. 664-66).

34. On cross, Conners testified that all three of the perpetrators were strangers to her (R. 677), and that she "was petrified" during the incident. Conners also testified that in a taped statement she described the man (later identified as Williford) that she told Detective Wade he was a yellow-skinned man who may have had no facial hair. (R. 684). Conners affirmed that she previously testified that "T." was "in his late 30s or early 40s" (R. 686-87).

35. In the end, Conners did not testify about all of the identification procedures that contributed to her identification of Williford. Specifically, while Conners testified about the single photo she was shown before the grand jury, as well as the photo array she was shown in 2003 (R. 691, 697-99, 707-10), neither the State nor the defense elicited testimony regarding the first photo from September 2002.

36. To link Williford with the "motive" evidence Conners provided, the State relied upon Scott Henderson. Henderson testified that Mr. Foxworth was trying to "borrow money" to "buy a house next door to him" in North Chicago, and that Mr. Foxworth allegedly told him that he "had indeed borrowed $20,000 from Mr. Williford." (R.716-18); see also (R. 727). That said, Henderson testified that he only knew this from what Foxworth had allegedly told him and that he never saw the money, denied ever seeing a note or an

"i.o.u.," and admitted he never saw Williford give Foxworth money. (R. 727).

37. Henderson also testified about a "conversation with a detective Warner from the North Chicago Police Department," which he testified took place over the phone. (R.720). Describing this conversation, Henderson denied having told Detective Warner that Williford went by the nickname "T," "because the only nickname he has is Julio." (R. 720); see also (R. 726). Henderson also testified about Williford's appearance: that "at all times" he had known him; Williford had a "goatee" and Henderson never saw him without "such a goatee." (R. 725-26).

38. The State next called Detective Warner to impeach its own witness, Henderson regarding the substance of their "confidential informant" meeting. In this conversation, Warner claims that Henderson referred to Williford as "T." (R751). This testimony was allowed for the limited purpose of impeaching Henderson's prior testimony that Williford did not go by "T." (R749). On cross examination, Detective Warner admitted he had not made a record of his conversation with Henderson. (R752).

39. To bolster Conners' identification, Detective Wade also testified. Detective Wade testified that he showed Conners the single photograph of Williford "just prior to the Grand Jury taking place in June of 2000." (R. 990). Detective Wade also testified that Conners was "certain" about the identification, and that Conners indicated the picture from the show-up was a much "thinner" version of the perpetrator. (R.990-92). On cross, Detective Wade testified that he had not conducted a photo array, and that he never did a live in-person lineup either. (9.993-96). Detective Wade then testified that the reason he used the "one photograph" was due to the fact that "It was the only photograph that I was

afforded at that time. I received that photograph from another agency." (R. 997).

40. In addition, Commander Holderbaum testified about the evidence collection at the time. Commander Holderbaum testified about the second photo array he showed Conners in 2003—where she narrowed the array down to No. 4 and No. 5, but eventually settled on the picture of Williford. (R. 855-57); see also (R. 866) ("Q: Commander, she indicated No. 4 looked like "T". What did she indicate about 5? A: At the same time she stated No. 4 looks like "T", but at the same time she said his face is too thick. She continued to look at the lineup, pointed to No. 5, and said, "That is him."). Commander Holderbaum was not asked any questions about the 2002 array.

41. The State also presented life or death evidence from Foxworth's mother as well as Doctor Cogan, discussed in detail below. The State also presented completely indirect—"consciousness of guilt" evidence—against Williford. South Carolina Highway patrolmen, John Dale Owens, testified about arresting Williford in South Carolina. (R.754-69). A prior inmate from Lake County jail, Mark Hall, also testified that Williford allegedly asked him to "scare," though not harm, Conners. (R. 819-48).

2. The Defense

42. The defense recalled Henderson to attempt to impeach Detective Warner regarding the nickname "T" and Henderson again denied ever telling Detective Warner that Williford went by the nickname "T"; but that it was always Julio or Terrell. (R. 1009-10).

43. Williford testified on his own behalf. To begin, Williford testified about his inability to make the sort of loan the State claimed as motive evidence, and denied ever loaning Foxworth any money. (R.1016-17). Williford admitted purchasing Foxworth's old

car about $2,000, but he allowed the City of Chicago to impound the car after he accumulated parking tickets he could not afford to pay. (R. 1018-20). Williford denied being in North Chicago on January 22, 2000, testified that he was not the man that Conners saw at Foxworth's house, and maintained that he had nothing to do with the incident. (R. 1030-33). Williford also testified that he had never gone by the nickname "T," and had consistently worn facial hair—a goatee—since he was 21. (R. 1029-30).

3. Forensic Evidence

44. The forensic evidence adduced at trial was presented via stipulation. See C. 215-30 (written stipulations of the parties). The State presented the fingerprint testimony of three analysts. The first could stipulation concerned fingerprints from the crime scene being largely unusable, aside for a storage container and the victim's wallet. (R. 932-38.) Williford was excluded from these prints. Id. Second, analyst Booker Washington's stipulated testimony would have been that three of the fingerprints taken from the exit door, porch door, and storage tin belonged to Foxworth, and that none of the other latent prints he analyzed belonged to Williford. Id. at 939-40. Third, the stipulated testimony of Nancy Keel was that could not develop fingerprints from a note allegedly written by Williford. Id. at 941.

45. The defense presented forensic evidence via drug tests and DNA. First, the defense offered stipulated testimony that the white substance found in Foxworth's wallet was heroin. (R. 1012-13.). The DNA stipulations occupy roughly one page of testimony, and include the fact that (1) one stain was tested from the 2x4 that matched Foxworth, (2) one stain from Foxworth's clothing matched Foxworth, and (3) that a second stain from Foxworth clothing came from an "unknown human male source." Id.

NEW DNA EVIDENCE

46. Since Mr. Williford's trial, extensive DNA testing has been conducted. The results of that testing should not be in dispute.

A. DNA Found on the Gas Can

47. The red gas can used in the commission of the offense was swabbed for DNA evidence. The testing was completed by Independent Forensics in Lombard, Illinois. This testing revealed a DNA profile a single unknown male contributor from the top of the handle of the gas can (Gas Can 1). Exhibit 12 (Independent Forensics Supplemental Testing Report (June 13, 2014)). Williford, Foxworth, and any other unknown profile are excluded as having been contributors to that profile. Exhibit 13, Affidavit of Karl Reich Affidavit, at ¶14. (Oct. 29, 2015). When this profile was entered into available databases it did not link or "hit" to any other suspects or genetic profiles already in the system.

48. In addition, from the bottom of the handle of the gas can, was derived a mixed profile, consistent having come from two contributors, including at least one male. Id. Gas Can 1 cannot be excluded from contributing from the DNA on the bottom of the can's handle. Id. Williford and any other unknown profiles derived from testing in this case are excluded as contributors to the mixture. Id.; Ex. 13, at ¶14.

49. The Northern Illinois Regional Crime Lab (NIRCL) conducted extensive additional testing on the gas can; none of the swabs produced sufficient DNA to be used for affirmative comparison analysis. Exhibit 14, NIRCL, No. 00-483, Report #18 (1/7/2015), #19 (1/9/2015). However, even for DNA profiles not deemed suitable for comparison, there are no data or even a hint of data linked to Mr. Williford. Ex. 13, at ¶¶11, 14.

B. DNA on the 2x4 Matches "Unidentified Male #1" From the Staker Rape Kit

50. When the NIRCL began its testing of items in the case, it first re-analyzed the testing that had been conducted in 2004, concluding that the analysis from the 2x4 presented at trial was no longer within the scientific standards for forensic analysis. Exhibit 15, NIRCL, No. 00-483, Report #13 (5/13/2014), #14 (6/5/2014).

