IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	82 C 001211-02
Plaintiff-Respondent,	)	88 CR 07771-01
	)	
v.	)	
	)	
JACKIE WILSON,	)	
	)	Hon. William H. Hooks
Defendant-Petitioner.	)	Judge Presiding

Order Granting Petition for Certificate of Innocence

This matter stems from a very difficult chapter in the history of the City of Chicago. On February 9, 1982, two Chicago Police Officers, William Fahey and Richard O'Brien, were shot and killed after a traffic stop. Andrew Wilson shot and killed both Officers. That much is undisputed and incontrovertible. It was a shocking and heinous crime. Andrew Wilson spent the rest of his life in prison as a result. But, the circumstances in which Andrew Wilson and his brother Jackie Wilson were apprehended, interrogated, and prosecuted gave rise to considerable controversy and damning revelations.

Background

The murders "led to the biggest manhunt in Chicago's history." *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 1. Testimony from various proceedings revealed that the Chicago Police Department believed it had a mandate to "do whatever it takes" to clear the case. Several accounts painted a picture of an extensive dragnet in which CPD arrested African Americans on nothing more than mere suspicion of possessing

information that could lead to the suspects and employed coercive tactics, including physical abuse, to extract it. Eventually, CPD identified Andrew and Jackie as suspects and concentrated their efforts on finding them. Both were arrested on February 14, 1982 and taken to Area 2 Police Headquarters where they were interrogated by detectives led by Lt. Jon Burge. Both gave statements implicating themselves in the murders and those statements were introduced as evidence at their joint trial in 1983. Andrew and Jackie were both found guilty of the two murders and two counts of armed robbery for taking the Officers' firearms. Andrew was sentenced to death and Jackie to life imprisonment.

Later, the Illinois Supreme Court reversed Andrew's conviction finding that his confession should have been suppressed because he was beaten, held against a hot radiator, and suffered other abuse at the hands of Burge and detectives under his supervision. *People v. Wilson*, 116 Ill. 2d 29 (1987). CPD ultimately fired Burge in 1991 for abusing Andrew Wilson. The episode together with other allegations of abuse of suspects by Burge and his subordinates led to the appointment of a Special Prosecutor. The Special Prosecutor concluded in a 2006 report that Burge presided over systemic abuse of suspects. Burge was later convicted of perjury in federal court for falsely denying any knowledge of or participation of abuse in a sworn statement. See *United States v. Burge*, 711 F.3d 803 (7th Cir. 2013). Due to the many torture claims that surfaced, the Illinois legislature established the Torture Inquiry and Relief Commission (TIRC) to investigate such claims and determine whether they merit judicial review.

Andrew Wilson was convicted of both murders in a second trial in 1988 with his statement suppressed. Jackie Wilson's initial conviction was reversed due to the appellate

court finding he should have been tried separately from Andrew. *People v. Wilson*, 161 Ill. App. 3d 995 (1987). However, the court found his statement was properly admitted despite his claim of abuse at Area 2. In 1989, Jackie Wilson was retried and convicted for the murder of Officer O'Brien and the armed robberies, but acquitted for the murder of Officer Fahey. He was again sentenced to natural life imprisonment. The conviction was affirmed on appeal. *People v. Wilson*, 257 Ill. App. 3d 670 (1993). The court reaffirmed the admission of his statement based on the law of the case doctrine.

In 2011, Jackie Wilson initiated a claim with TIRC. The Commission ultimately referred the claim to the Cook County Circuit Court. Following an evidentiary hearing, this Court found that had the evidence of a pattern and practice of torture under Burge been available to impeach the officers who denied abusing Jackie Wilson, his motion to suppress would have likely been granted. On that basis, the Court vacated the convictions and granted a new trial. In addition, the Court ordered the statement suppressed because the hearing evidence showed that the State could not overcome Jackie's allegations of abuse. In significant part, that finding followed from the adverse inference drawn after Burge, the other detectives, and the assistant State's Attorney who took Jackie's statement all invoked their fifth amendment privilege against self-incrimination in response to questioning about Jackie's treatment in custody at Area 2. The appellate court affirmed those findings. *Wilson*, 2019 IL App (1st) 181486.

The case proceeded to a third trial in September of 2020. On October 1, 2020, the State moved to dismiss the indictment with prejudice after informing the Court that a witness had provided false testimony. That witness was a former assistant State's

Attorney, Nick Trutenko, who prosecuted Jackie in his second trial in 1989. The trial revealed a number of sordid details regarding Trutenko's involvement in the case. Most notably, Trutenko orchestrated unusually favorable resolutions for pending criminal charges against a jailhouse informant, William Coleman, who testified against Jackie in 1989. Substantial evidence showed Coleman, a British national, to be an international con man whose exploits surpass many works of fiction. Even more bizarre, evidence revealed Trutenko and Coleman developed and maintained a personal friendship ever since. Based on their efforts to ascertain Coleman's whereabouts, both parties had assumed him to be deceased. On the stand, Trutenko admitted the two exchanged messages just a few days before. He never disclosed this relationship or his knowledge of Coleman's whereabouts to the State's Attorney's Office or the Special Prosecutors handling the case despite his awareness of this matter and meeting with the Special Prosecutors before trial.