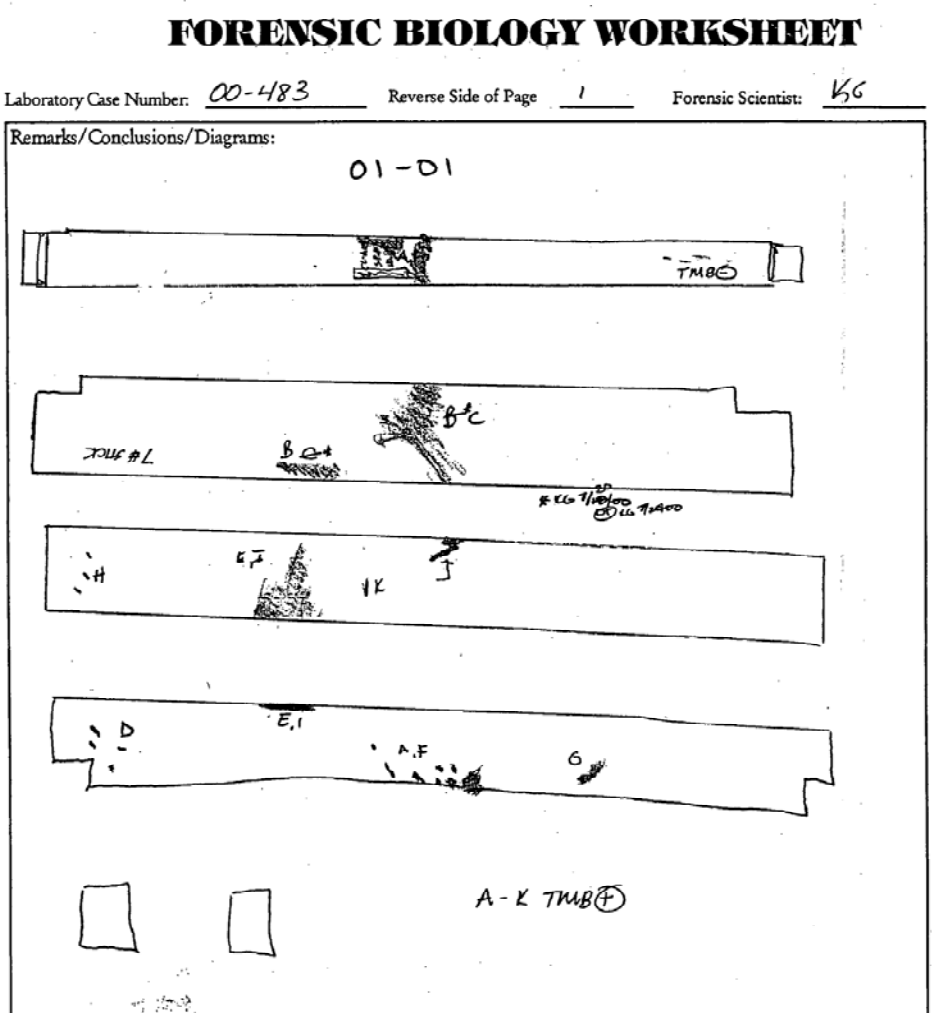
51. In the recent testing, the NIRCL re-extracted DNA from the original testing, and discovered a mixture of DNA profiles, including a major and profile. The minor profile belongs to Foxworth. Id, at 3. The major profile excluded Williford and was therefore uploaded into the CODIS database. Id. Upon entry into the database, this major profile from this extraction was revealed to be a match to the DNA profile obtained in "Lake County Sheriff's Office, Case #92-55313"—the Holy Staker case. Id. at 1. Indeed, this profile matched the DNA obtained from the "Pooled Spermatozoa from Holly Staker Vaginal Swabs" developed by an independent lab in California—Forensic Science Associates. Id. In subsequent litigation, this profile has become known as "Unidentified Male #1." See Rivera, 20122 Il App (2d) 091060, at ¶16.

52. The Unidentified Male #1 profile was derived from testing on the rape kit in the Holly Stake case. Id. By way of background, in 1992 an 11-year-old babysitter, Holly Staker, was brutally attacked, raped, and killed in Waukegan. See People v. Rivera, 20122 Il App (2d) 091060, at ¶¶ 5-6 (2001). The doctor who performed the victim's autopsy testified that she "had suffered 27 stab wounds, had been strangled, and had incurred massive injuries as a result of having been sexually assaulted vaginally and anally prior to her death." Id. In 2005, a forensic testing company tested the sperm from this rape kit that separated the

"sperm cells from the epithelial cells," allowing the sperm to be observed, and conclusively found a DNA profile belonging to a "single male." Id. The DNA testing in this case links specifically to this profile. Ex. 15, at 1.

C. Stains on the 2x4 Include A Third Profile, Exclude Williford

53. After the shocking link to the Staker case, the NIRCL conducted additional testing on the 2x4 used in the commission of the Foxworth home invasion. Notably, the 2x4 was covered with several stains, which the lab analysts lettered:


FORENSIC BIOLOGY WORKSHEET

Laboratory Case Number: 00-483 Reverse Side of Page 1 Forensic Scientist: KG

Remarks/Conclusions/Diagrams:

01-01

TMB

A-K TMB

54. Unsurprisingly, given the fact that this was a sustained beating, much of the DNA found in the stains on the board—stains A, E, F, I, H, J, and K—belongs to Foxworth. See generally Ex. 14. None of these stains belong to Williford, of course.

55. However, several of the stains on the board were mixtures of Foxworth's DNA with another male individual's DNA present. Id. In one such stain—Stain D—the NIRCL was able to deduce an unknown "profile" (the "Stain D Profile"). Id. at 2-3. This deduced profile is suitable for comparison analysis but not robust enough for entry into the CODIS database. Id. at 2. Like the Staker Profile, the Stain D Profile was derived from a mixture of DNA that included Foxworth's blood. Id.

56. Two other stains on the board, Stain B and Stain G, include intermingled mixtures of DNA. Id. at 4. For both Stains B and G, Foxworth is definitely a contributor, and a second contributor's incomplete profile is there as well. Id. at 4-5. Notably, the NIRCL reports indicate that the Stain D deduced profile cannot be excluded from having contributed to the non-Foxworth portions of Stains B and G. Ex. 14, at 5-6. In other words, the DNA evidence indicates that the individual with the identity of Stain D has DNA on the 2x4 mixed with Foxworth's blood in possibly three different places.

57. Williford is excluded from having been the unknown male whose DNA constitutes the Stain D Profile, and from having contributed to either Stain B or Stain G. Id.

D. Blood Stains on the Duct Tape Do Not Exclude The Stain D Profile

58. The lab also tested the duct tape the perpetrators used to bind Foxworth. Ex. 15, at 3. Though the lab did not to interpret the remainder of this data, Petitioner's expert has examined the results—a scientifically acceptable process, some of which was sufficient

for comparison here. Ex. 13, at ¶8. Specifically, one piece of duct tape found on Foxworth's right ankle (21.01B), DNA testing revealed a mixed profile. This mixture is consistent with having come from Stain "D" and another male. Ex. 13, at ¶10. Tellingly, neither Foxworth nor the Gas Can 1 profile can be excluded as having contributed to the DNA found on the duct tape from the right ankle. Ex. 13. Williford, however, is completely excluded. Id.

59. A second piece of duct tape, taken from Foxworth's left ankle (22.01A), produced a mixture of blood. Here, this mixture is consistent with having come from Foxworth as well as another male contributor. As before, Williford is completely excluded from having been a contributor to the DNA on the duct tape while the person constituting the Stain D Profile cannot be excluded. Id.

60. In other words, the Stain D profile appears to show up in five different places on the items involved in the offense—in three stains on the 2x4, as well as two places on the duct tape. In each instance, DNA was intermingled with the victim's blood.

E. Other DNA Testing Excludes Williford

61. Extensive DNA Testing was conducted on a number of other items found in the house: a cordless phone, a broken CD, a "Crown Royal" glass, a wooden box, a liquid soap dispense, a package of diapers, a black wallet, a matchbook a lighter, a pair of earrings, and other items. DNA testing on other items at the house. Exhibit 16, NIRCL, No. 00-483, Report #17 (12/02/2014). Williford is completely excluded from having contributed to any of these items. Ex. 13, at ¶14.

62. Additionally, in the course of its investigation, the Task Force obtained DNA profiles from numerous individuals to see if they "matched" either Unidentified Male # 1 or

the Gas Can Q1 profile. These efforts were unsuccessful. But, in so doing, DNA profiles were generated from a number of people who investigators believed might be suspects; from people who might have otherwise had the opportunity to "innocently" touch the items at Foxworth's house; and from individuals who may have touched the items in the course of evidence collection, earlier testing, at trial, or any other step along the way. This extensive list includes associates of Foxworth, the evidence technicians who collected the evidence, the detectives investigating the case, "alternative suspects," witnesses who testified at trial, and others. Indeed, the testing included Y-STR analysis of deceased associates of Foxworth who might have had the opportunity to touch the 2x4 before the home invasion. See Exhibit 17, NIRCL, 14-4780, Reports #1-3 (09/24/2014).

63. Tellingly, all of the individuals tested have been excluded as having been either Unidentified Male #1 or the Gas Can Q1. Id. at 3. And, Mr. Williford himself and his family line have been excluded as well.

ADDITIONAL EVIDENCE IN SUPPORT OF WILLIFORD'S CONSTITUIONAL CLAIMS

64. In addition to the new DNA evidence described above, counsel has now obtained other new evidence in support of his constitutional claims.

A. New Evidence In Support of Williford's Due Process Claims

1. Evidence Regarding The Unreliability of Eyewitness Identification Testimony

65. Though faults in eyewitness identification were somewhat known at the time of Williford's trial, the last decade has produced a wealth of substantial scientific evidence concerning the reliability of eyewitness identifications. Social scientists have now been able

to identify factors that can impact the reliability of witness identifications. As a consequence, since the time of Williford's trial, "courts in Illinois and around the country have recognized … significant errors in eyewitness identifications." People v. Lerma, 2014 Il App (1st) 121880, at ¶ 39 (Sept. 8, 2014) (citing, among others, People v. Allen, 376 Ill. App. 3d 511, 523 (2007), State v. Lawson, 291 P.3d 673, 684-90 (Or. 2012), and State v. Henderson, 27 A.3d 872, 877 (N.J. 2011)), attached as Exhibit 18.