Following the final judgement in the criminal case, Jackie Wilson filed a petition for a Certificate of Innocence.

Certificate of Innocence

A Certificate of Innocence provides an avenue for innocent persons who have been wrongly convicted of crimes in Illinois and subsequently imprisoned to obtain relief through a petition in the Court of Claims. The petition shall request a Certificate of Innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated. 735 ILCS 5/2-702(b). A person is entitled to a certificate of innocence if he can prove by a preponderance of the evidence that:

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

735 ILCS 5/2-702(g).

If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or is binding only with respect to claims filed in the Court of Claims and does not have a preclusive effect on any other proceedings. *Id*. § 2-702(j).

Analysis

There is no dispute that Jackie Wilson meets the first, second, and fourth prongs for a certificate of innocence. He was convicted of three felonies in Illinois—first degree murder and two armed robberies—and was sentenced to a term of imprisonment. His conviction was vacated and the ordered new trial concluded by dismissal. Nothing suggests he voluntarily caused or brought about his conviction. *Cf. People v. Simon*, 2017 IL App (1st) 152173, ¶ 22 (describing evidence on which a court found a petitioner voluntarily caused or brought about his conviction by participating in a scheme to free

another person); see also *People v. Dumas*, 2013 IL App (2d) 120561 (affirming denial of certificate of innocence where evidence showed petitioner took many steps to arrange a drug deal that led to his conviction). Therefore, the dispositive issue is whether Jackie has shown by a preponderance of evidence that he is innocent of the offenses charged in the indictment. Illinois courts have interpreted this provision to require the petitioner to show he is actually innocent and not merely that the State did not or could not prove him guilty beyond a reasonable doubt. *People v. Fields*, 2011 IL App (1st) 100169, ¶ 19 ("the plain language of section 2-702 shows the legislature's intent to distinguish between a finding of not guilty at retrial and actual innocence of the charged offenses").

"A prototypical example of 'actual innocence' in a colloquial sense is the case where the State has convicted the wrong person of the crime." *People v. Savory*, 309 Ill. App. 3d 408, 414 (1999), quoting *Sawyer v. Whitley*, 505 U.S. 333, 340-41 (1992). This case, however, is not prototypical. It does not, for example, involve definitive DNA analysis proving the petitioner was not the perpetrator of the crime. Rather, the inquiry requires consideration of both facts and law—namely, the principle of accountability. Andrew Wilson shot and killed Officers Fahey and O'Brien and took their firearms from their person. Jackie Wilson did none of those things. For Jackie Wilson to be guilty of any crimes based on Andrew's actions, he must be proven accountable. Conversely, for Jackie to be actually innocent, he must show by a preponderance that he was not accountable.

Section 5-2(c) of the Criminal Code of 1961 provides that a person is legally accountable for the criminal conduct of another if "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission,

he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c). This statute incorporates the common-design rule. *People v. Nelson*, 2017 IL 120198, ¶ 39. Under the common-design rule, if "two or more persons engage in a common criminal design or agreement, any acts in the furtherance thereof committed by one party are considered to be the acts of all parties to the common design and all are equally responsible for the consequences of such further acts." *Id.* ¶ 40, quoting *People v. Kessler*, 57 Ill. 2d 493, 496-97 (1974). "Where there is a common design to do an unlawful act, then whatever act any one of them does in furtherance of the common design is the act of all, and all are equally guilty of whatever crime was committed." *Id.*, quoting *People v. Tarver*, 381 Ill. 411, 416 (1942). So, for example, "a defendant may be charged with murder based on a theory of accountability where the defendant enters a common design to commit only a battery yet a murder is committed during the course of the battery." *Id.*, citing *People v. Terry*, 99 Ill. 2d 508, 515 (1984).

In Jackie's appeal following his initial 1983 conviction, the court found the State had presented sufficient evidence to prove him accountable beyond a reasonable doubt. *People v. Wilson*, 139 Ill. App. 3d 726, 741-42 (1985). The court reasoned evidence indicating that Jackie agreed to a plan to help Edgar Hope escape from custody at Cook County Hospital and his participation in a burglary to find weapons to facilitate the escape supported a conclusion that the shootings and robberies were part of a common design to which Jackie had attached himself. The court remarked:

> we believe that evidence of the escape plan and the burglary committed to facilitate it were relevant to any or all of the above [accountability] factors and that the jurors might easily have inferred therefrom that the motivation for the shootings was (a) the recognition of an opportunity to acquire the officers' service revolvers—which were indeed taken from the scene—as weapons needed for the escape plan, (b) a determination to evade arrest -- which, among other negative consequences, would have thwarted that plan, or (c) both.