66. Significantly, last October the National Academy of Sciences released a landmark report regarding eyewitness identification. See NATIONAL RESEARCH COUNCIL, IDENTIFYING THE CULPRIT: ASSESSING EYEWITNESS IDENTIFICATION, NATIONAL ACADEMIES OF SCIENCES 11 (2014), attached as Exhibit 19. This report—as well as cases like Lerma and Henderson—constitutes new evidence under the PC Act. People v. Patterson, 192 Ill.2d 93, 139 (2000).

67. The NAS Report describes developments in a number of areas relevant here. Most generally, the NAS report identified two structurally distinct variables that influence identifications: "system variables" and "estimator variables." System variables are those that the criminal justice system can influence (e.g., by what investigators say to witnesses and how they conduct identifications) while "estimator" variables concern variables happening at the time of the criminal event" or during the time between incident and the identification process (e.g., the "level or stress or trauma at the time of the incident" or "the presence or absence of a weapon during the incident"). Id. at 49-50.

68. Witness confidence falls on the "system variable" side of the metric. "[E]xtensive scientific research establishes that high confidence on the part of an eyewitness

does not directly correlate with high accuracy." Jacqueline McMurtrie, The Role of the Social Sciences in Preventing Wrongful Convictions, 42 AM. CRIM. L. REV. 1271, 1277 (2005)), attached as Exhibit 20. Tellingly, the NAS Report recognized that misidentifications often occur despite the fact that "almost without exception, the eyewitness expressed complete confidence that they had chosen the perpetrator." See NAS Report, Ex. 19, at 7. We now know, however, that "[t]he nature of law enforcement interactions with the eyewitness before, during, and after the identification plays a role in the accuracy of eyewitness identifications and in the confidence expressed in the accuracy of those identifications by witnesses." Id. at 91. Put differently, "research establishes that eyewitness confidence is highly malleable." Mcmurtrie, supra, Ex. 20 at 1278. Thus, research shows that the "confidence of an eyewitness can be influenced and strengthened by repeat questioning or by information that the witness receives during, or after, the identification process," and that eyewitnesses "who are given confirming feedback about their identifications express more confidence in their identification and the details of their identification" Id. Analysis of these system variables, therefore, explains why, in many instances, though a witness might be confident at trial that confidence may not be indicia of reliability, as previously believed. See also BRANDON GARRETT, CONVICTING THE INNOCENT 63-68 (2011) (discussing problems with witness confidence).

69. On the "estimator variable" side, several factors are relevant here. First, experiencing severe trauma may also undermine the accuracy of an eyewitness's identification. See Sarah Kellogg, A Flawed Record: The Fragility of Eyewitness Memory, WASH. LAWYER (Nov. 2014) ("[W]hen people are severely traumatized, their brains stop

operating in an integrated fashion."), attached hereto as Exhibit 21. As the NAS report puts it: "Under conditions of high stress, a witness' ability to identify key characteristics of an individual's face (e.g., hair length, hair color, eye color, shape of face, presence of facial hair) may be significantly impaired." Ex. 16, at 65. As a consequence, "[t]he effects of suggestion and estimator variables may be particularly important when the original memory is of a highly stressful event." Id. at 66. Likewise, researchers have addressed the issue of "weapon focus"—the presence of an unusual object at the scene of a crime, which can sometimes "impair visual perception and memory of key features of the crime event." Id.

70. Further, the "retention interval"—that is, the time between the initial observation and the moment of identification—"can affect identification accuracy." Id. Specifically, studies have studies "have demonstrated that stored memories are more likely to be forgotten with the increasing passage of time and can easily become "enhanced" or distorted by events that take place during this retention interval." Id. at 68. Naturally, the amount of time between viewing a crime and the subsequent identification procedure can be expected to similarly affect the accuracy of the eyewitness identification, either independently or in combination with other variables." Id.

71. In sum, the social science evidence presented in the NAS report—and cited therein—provides "new" evidence to be considered when the Court assesses the identification of Williford by Conners here.

2. Material Evidence Suppressed by North Chicago Investigators

72. At trial, the defense was not in possession of evidence regarding the circumstances behind Detective Warner's interactions with a "confidential informant," later

identified as Scott Henderson. Important, previously unknown, information about this event was recently unearthed during the Task Force's investigation. Specifically, in the original investigation, North Chicago investigators' police reports inconsistently indicate that Williford's name was obtained via a phone call with "confidential informant" who spoke with Detective Warner. But, at the Grand Jury Detective Wade testified that he obtained Williford's name from the Illinois Secretary of State.

73. The Task Force investigation has shed light on some of these inconsistencies. First, Detective Warner has now admitted that he had an in-person meeting, not a phone call, with Henderson "a few days after the initial incident." Exhibit 22, at 1 (Task Force Investigation Reports). At trial, however, both Henderson and Warner testified about a "phone call" between the two of them. (R.721 & 751). Second, that meeting was at Detective Warner's "girlfriend's" house, and Mr. Williford's name came up when Scott Henderson "interjected" during a conversation Detective Warner was having with his girlfriend. Id. Detective Warner's then-girlfriend was, therefore, a witness to this conversation, the circumstances of the how the "confidential informant" came to speak with law enforcement. In other words, the revelation of this "girlfriend" illustrates that the initial reports contained false information, and the "girlfriend" could have been an impeachment witness for the defense but was never disclosed.

B. Evidence Pertaining to Ineffective Assistance of Counsel

1. Counsel's Failure to Seek Suppression of an Unreliable Identification

74. Before trial, defense counsel failed to seek suppression of Delia Conners identification of Williford. In addition, at trial, counsel did not examine any witness

regarding the first photo array that Conners viewed—the array that included the same photograph Conners was shown before testifying at the Grand Jury.

75. Defense Counsel has now admitted that this failure was not a strategic decision. Affidavit of Jed Stone, Exhibit 23, at ¶3 (October 30, 2015).

2. Counsel's Failure to Investigate the Cause of Death

76. Foxworth lived until August of 2002—more than two and a half years after he was burned. Before he died, Mr. Foxworth spent the majority of his time in outpatient nursing homes, rather than hospitalized. Affidavit of Dr. Jennifer Ron, M.D., Exhibit 24, at ¶6 (October 27, 2015). At the time of his death, Foxworth was emaciated, weighed only 119 pounds, and suffered from Stage-Four bedsores. Ultimately, after being admitted to Loyola University Medical Center, he asked employees to institute a "Do Not Resuscitate." Id. at ¶8; See generally Exhibit 25 (Medical Records).[3]

77. Despite these facts, defense counsel failed to investigate or present evidence concerning whether there was an intervening cause of death. Ex. 23 at ¶5.

78. Now, the record includes evidence that Mr. Foxworth was using heroin at the he was in the nursing home. Affidavit of Sam McClain, Exhibit 26, at ¶¶ 3-6. In addition, Dr. Ron has averred that the medical records indicate, to a reasonable degree of medical certainty, that it is not possible to say that Mr. Foxworth died as a result of his burns. Ex. 24, at ¶7. Instead, Dr. Ron has averred that multiple intervening causes, including neglect, bed sores, and heroin usage likely "caused" Mr. Foxworth's death. Id. at ¶¶ 8-9.

[3] Due to their size, as well the privacy of these records, this exhibit has been furnished to the Court as a disc, and should be regarded as filed under seal.

C. New Evidence Regarding The Motive for the Crimes

79. The Lake County Major Crimes Task Force recently re-investigated certain aspects of Foxworth home invasion. At trial, the State presented the theory that Mr. Foxworth owed Williford money related to a debt involving some sort of real estate transaction. Statements obtained by Task Force investigators, and in their police reports, call this theory into question. Indeed, the reports go further: they reveal that the motive for the Foxworth invasion was drugs, not real estate, and indicate that Scott Henderson was possibly himself involved with "setting up" the drug deal.

80. The Task Force interviewed Delia Conners. Ex. 22, at 4-5. For the first time, Conners revealed that she spoke with Foxworth before his death about who was responsible for the home invasion, and told her she "had the right to know what was going on." Id. According to Conners, Foxworth "borrowed some money to buy a kilo, but the kilo ended up being no good. He was going to sell the kilo to make a profit, but when he could not they came after him." Id. According to Conners, "Foxworth told her that Scott Henderson set it up." Id. Conners also revealed that "around the first trial," Henderson tried to get her to recant her statement about what had happened, "because it was too dangerous." Id. at 4.

81. Conners gave similar statements recently to Waukegan Detective Greathouse. Referring to Henderson:

> Ms. Conners stated, 'That black dog knows exactly what happen. He was the one who help set up the deal.' She further stated that Mr. Henderson was close friends with both Mr. Foxworth and Mr. Williford. She stated that he was a coward for not telling the truth and changing his story. She also stated that at one point, he even tried to convince her not to testify because it was too dangerous.

Exhibit 27, Memo from Detective Greathouse (June 13, 2014).

82. Investigators, for the first time, also learned of and spoke with Carl Keith Wade, one of Foxworth's associates, whose name does not appear in any of the original police reports from the case. Id. at 41-43. Carl Keith Wade informed officers that he was "partners" with Foxworth and that they sold drugs together out of Foxworth's house. Id. Carl Keith Wade informed officers that Scott Henderson would come to the house "one or two times a month" to meet with Foxworth. Id. Carl Keith Wade told investigators that going into Foxworth's home was, itself, a significant aspect of the commission of the crime because "Foxworth wouldn't have let anyone into the house unless he knew who they were, "and that "no one could break into the house because they barricaded the door." Id.

83. Like Conners, Carl Keith Wade also met with Foxworth at the rehab center after the incident. And, Like Conners, Carl Keith Wade informed investigators that Foxworth implicated Henderson, and even told him that he opened the door for "Scotty." Id. at 42. According to Carl Keith Wade, Foxworth also told him that he "borrowed $20,000.00 from some people in Chicago and had to pay back $30,000.00." Id.

84. Corroborating this account, Task Force investigators also interviewed Foxworth's ex-girlfriend, who informed them that "Henderson introduced Delwin to loan sharks," and that Foxworth "was a known drug dealer." Id. at 55.

CLAIM I

RELIEF FROM JUDGMENT PURSUANT TO SECTION 5/2-1401

85. Petitioner re-alleges paragraphs 1-74 this petition and expressly incorporates them as if they were fully set forth herein.

A. Legal Standard

86. Under Section 2-2/1401, a criminal defendant can challenge a final judgment against them "to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and the court at the time that judgment was entered, which, if then known, would have prevented its rendition." People v. Kane, 2013 IL App (2d) 110594, ¶ 13 (Dec. 5, 2013); see also People v. Vincent, 226 Ill.2d 1, 7-8 (2007), attached as Exhibit 28.

87. To obtain relief under section 2–1401, a Petition must be (1) timely, (2) present new evidence that could not have been previously discovered by due diligence, and (3) that evidence must be material, noncumulative, and so conclusive that it would probably change the result if a new trial were granted. People v. Waters, 328 Ill.App.3d 117, 127 (1 Dist. 2002), attached as Exhibit 29. Id. These standards are well satisfied here.

B. This Petition is Timely and Based Upon New Evidence

88. This petition is timely. Brought pursuant to 735 ILCS 5/2-14-1, the petition is not subject to the two year statute of limitations because it is based upon DNA evidence obtained pursuant to 725 ILCS 5/166-3. See 735 ILCS 5/2-1401(c). Instead, the Court can look to whether Petitioner has exercised due diligence in filing this petition. Waters, 328 Ill.App.3d at 127. Undoubtedly, Mr. Williford has. The DNA testing in the case was completed over the course of the last year in April of 2015.

89. There also cannot be any doubt that the DNA evidence "was not known to the petitioner at the time of trial and could not have been discovered with the exercise of reasonable diligence." Id. At Williford's first trial, DNA testing was conducted on some of the items, but did not lead to interpretable results in many instances. Significant advancements in DNA technology over the last decade, however, made DNA testing more sensitive and able to see what was previously indiscernible in the prior tests. See generally People v. Zapata, 2014 IL App (2d) 120825, at ¶¶ 10-15 (Apr. 15, 2014).

C. The Forensic Evidence Is Noncumulative

90. Evidence is noncumulative if it "adds to what the jury heard." People v. Coleman, 2013 IL 113307, ¶ 96. At trial, the forensic evidence was insignificant, and was presented entirely via stipulation. Ex. 23, at ¶4. That would certainly not be the case now. Indeed, the jury never heard that there were three unknown profiles, corresponding with three perpetrators. The jury never heard that one of the DNA profiles on the 2x4—the Stain D profile—appears to show up in five different places on items involved in the offense. The jury likewise never heard that an unknown male profile was found on the handle of the gas can. Nor did the jury ever hear evidence linking the Foxworth home invasion in 2000 to the Staker homicide in 1992. Certainly, these results are noncumulative and material.

D. The Forensic Evidence Would Probably Change The Result on Retrial

91. The issue in this case is really about whether the new evidence is "so conclusive that it would probably change the result if a new trial were granted." [4] The

[4] To warrant relief, evidence must also be "material"—i.e., "relevant and probative of the petitioner's innocence" Coleman, 2013 IL 113307, ¶ 96. Because of the substantial overlap, and redundancy, between materiality and conclusiveness (whether the evidence is likely to change the result on retrial), this discussion of conclusiveness subsumes any separate discussion of materiality.

forensic results here easily satisfy this criterion. In making this assessment, the "determining factor is whether the DNA results in this case go to the ultimate issue: whether defendant actually [committed the crime], or whether he was wrongfully accused by the victim." People v. Starks, 365 Ill. App.3d 592 (2 Dist. 2006), attached as Exhibit 30; see also State v. Parmer, 283 Neb. 247, 260 (2012) ("DNA evidence warrants a new trial when it compromises key evidence that the prosecutor used against the defendant at trial." (citing, among other cases, Waters, 328 Ill. App. 3d at 117), attached hereto as Exhibit 31. Put differently, the court should consider whether "the DNA results … are probative of a factual situation" that is different from the one presented at trial. Id; see also Waters, 328 Ill. App.3d at 128 (noting that a distinction should be drawn between mere impeachment evidence and evidence "'which is probative in that it presents a state of facts which differs from that to which the witness identified'" (quoting People v. Smith, 177 Ill.2d 53, 82-83 (1997)). In so doing, the court considers "the trial evidence in light of the new DNA results to determine whether they are so conclusive as to warrant a new trial." People v. Davis, 2012 IL App (4th) 110303, at ¶27 (2012), attached as Exhibit 32.

92. Here, it is clear that the DNA evidence is not mere impeachment but goes to the ultimate issue in the case—whether Williford was one of the assailants, or whether he was "mistakenly identified" by Delia Conners. Waters, 328 Ill. App.3d at 128. The DNA evidence paints a different factual situation here than the one at trial; namely that Williford was not there at all. To start, the jury did not here any live testimony about the DNA; it was presented via a one-page stipulation. (R. 1013-14). And the DNA evidence was not very probative. The same is not true now. Instead, the DNA evidence illustrates Williford's

innocence.

93. To start, Williford is absolutely and completely excluded from all of the DNA testing that has been conducted. This fact is significant, in light of the testing done here, which was extensive and included the 2x4, the gas can, the duct tape, Foxworth's clothing, Foxworth's left and right boots, as well as a number of items found in Foxworth's home. As Dr. Karl Reich, a DNA expert who has examined the testing in this case, concluded: "an unusually large number of items of evidence and individual stains and areas of … items of evidence were processed for forensic DNA analysis. In every and all cases Mr. Williford was excluded as a contributor from any DNA profile suitable for comparison." Ex. 13, at ¶14. Indeed, "even from the DNA profiles deemed too incomplete for comparison or a DNA database search, no inference, data or hint of data links to Mr. Williford." Id.

94. In addition, the DNA results then show that there are three unknown profiles found on the crime scene evidence that "T"—identified as Williford—was specifically alleged to have touched in the commission of the offense. None of these profiles belong to Williford. These results clearly matter: Conners testified that there were three individuals who participated in the home invasion, and three unknown profiles have been identified from the DNA evidence found at the crime scene. The fact that there are three profiles and three perpetrators substantially increases the conclusive nature of the DNA evidence here because it discounts the possible argument that despite the absence of his DNA at scene, Williford might be guilty because the DNA really belonged to one of the other perpetrators. And, as must be emphasized, even if this were a single-assailant case, the DNA would still warrant relief because Conners testified that "T" (identified as Williford) specifically handled

the 2x4, duct tape, and gas can.

95. The testing related to the Stain D profile powerfully demonstrates Williford's innocence and would absolutely, on its own, warrant a new trial. Of course, the jury never heard about the Stain D profile, which was also derived from a mixture of Foxworth's blood found with the item he was beaten with. Significantly, this profile cannot be excluded from other items of evidence—Stain B on the 2x4, Stain G on the 2x4, the duct tape from Foxworth's right ankle, and the duct tape from Foxworth's left ankle. As stated, this profile appears to show up in five separate places mixed with Foxworth's blood on the items used to commit the offenses against Mr. Foxworth. Indeed, the redundancy of this profile on multiple places on the board as well as the duct tape casts serious doubt on the identification of Williford as "T." The Stain D profile paints a picture that this individual was definitely involved in the crime, and could have likely have been "T." The link to the duct tape, which was collected from Foxworth at the hospital, also eliminates the possible argument that the DNA on the board was added by the perpetrator during the commission of the offense—as there is nothing linking the duct tape to anyone but the perpetrators, and they appear to have fled the scene with the remainder of the roll (it was not collected).

96. Moreover, and also independently significant to warrant a new trial here, one of extractions of blood from the 2x4 includes a mixture of DNA that belongs to Foxworth and Unidentified Male #1 (which was the major profile). To be sure, the jury never heard that DNA on the 2x4 used to beat Foxworth included a bloody mixture of Foxworth's DNA and the unknown individual who raped and killed Holly Staker in 1992. The jury never heard the heinous facts associated with that crime, the circumstances how that DNA was

discovered—from sperm found in a rape kit. Thus, the factual situation presented about the assailants, and who the assailants associated with, is totally different when you consider the possibility that one of them was in the Waukegan area in 1992—8 years before the Foxworth home invasion—and was the type of heinous individual that would brutally sexually and physically assault an 11-year old babysitter. No evidence links Williford with this sort of individual, nor does any evidence link Williford with individuals who would have been in Waukegan in 1992. This all suggests one thing: Williford was in fact not involved at all.