Id. The court also observed:

> it was reasonable for the jury to conclude that by telling Andrew that Officer O'Brien was "still there; he's up and about" when ordered by Andrew to get the guns, defendant was in fact advising Andrew that he could not do so because O'Brien was still alive, and thereby prompted Andrew to shoot O'Brien again -- a total of four or five times -- so that the guns could be obtained.

Id. at 742.

After Jackie's second 1989 trial, he again challenged the sufficiency of the evidence to prove him accountable. The appellate court rejected the argument citing much of the same evidence and reasoning it had noted in the prior appeal. The court further found reconsideration of the issue was precluded by the law of the case doctrine because the evidence presented in the second trial was substantially similar to the evidence presented in the first. *Wilson*, 257 Ill. App. 3d at 698-700.

"Issues presented and disposed of in a prior appeal are binding and will control in the circuit court on remand,***, unless the facts presented are so different as to require a different interpretation." *People v. Gliniewicz*, 2020 IL App (2d) 190412, ¶ 36, quoting *Bilut v. Northwestern University*, 296 Ill. App. 3d 42, 47 (1998). "[A] ruling will not be binding in a subsequent stage of litigation when different issues are involved, different

parties are involved, or the underlying facts have changed." *Id*. Thus, the law of the case doctrine means that when the evidence offered at two trials is the same, or substantially the same, reconsideration of the prior finding is precluded. *People v. Cumbee*, 366 Ill. App. 3d 476, 498 (2006). Much like the evidence regarding the voluntariness of Jackie's statement, which was also decided in Jackie's first appeal, the evidence concerning Jackie's accountability is not substantially the same at this juncture. Furthermore, the appellate court's prior review was highly deferential to the jury's verdict. When considering a challenge to the sufficiency of the evidence, a reviewing court views the evidence in the light most favorable to the State and determines whether any rational trier of fact could have found the required elements beyond a reasonable doubt. *People v. Newton*, 2018 IL 122958, ¶ 24. The appellate court draws "all reasonable inferences from the evidence" in favor of the prosecution and does not reverse a conviction "unless the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *Id*. That standard did not apply to this Court for Jackie's third trial or consideration of this petition. Moreover, this Court, finds that the evidence the prior appellate opinions relied upon to conclude Jackie could be accountable was either refuted or cannot be viewed in the same light after Wilson's third trial.

It has been often said that the duty of a criminal prosecution and her agency and office is to seek justice and not simply "win" at any cost. This concept is fronted in the landmark case of *Berger v. United States*, 235 U.S. 78 (1935) which provides us with the bedrock warnings of Justice George Sutherland who reminded all American prosecutors of their role in 1935. His words ring true to this day. He wrote:

> [He or she] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Id. at 88. While this is the "champion of the people" view of and obligation of the prosecution, unfortunately some small number of prosecutors not only reject their "champion of the people" role. Some venture into the dirty, or unethical, or criminal arena to not only quash justice; in some very small number of cases, they become criminals themselves under a misguided understanding of their role in the criminal justice process.

A 1999 national study of 11,000 homicide convictions between 1963 and 1999 resulted in 381 being reversed for prosecutorial misconduct. See Ken Armstrong & Maurice Possley, *Trial & Error: How Prosecutors Sacrifice Justice to Win*. Part 1: The Verdict: Dishonor, Chi. Trib. (Jan. 11, 1999). The more typical forms of prosecutorial misconduct involve improper arguments or concealment of exculpatory evidence. See Bennett L. Gershman, *Prosecutorial Misconduct*, 476-79 (2d ed. 2009-2018). The instant case, however, involves clear misconduct that goes far beyond the typical issues.

Accordingly, this Court finds that Petitioner has met his burden by a preponderance of the evidence for the issuance of a Certificate of Innocence. In reaching

a final order on the petition, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. The Court is tasked with determining whether Petitioner has proven by a preponderance of the evidence that he is innocent of the offenses charged. Before addressing the evidence, the Court first must address the two legal theories under which the Petitioner was charged: (1) that Jackie Wilson aided or assisted his brother at the scene of the crime, namely that he "told his brother 'let's take them' as they were being pulled over," see OSP Resp. at 17; and/or (2) that Jackie Wilson is liable for Andrew Wilson's actions under a common-scheme theory because "he and Andrew were on their way to break [Edgar] Hope out when they were pulled over." See OSP Resp. at 17-18.