97. Finally, the Gas Can 1 profile goes to the ultimate issue in the case, as the offenders used the gas can to sprinkle Foxworth with gasoline before he caught fire. Conners testified that she saw "T", whom she identified as Williford, as holding the gas can at some point before the fire began. The fact that Williford's DNA is excluded from this item is significant on its own right, because it suggests that he cannot be "T" or involved in the offense. In addition, the existence of an unknown profile on the handle of the gas can strongly indicates that the DNA belongs to someone else involved with the crime. That identity of that person simply is not Mr. Williford.

98. As Davis instructs, the DNA results should be assessed in light of the evidence presented at trial. 2012 IL App (4th) 110303, at ¶27. Clearly, while there was other evidence presented, this case rested most substantially on Conners identification of Williford as "T." That identification, which the State attempted to bolster with other witnesses, was the only direct link to Williford in anyway. But, we now know that eyewitness identification error is a principal cause of wrongful convictions. See Lerma, 2014 Il App (1st) 121880, at ¶ 39 (explaining "erroneous identification" have contributed to "as much as 85% of the

convictions later" overturned by DNA testing) (citing McMurtrie, supra, at 1271-75). Indeed, as the Second District has already held, Conner's "testimony and her identification of [Williford] made up the majority of the State's case, and "absent her testimony identifying defendant as one of the perpetrators, there is a reasonable probability that [Williford] would have been acquitted." Williford II, at 13.[5] And, as explained in detail below and incorporated here, that eyewitness identification was unreliable.

99. Tellingly, Illinois courts have granted new trials because of DNA testing when the results—like those here—were probative of a factual scenario that meaningfully differed from the eyewitness account. See, e.g., People v. Starks, 365 Ill. App. 3d 592, 599 (2006) (granting relief and concluding that the DNA results were "probative of a factual situation that is so different from the victim's testimony"); People v. Waters, 328 Ill. App. 3d 117, 128 (1st Dist. 2002) (granting relief and finding that the DNA evidence not was probative of a new factual scenario that differs from that to which the eyewitness testified.).

100. Importantly, a defendant need not show that there is absolutely no metaphysical possibility that he was involved in the crime to warrant a new trial—that standard is far too high. For that reason, "the sufficiency of the State's evidence to convict beyond a reasonable doubt is not the determination that the trial court must make," and the court does not re-decide guilt or innocence. Coleman, 2013 IL 113307, at ¶96. And, "[p]robability, not certainty, is the key as the trial court in effect predicts what another jury would likely do, considering all the evidence, both new and old, together." Id. (citing Davis,

[5] This aspect of the Second District's opinion, a legal conclusion, is the law of the case and binding here. See People v. Anderson, 2015 IL App. (2d) 140444, at ¶ 27 (Oct. 20 2015) ("Under this doctrine, rulings made on points of law by a reviewing court are binding in the trial court upon remand … unless a higher court has changed the law." (citing In re Marriage of Colangelo, 355 Ill.App.3d 383, 389 (2005)).

2012 IL App (4th) 110305, ¶¶ 62–64 ("New evidence need not be completely dispositive of an issue to be likely to change the result upon retrial.")). Thus, even if DNA or other forensic evidence does not "completely exonerate" a defendant, a conviction must be overturned where the DNA evidence is "significantly important … in that it may raise a reasonable doubt as to the identity of the perpetrator"; that is, where the evidence "significantly impeaches the theory of the State's case." Rivera, 2011 Ill App. (2d) 091060, at ¶31, 35). This standard has certainly been met here.

101. The Nebraska Supreme Court, following Illinois authorities, applied this principle in a somewhat analogous case where post-conviction DNA testing was conducted. State v. Parmar. 283 Neb. 247 (2012). As here, Parmar dealt with a murder charge and a crime committed multiple defendants. Evidence at trial indicated that three individuals entered the victim's home and robbed him while as he was sleeping in bed. In the course of this crime, one of the assailants physically beat the victim, causing his death. Id. at 250-51. The conviction "depended heavily upon the testimony of two eyewitnesses, one of whom was an accomplice," who identified the defendant as the person who beat the victim. Id. Post-conviction DNA testing of the victim's bed sheet had blood samples with DNA that matched the victim, putting him on the bed during the offense. Id. at 260. But that testing revealed mix profiles on the bed sheet, and the defendant was excluded as a contributor to those stains. Id. at 252. Following Waters, in determining that this DNA evidence was likely to change the result on retrial, the Court concluded that even if the results did not "completely exonerate" the defendant, he was entitled to a new trial because the results "tend to create a reasonable doubt that he was a participant." Id. at 261; see also id. at 634

(ordering a new trial and concluding that "even if evidence excluding [the defendant] as a contributor to the bloodstains cannot prove that the witnesses testimonies were false, it certainly makes their version of the facts less probable" (citing Dodds, 344 Ill. App.3d 513).

102. If Mr. Parmar was entitled to relief, then Mr. Williford certainly is and this Court should overturn Williford's conviction. Indeed, the facts and DNA evidence here are substantially more exculpatory than those in Parmar—that is, more clearly indicative of innocence—and demand relief. In brief: the DNA testing has revealed the same number of unknown profiles as participants in the crime; some of the DNA (like Stain D) appears on, and cannot be excluded from, multiple locations where DNA was found; the DNA "hit" to Unidentified Male #1 gives one of the "unknown" profiles some drastically different meaning beyond this crime; the DNA testing was extensive and all of it completely unequivocally excludes Williford; the witness identification here was of a stranger (not an acquaintance); and the identification here was obtained through highly suggestive techniques. Thus, as in other cases, this Court should grant relief because if this "DNA evidence were presented to the jury, the jury could find that" the eyewitness "though sincere, innocently and mistakenly identified" Williford "as one of her attackers." Waters, 328 Ill. App.3d at129.

103. In sum, the new testing results powerfully support Williford's claim of innocence, would have changed the result at trial, and compel the conclusion that Williford's conviction be overturned and a new trial ordered.

CLAIM II
ACTUAL INNOCENCE

MARVIN WILLIFORD'S CONVICTION AND CONTINUED DETENTION VIOLATE HIS RIGHT TO DUE PROCESS OF LAW BECAUSE NEWLY DISCOVERED EVIDENCE PROVES HIS INNOCENCE

104. Petitioner re-alleges every paragraph of this petition and expressly incorporates them as if they were fully set forth herein.

105. It is well-established that Illinois has no interest in wrongfully incarcerating innocent persons. To do so would be "so conscience shocking as to trigger the operation of substantive due process." People v. Washington, 171 Ill.2d 475, 487-488 (1996). As such, an actually innocent defendant may bring a free-standing claim of actual innocence, seeking reversal of his conviction. Coleman, 2013 IL 113307 at ¶ 96 (2013). To prevail, the petitioner "must present new, material, noncumulative evidence that is so conclusive it would probably change the result on retrial." Id. (citing Washington, 171 Ill.2d at 489).

A. Recent Forensic Testing Results Constitute New, Noncumulative and Material Evidence that Would Probably Change the Result on Retrial

106. The inquiry used under Coleman for an actual innocence claim is the same standard used § 2-1401. Compare Coleman, 2013 IL 113307, at ¶ 84, with Davis, 2012 IL App (4th) 110305, at ¶ 26, and Waters, 328 Ill. App. 3d at 127. The discussion of these factors above is therefore incorporated and re-alleged here.

B. Recent Reports Reveal that Henderson Witness May Be a Suspect, and that State's Witnesses Provided False or Misleading Testimony

107. At trial, the State bolstered its identification of Williford by Conners, by presenting possible "motive" evidence: an alleged real estate transaction and debt between Williford and Foxworth. (R. 716-17, 727.) In so doing, the State relied primarily on Scott

Henderson. Even at the time, both that theory and the witness were imperfect. The theory was imperfect because Conners claimed that "T" asked Foxworth for the "money or the work," with "the work" being drugs or even guns. Ex. 3, at 9. No mention of real estate was testified to by Conners, and no evidence of an actual real estate transaction was ever presented to the jury. The State's witness was also imperfect, and the State called Detective Warner to impeach Henderson about Williford's nickname and being called "T."

108. As explained above, the Task Force investigation adduced information confirming that the crime was drug-related and that Foxworth's debt in fact had to do with "the work"—that is, drugs—not real estate. We now know that Foxworth told Conners that this was all about a drug deal gone badly, not a property transaction. Ex. 22, at 4; Ex. 27. We also know that Foxworth told Conners that Scott Henderson helped "set up" a drug transaction, id., and that Foxworth told Carl Keith Wade that the reason he opened the door "for Scotty." Ex. 22, at 7. Common sense also indicates that it is difficult to imagine that an individual would attempt to kill an individual with whom they jointly owned a property next door. It just does not add up. Likewise, the statements of Vanessa Hadrick, Foxworth's ex-girlfriend (that Foxworth was a drug dealer and that Henderson set him up with "loan sharks"), confirms that the motive of the crimes was more likely a drug debt, not a "real estate" transaction for the home next door to Foxworth's residence.

109. This evidence is new, noncumulative, and likely to change the result on retrial. First, the evidence is new because these reinvestigation reports include material information that has never been provided to the defense or known to the defense in any way. See Patterson. 192 Ill.2d at 139; see also, e.g., People v. King, 192 Ill.2d 189, 198–99 (2000)

(holding reinvestigation reports constituted new evidence sufficient to entitle Petitioner a hearing on his constitutional claim); People v. Cannon, 293 Ill.App.3d 634, 642 (1 Dist. 1997) (similar). In addition, this is the first time Conners has ever informed investigators that Foxworth had revealed to her the true back-story behind the crime. In addition, Carl Keith Wade was never named in a police report or thought to have relevant information to the incident until the Task Force's recent investigation.

110. The evidence is similarly noncumulative: there was no evidence presented by the defense at trial regarding the motive of the crime being drug-related, and there was no evidence presented that one of the State's witnesses (Henderson) might have been involved, providing him with a strong incentive to lie and to falsely implicate someone else.

111. Likewise, the evidence is material. Discovery of this evidence might have prevented the State from calling Henderson altogether, thus depriving the State of a link between Williford and a motive to commit the crime

112. When this evidence is considered cumulatively with the other new evidence presented in this petition—the DNA evidence, new evidence concerning the unreliability of the eyewitness identification in this case—it is clear that Mr. Williford's actual innocence demands his conviction be overturned because the evidence would probably change the result on retrial. Coleman, 2013 IL 113307, at ¶ 97.

CLAIM III
DUE PROCESS/FAIR TRIAL
5TH, 6TH AND 14TH AMENDMENTS — U.S. CONSTITUTION
ARTICLE 1, SECITION 2 — ILLINOIS CONSTITUTION

THE INTRODUCTION OF UNRELIABLE IDENTIFICATION EVIDENCE VIOLATED WILLIFORD'S CONSTITUTIONAL RIGHTS

113. Petitioner re-alleges every paragraph of this petition and expressly incorporates them as if they were fully set forth herein.

114. Due Process is violated where unreliable identification evidence is introduced at trial. Neil v. Biggers, 409 U.S. 188, 198 (1972). In addition, "[w]here there is a very substantial likelihood of irreparable misidentification, admission of identification evidence violates due process." People v. Miller, 254 Ill. App.3d 997, 1003 (1993). It is well-established that "the determination whether a pretrial confrontation is "so unnecessarily suggestive and conducive to irreparable mistaken identification that [defendant] was denied due process depends on the totality of the circumstances," People v. Simpson, 172 Ill.2d 117, 140 (1996) (citation omitted). The Court engages in a two inquires: (1) determining whether suggestive procedures were employed, and (2) assessing the reliability of the identification overall. Miller, 254 Ill. App.3d at 1003.

1. The Identification Procedures Were Unduly Suggestive

115. The Second District has already held—and is now law of the case—that "there can be little doubt" that showing Conners a single photograph five months after the offense was suggestive. Williford II, at 15. The Supreme Court has long held that "identifications arising from single-photograph displays may be viewed in general with suspicion." Manson v. Brathwaite, 432 U.S. 98, 116 (1977). As if being shown a single

photograph were not suggestive enough, Conners was shown that photograph in a highly prejudicial, inherently suggestive circumstance—walking into the Grand Jury. (R. 989-90).

116. Moreover, as the Second District held, this process was not just suggestive it was "unnecessarily so" because there was no emergency or investigative exigency that justified this inherently suggestive confrontation. Williford II, at 15. Again, the Supreme Court has commented on such unnecessary suggestiveness, explaining that while "[s]uggestive confrontations are disapproved because they increase the likelihood of misidentification[,] … "unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous." Neal, 409 U.S. at 198. That sort of "gratuitous" suggestiveness is precisely what happened here. In addition, further unnecessarily and gratuitously contaminating Conners memory and identification, over two years after the incident Conners was "reminded" of her prior identification of this photograph and shown a photo array that included the very same picture.

b. Conners' Identification Was Unreliable

117. Turning to the second factor of reliability—"the linchpin in determining the admissibility of identification testimony"—the State cannot meet its burden. Manson, 432 at 114. To determine whether an identification is reliable, this Court considers the "totality of the circumstances" behind the confrontation, and weighs the totality of the circumstances against "the corrupting effect of the suggestive identification itself." Id.

118. Some of "the factors to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of

the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation." Niel, 409 U.S. at 198. In addition, recent developments in social have changed our understanding of how to assess the "totality of the circumstances" and should be considered as well. See Lerma, 2014 Il App (1st) 121880, at ¶ 39; Starks, 2014 IL App. (1st) 121169, at ¶¶ 85-93 (Hyman, J., concurring); Henderson, 208 N.J. at 218 ("From social science research to the review of actual police lineups, from laboratory experiments to DNA exonerations, the record proves that the possibility of mistaken identification is real."); see id. at 283-84 (collecting cases nationally).

119. Given the suggestive tactics employed here, Petitioner submits that there is no way the State can meet its burden and establish that Conners identification of Williford was reliable because "corrupting effect of the suggestive identification itself" cannot be overcome by any of the remaining factors. Manson, 432 at 114. In other words, because the suggestiveness here created "very substantial likelihood of irreparable misidentification," the identification should be deemed unreliable. Miller, 254 Ill. App.3d at 1003.

120. Again, Conners had multiple viewings of photographs of Williford between the event and trial—a single photo in June of 2000, that same photo in an array in September of 2002, and another photograph in an array in 2003. The corrupting influence of these viewings illustrates unreliability. For one, "[v]iewing a suspect more than once during an investigation can affect the reliability of the later identification….[S]uccessive views of the same person can make it difficult to know whether the later identification stems from a memory of the original event or a memory of the earlier identification procedure." Henderson, 208 N.J. at 255.

121. Indeed, the contaminating effect of "mugshot commitment" is particularly apt here. "Mugshot commitment occurs when a witness identifies a photo that is then included in a later lineup procedure. Studies have shown that once witnesses identify an innocent person from a mugshot, 'a significant number' then 'reaffirm[] their false identification' in a later lineup—even if the actual target is present." Id. at 256 (citation omitted). In this circumstance, the problem of successive views and mugshot commitment completely undermine the reliability of Conners identification. It is undisputed that Conners had the saw a single photograph of Williford and that photo later appeared in a line-up, and then Conners viewed another array, all of which tainted the identification further.

122. Weighing the remaining "totality of the circumstances" overwhelmingly demonstrates unreliability. One of the most significant factors is the passage of time. See Williford II, at 18. Indeed, it is clear that "the more time that passes, the greater the possibility that a witnesses' memory of a perpetrator," even as quickly as 24 hours following an event. Henderson, 208 N.J. at 267 (cite omitted). Here, Conners initial, single-photograph view of Williford did not take place until 5 months after the crime, but even a three-month gap can render an identification unreliable and "fatally weak." People v. Hernandez 312 Ill. App.3d 1032 (2000). Indeed, the Illinois Supreme Court has made clear that a six month gap "between the crime and the photo identification is 'a seriously negative factor" concerning reliability. People v. Platkowski, 225 Ill. 2d 551 (2007). The social science discussed above, (which calls this factor the "retention interval") only buttresses this conclusion.

123. Conners certainly had some the "opportunity to view" the perpetrator during this tragic incident. However, that alone does not make her identification reliable because, it

is not the mere opportunity that matters but what happened during that opportunity that goes to reliability. For example, Conners did not know Williford before this instance, increasing the likelihood of misidentification. See United States v. Wade, 388 U.S. 218, 228 (1967) ("The identification of strangers is proverbially untrustworthy."). Likewise, the incident was extremely stressful—Foxworth was being repeatedly beaten by strangers with guns, and she was being held up at gunpoint by an individual who sexually assaulted her and stole her jewelry. Indeed, Conners testified that she thought the offenders were "getting ready to cut us up in pieces and put us in the bucket," Ex. 3 at 11, and that "after they killed [Foxworth], they were going to kill me." (R. 655.) Thus, in light of these "conditions of high stress," Conners ability to identify key attributes of the perpetrators may have been "significantly impaired." NAS Report, Ex. 19, at 65. In addition, Conners was crying throughout the incident, and "was looking down" at various times during the incident. Ex. 3 at 9. These responses, of course, are completely expected during such high trauma; they do, however, weigh towards unreliability.

124. Further undermining the "opportunity" factor, Conners testified the perpetrators had weapons, and there is a substantial possibility that "weapon focus" was influencing her memory. See Ex. 19, at 68. Indeed, the record supports the notion that Conners was focused on the weapons, as the police reports from the night of the crime mention guns and weapons a number of times, while Conners descriptions of the perpetrators are brief, vague, and mention the weapons. See Ex. 3, at 1 ("Some guys came into the house with Uzis and shotguns"), id. at 3 ("A male black adult with a short barreled rifle (not a shot-gun)… came into the bedroom, told her to get out and directed her to a

chair in the kitchen where there was a second black male adult with an Uzi"); id. at 9 (describing the suspects, and referring to the "suspect with the Uzi" multiple times). All of this tends toward finding that the "opportunity" factor weighs against reliability.

125. In addition, a "witness's prior description of the criminal" is also significant. People v. Green, 290 Ill. App. 3d 1054, 1063 (2d Dist. 1998). This factor favors unreliability. First, Conners' identification of "T." was somewhat vague. See Williford II, at 17 ("Conners' pre-identification descriptions of defendant were not particularly detailed."). Second, Conners description—of an individual in their upper 30s or 40s, and who was clean shaven—did not match Williford. Williford has presented evidence that he always wore facial hair. See id. Likewise, Conners described the perpetrator as being in his late 30s or early 40s at the time of the crime, and Williford was in his upper 20s at the time. Id.

126. Finally, the degree of confidence carries little weight here. While, at trial, Ms. Conners expressed complete certainty about her identification of Williford, her memory was tainted by the suggestive procedures and multiple views of Williford. Tellingly, it appears that Conners memory was anchored to the very old photo she saw twice and then contaminated when she saw the second photo array. When Conners saw a more "updated" photograph of Williford, she expressed some doubt about her identification, and specifically thought that two pictures "looked like" T. Conners statement about her hesitation is indicative of mugshot confirmation: she testified that she thought the "updated" photo array pictures looked like the same person but (1) older and (2) with more weight. This appears more likely a reference to the single black and white photograph she had seen twice, rather than the appearance of the perpetrator. The fact of three confrontations, where Williford

was the only individual present for each one of them, gives further credence to the fact that Conners confidence, while well-meaning, was mistaken and unreliable.

127. In sum, the circumstances reveal that the identification of Williford by Conners at trial so unreliable that the admission of which violated due process.

CLAIM IV
FAIR TRIAL
6TH AND 14TH AMENDMENTS — U.S. CONSTITUTION
ARTICLE 1, SECTION 8 — ILLINOIS CONSTITUTION

WILLIFORD WAS DENIED HIS CONSTITIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

128. Petitioner re-alleges every paragraph of this petition and expressly incorporates them as if they were fully set forth herein.

129. The Sixth and Fourteenth Amendments to the U.S. Constitution guarantee a person accused of a crime the right to counsel, as does the Illinois Constitution. See U.S. CONST. AMEND. VI & XIV; ILL. CONST. 1970, ART. I, SEC. 8. The right to counsel is a fundamental right aimed at protecting the right to a fair trial, and it includes the right to effective representation. Strickland v. Washington, 466 U.S. 688 (1984); People v. Perez, 148 Ill.2d 168 (1992). To show ineffective assistance of counsel, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness and that there is a reasonable probability that the result of the proceedings would have been different absent counsel's errors. Strickland, 466 U.S. at 687; People v. Weir, 111 Ill.2d 334, 337, 490 N.E.2d 1, 2 (1986). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694.

130. Williford alleges that trial counsel was ineffective in two ways: (1) by failing to

seek suppression of Conners' identification, and (2) by failing to investigate Foxworth's cause of death.

A. Failure to Seek Suppression of Conners' Identification

131. As the record indicates, Williford's trial counsel failed to move to suppress Conners' identification of Williford. Counsel is ineffective where the motion would have been granted and the outcome of the trial would have been different as a result. People v. Givens, 384 Ill. App. 3d 101, 108 (2008); see also Williford II, at 13.

132. As explained above and incorporated here, Williford's motion to suppress the identification—had it been filed—should have been granted. And, trial counsel has averred that his failure in this regard was not a strategic decision. See Ex. 23, at ¶3. Thus, no form of "trial strategy" insulates this decision, and Williford's right to a fair trial was violated by the failure of his counsel to seek suppression of Conners' identification.[6]

B. Failure to Investigate the Cause of Death

133. Second, defense counsel was ineffective because he failed to investigate whether Mr. Foxworth's death was caused by something other than his burns. In light of the time Foxworth lived after being burned until his death, and in light of medical records that signaled Foxworth suffered from gross neglect, defense had a duty to investigate Foxworth's cause of death. Defense counsel has admitted that he did not investigate an intervening cause of death, despite recognizing the viability of such a defense. Id. at ¶5.

134. Illinois' courts have routinely held that an intervening cause unrelated to the

[6] This claim was not raised on direct appeal. To the extent this issue was apparent from the record on appeal, Petitioner's ineffectiveness claim includes appellate counsel's failure to raise trial counsel's ineffectiveness. See People v. McGhee, 2012 IL App. (1st) 093404, at ¶¶11-12; see Williford II, at 13 (noting this claim).

acts of the defendant relieves the defendant of liability. People v. Meyers, 392 Ill. 355(1946); Cunningham v. People, 195 Ill. 550 (1902); People v. Gulliford, 86 Ill. App. 3d 237, 241 (3d Dist. 1980). Here, gross negligence by the nursing home constitutes a superseding cause that could have relieved petitioner of criminal culpability. See People v. Brackett, 117 Ill. 2d 170, 177 (1987); Guilford , 86 Ill. App. 3d at 241; see also Carolyn Kelly MacWilliam, Homicide: Liability Where Death Immediately Results From Treatment Or Mistreatment Of Injury Inflicted By Defendant, 50 A.L.R. 5th 467 (1997) (noting many jurisdictions recognize a defense to homicide when medical treatment is grossly negligent; collecting cases), attached as Exhibit 33.; 40 C.J.S. HOMICIDE §§ 10-11 (2006) (explaining that gross negligence or "manifestly improper treatment" are intervening causes that negate criminal responsibility).

135. Foxworth's medical records establish that he underwent a series of skin-graft surgeries and subsequent surgeries to treat non-healing graft locations. See generally Ex. 25. As a result, Foxworth was in and out of hospital care at Loyola until his discharge on December 7, 2000. Id. at 1031. Following his discharge, Foxworth was not admitted to Loyola for another year-and-a half—days before he passed away. During that period, Foxworth was housed at numerous nursing homes. (R. 948, 1284-85).

136. Records also indicate that Foxworth next came to Loyola over two years later, on August 7, 2002. At the time, he was suffering from depression, had poor nutritional status, and suffered from "decubitus ulcers"; i.e., bedsores. Ex. 25 at.2758-68. Medical records repeatedly note "substance abuse" when discussing Mr. Foxworth, a known heroin user. See generally id. Foxworth eventually died after he requested medical personal implement a "Do No Resuscitate" ("DNR"), where after he refused anything but treatment

for the pain stemming from his bedsores. Ex. 25 at 2760, 2779.

137. At trial, the State asserted that Foxworth died as a direct result of his burns. Specifically, Dr. Joseph Cogan, an employee at the Cook County Medical Examiner's Office, testified that Foxworth "died as a consequence of thermal burns of the fire which was an assault." (R. 971). Dr. Cogan also testified that Mr. Foxworth was "hospitalized" from the time of his burns until his death, and he was "a man who has been continually deteriorating, he is going downhill." (R. 984). Dr. Cogan also testified that Foxworth received "quite good" medical care from the time he sustained his burns to his death. (R. 988).

138. To the contrary, had counsel conducted a reasonable investigation, he could have presented evidence that not only would have impeached Dr. Cogan's testimony, but that would have supported an argument that Foxworth died in August 2002 from gross neglect, not from the burns he sustained in January of 2000. In fact, Dr. Jennifer Ron, after reviewing relevant documentation, has averred that it is impossible to say, within a reasonable degree of scientific certainty, that Foxworth died as consequence of his burns. Exhibit 24, at ¶9. Instead, Dr. Ron's medical opinion is that Mr. Foxworth he died from multiple contributing factors including emaciation, dehydration, depression, opiate addiction, and untreated infections stemming from his stage four bedsores. Id. at ¶¶ 8-9.

139. Dr. Ron's medically-reliable testimony indicates that the State's medical witness, Dr. Cogan, presented testimony not grounded in accepted medical thought. For one, Mr. Foxworth was not hospitalized from the time he sustained his burns until his death. Id. at ¶6. Instead, Mr. Foxworth was discharged from Loyola on July 31, 2000—two years before he passed away. Id. Dr. Ron's affidavit also contradicts Dr. Cogan's testimony that

Foxworth received "quite good" medical care when living at various nursing homes. (R. 988.) Instead, the fact of Foxworth's poor nutritional status, his weight at his time of death, and the ulcers he suffered are "the hallmarks of neglect (from nursing home staff)" and heroin addiction. Ex. 24, at ¶¶8-9. Significantly, and unmentioned by Dr. Cogan at trial, Mr. Foxworth was apparently allowed to institute a DNR without a psychological examination despite the fact that he exhibited the hallmark signs of neglectful care from the nursing home —contrary to accepted medical science. Id. at ¶8(p-v,); Ex. 25 at 2760-66.

140. Given the foregoing, trial counsel was deficient for failing to investigate these issues. And, Petitioner was prejudiced by counsel's failure to present the aforementioned evidence. Armed with objective, reliable medical testimony, effective counsel would have argued that Foxworth's cause of death was directly caused from gross neglect at the nursing home and facilitated when Loyola allowed him to implement a DNR which foreclosed the hospital from treating the infection stemming from bedsores. Those conditions were not part of a "natural sequence of events" that originated from Foxworth being burned, and therefore constitute an intervening cause. See e.g., People v. Baer, 35 Ill. App. 3d 391 (1976); People v. Paulson, 80 Ill. App. 2d 44 (1967); People v. Reader, 26 Ill. 2d 210 (1962).

141. In the end, while Mr. Foxworth undoubtedly experienced substantial personal and medical hurdles following his being burnt, it is not medically sound to conclude that his burns caused his death, negating the first-degree murder charge. Because counsel failed to conduct reasonable investigation into this issue, the State was permitted to argue not only that Foxworth received wonderful medical care and died as a direct result of his wounds, but also that he suffered for two and a half years, with continuously declining health, until he

died. There is a reasonable probability the outcome of petitioner's trial on the murder charges would have been different had conducted investigated this issue. At a minimum, this evidence alone warrants an evidentiary hearing on this claim. See People v. Domagala, 2013 IL 113688 at ¶¶ 39, 40 (2013) (ordering an evidentiary hearing based on trial counsel's failure to investigate an intervening act of a gross negligence).

CLAIM V
DUE PROCESS
5TH AND 14TH AMENDMENTS — U.S. CONSTITUTION
ARTICLE 1, SECITION 2 — ILLINOIS CONSTITUTION

THE STATE FAILED TO PRODUCE MATERIAL EVIDENCE TO THE DEFENSE

142. Petitioner incorporates each of the preceding paragraphs as though fully restated herein.

143. It is well-settled that the prosecution has a duty to disclose information that is materially favorable to a criminal defendant. The failure to do so violates due process. Brady v. Maryland, 373 U.S.83, 87 (1963); see also United States v. Giglio, 405 U.S. 150 (1972). And, the State's Brady obligations also extend to police officers. Kyles v. Whitley, 514 U.S. 419, 437 (1995). The standard is whether evidence was suppressed, that is material, and such suppression was "prejudicial," meaning "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 514 U.S. at 434.

144. Here, Petitioner does not contend that the Lake County State's Attorney's office failed to turn over exculpatory evidence in its possession. Instead, the claim is that the North Chicago Police Department Officers—Detectives Warner and Wade—failed to turn

evidence not only to the defense, but to the Lake County State's Attorney's Office as well.

145. To start, Detectives Warner and Wade's police reports concerning how Mr. Williford became a suspect are contradictory. In fact, they are worse than that—they appear involve intentional fabrication. Several handwritten reports, memorialized in typed supplemental reports, indicate that on January 26, 2000, Detective Warner spoke with a confidential informant and obtained only the name "Terrell" as a possible suspect. Ex. 5, at 1-3. These reports indicate that four days later—what would have been January 30, 2000—Warner obtained full identifier information for Marvin Terrell Williford, including his date of birth. Id. However, it is clear that the officers had Williford's full name before the 30th—the detectives received Williford's booking information and fingerprints from the Cicero Police Department on the 27th. Id. Indeed, they even submitted his prints to the crime lab that same day. Exhibit 34, NIRCL Evidence Submission Receipt, at 1.

146. Though it is unclear what should or should not be believed about these reports, there is a silver bullet demonstrating the falsity of the Detectives' indication that they did not have Williford's last name and date of birth name on January 26th: Detective Warner specifically inquired about Williford on January 25, 2000 at 2:42 in the afternoon via the Interstate Identification Index. See Exhibit 35, at 1 (Triple I Report).

147. The foregoing indicates that Henderson and Warner provided false testimony about their "confidential informant" meeting, and that he with Detective Wade, the concealed evidence about why they targeted Williford as a suspect. In addition, the revelation that these reports contain false information indicates that Detective Wade's testimony at the grand jury was either false or misleading. Specifically, Wade testified that after he spoke with

Foxworth he went to the Secretary of State to obtain Williford's identifiers, an event his reports describe as happening in April of 2000, not January. Ex. 6. at 1. Indeed, when speaking to investigators recently, Detective Wade repeated this demonstrably false version of events. See Ex. 22, at 3 ("Wade said he came up with the name of Williford thru investigative sources which led to a car that was Foxworth's and later owned by Williford as payment for a debt. Wade said that is how he got the name Williford.").

148. The foregoing suggests that Detectives Warner and Wade were concealing something about Williford's emergence as the only suspect in this case, why they obtained his information from the Cicero Police Department, and why no one else was ever investigated. What the Detectives were hiding, and a potential reason why, is now (at least partially) known: Detective Warner, it seems, was attempting to hide the fact that his "girlfriend" at the time was actually a possible witness in the case. And, Detective Warner appears to have an incentive to hide that fact: this girlfriend appears to have been either engaged or dating her future husband at the time of this confidential informant meeting and was married by the time Detective Warner testified against Williford at trial. See Exhibit 36 (Marriage Records). In other words, Detective Warner hid the fact not only was he having a sexual relationship with a witness involved in the so-called "confidential informant" meeting, he was also concealing the fact that this relationship was some sort of affair.

149. Thus, Detective Warner testified that he had conversations over the phone with Henderson and failed to mention how he met Henderson. But, we now know, those conversations were in person. And, they were at the home of Detective Warner's ex-girlfriend, who apparently also set up the meeting. The girlfriend was, therefore, a potential

witness, and was never disclosed. And, the Defense was never made aware that Detective Warner was having a sexual relationship with a potential witness. Ex. 20, at ¶3.

150. The discovery of this evidence goes directly to the credibility of State witnesses, as well as the State's theory that Williford went by the same nickname as the true perpetrator. Put differently, all of this information constitutes devastating impeachment evidence for three State witnesses—Henderson, Detective Warner, and Detective Wade—the suppression of which violated due process. See People v. Rincon, 387 Ill.App.3d 708, 726 (2 Dist. 2008) ("The Brady rule encompasses not just exculpatory evidence, but also impeachment evidence." (citing United States v. Bagley, 473 U.S. 667, 676 (1985), and People v. Williams, 329 Ill. App.3d 846, 857 (2002)).

151. To reiterate, at trial, after calling Henderson to testify about motive and other items he told Warner in the alleged "confidential informant" meeting, Henderson was able to freely state that he had one conversation on the phone with Warner—a fact that is apparently false. (R. 721.) And, Detective Warner was able to give similar, now apparently false, testimony about this "confidential informant meeting." (R. 741, 748-51).

152. The previously-suppressed information would have changed the manner in which the evidence was presented at trial. Indeed, the information might have substantially undermined these three witnesses to the point where they could not have been called as witness on behalf of the State at all. The Brady material directly undermines Henderson's testimony and credibility, and, therefore, calls into question his testimony regarding the so-called "motive" evidence. The Brady material illustrates that the Detectives were not honest in their investigation, and created false or misleading police reports about Williford in an

attempt to hide the fact that Detective Warner had a sexual relationship with the person who set up the "confidential informant" meeting. The suppressed information also undermines the State's attempt to bolster Conners identification by linking Williford with the nickname "T" through Detective Warner's testimony. The Brady material also undermines the State's efforts—through Detective Wade—to justify showing Conners a single picture of Williford just before the grand jury. What Wade painted as innocent, now appears malicious. Suppression of this information violated due process.

CLAIM VI
CUMULATIVE ERROR

FUNDAMENTAL FAIRNESS DEMANDS A NEW TRIAL

153. Petitioner re-alleges every paragraph of this petition and expressly incorporates them as if they were fully set forth herein.

154. Even if individually the errors and other matters alleged here are not found to be sufficiently prejudicial to grant Marvin Williford post-conviction relief, the cumulative effect of all the matters alleged in this petition deprived Mr. Williford of his fundamental due process right to a fair trial. See People v. Jackson, 205 Ill. 2d 247, 283 (2001) ("individual errors may have the cumulative effect of denying a defendant a fair hearing").

CONCLUSION

155. For the reasons stated throughout this petition, Marvin T. Williford respectfully requests that this Court vacate his conviction and grant him a new trial or conduct an evidentiary hearing to resolve any factual disputes regarding the DNA evidence under Claim I above pursuant to § 2-1401 of the Code of Civil Procedure. See People v. Vincent, 226 Ill. 2d 1, 23-24 (2007).

156. Alternatively, as concerns Claims II-VI, Petitioner asks this Court to docket this amended petition pursuant, order and hold an evidentiary hearing pursuant to the PC Act, and vacate Petitioner's conviction and order a new trial.

Respectfully Submitted,

Marvin T. Williford

_____

By:
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VERIFICATION

Marvin T. williford, being first duly sworn on oath, states that he is the Petitioner in the above-captioned case, and that he has read the above **Petition for Relief from judgment & Amended Post-Conviction Petition**, and, having knowledge of its contents, states that the facts in the foregoing are true and correct to the best of my personal knowledge and belief.

Marvin Williford
Marvin T. Williford

SUBSCRIBED and SWORN TO
Before me this 28th day of
October, 2015.

Karen Marie Rabideau
Notary Public

KAREN MARIE RABIDEAU
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
July 29, 2019