2. The Illinois Criminal Code renders one person accountable for a criminal offense committed by another person when "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees or attempts to aid, that other person in the planning or commission of the offense." 720 ILCS 5/5–2(c) (2012). As the Illinois Appellate Court recognized, that intent is the "cornerstone" of liability under the accountability statute. *People v. Shaw*, 186 Ill.2d 301, 239 (1998); *People v. Perez*, 189 Ill.2d 254, 244 (2000); *People v. Taylor*, 186 Ill.2d 439 (1999).

3. Petitioner cannot be convicted based only upon his mere presence at the scene and his flight thereafter without proof that he aided or assisted Andrew Wilson. *People v. Gray*, 87 Ill. App. 3d 142 (1980); *People v. Williams*, 324 Ill. App. 3d 419, 434 (2001).

4. Eyewitness testimony from Tyrone Sims and DeWayne Hardin establishes by a preponderance of evidence that Petitioner did nothing at the scene that could hold him legally or factually accountable for his brother's crimes. Further, the only evidence the Special Prosecutor presents to this Court supporting this theory is based on William Coleman's wholly unreliable testimony which the Court, for the reasons set forth later, must exclude from consideration. For these reasons, this Court's analysis focuses on the State's common-design theory.

5. The relevant law on common-design is discussed in turn. A defendant's intent to aid in the commission of a crime by another person may be shown by evidence of a common criminal plan or design in which the defendant joined. *Perez*, 189 Ill. 2d 254; *People v. Thompson*, 313 Ill.App.3d 510 (2000*); Monroe v. Davis*, 712 F.3d 1106, 1120 (7th Cir. 2013). A defendant's liability under the Illinois common-design rule extends not only to the particular crime that the defendant intends to aid, but also to another offense that the principal commits within the same course of conduct. *People v. McClain*, 269 Ill.App.3d 500 (1995); see also *Hennon v. Cooper*, 109 F.3d 330, 334 (7th Cir. 1997) (Illinois law); *Brumley v. DeTella*, 83 F.3d 856, 865 (7th Cir. 1996) (Illinois law); *People v. Terry*, 99 Ill.2d 508 (1984).

6. As explained in *Terry*, when a defendant intends to aid in the commission of a battery, and that battery culminates in a murder, the defendant's intent to aid the battery may render him liable for the murder, even if he did not share the principal's intent to kill the victim; the defendant's shared intent to commit the battery, and thus to inflict serious harm on the victim, is enough to make him culpable for the murder as well.

Terry, 99 Ill.2d 508 (agreeing that common-design rule "does impose liability for murder even though a misdemeanor was only intended"); see also *Brumley*, 83 F.3d at 864–65; *Brennan v. People*, 15 Ill. 511, 1854 WL 4728, at *3 (1854); *People v. Duncan*, 297 Ill.App.3d 446 (1998); *McClain*, 269 Ill.App.3d 500; see also *People v. Batchelor*, 171 Ill.2d 367 (1996) (murder committed in course of robbery); *People v. Kessler*, 57 Ill.2d 493 (1974) (attempted murder committed in course of burglary).

7. Thus, Petitioner's ability to satisfy element number three hinges on showing, by the preponderance of the evidence, that Andrew Wilson's actions on February 9, 1982 were not done "within the same course of conduct" of a common design to free Edgar Hope from the Cook County Hospital.

8. Petitioner provided a statement to police on February 14, 1982. This Court determined that Jackie Wilson's 1982 statement was obtained in violation of his constitutional rights. See Petitioner's PSOF to COI at ¶¶74-100, 166. In 2019, the Appellate Court affirmed this Court's ruling and found that "petitioner demonstrated by a preponderance of the evidence that his confession resulted from coercion." See Petitioner's PSOF to COI at ¶167.

9. Given these prior rulings, law of the case precludes the Special Prosecutor's use of Petitioner's tortured false confession. People v. Patterson, 154 Ill. 2d 414, 468–69 (1992). The Special Prosecutor agrees that Petitioner's suppressed statement should not be considered for purposes of this proceeding. See OSP Resp. at 3 ("The State is not in any way relying on these statements to establish Jackie's guilt by the preponderance of

the evidence."). Given the above, this Court will not consider Petitioner's statement for purposes of this proceeding.

10. This Court finds that the record and pleadings submitted by the parties, along with the testimony and evidence presented, including the documentary exhibits submitted to the Court, establish the following relating to William Coleman:

11. At Petitioner's 1989 retrial, the State relied upon a jailhouse informant named William Coleman AKA Alfred Clarkson. Mr. Coleman testified there to jail library admissions that Petitioner purportedly made to him about his involvement in the murders and about his alleged involvement in an escape plot from the ABO division of the Cook County Jail.

12. Mr. Coleman was being prosecuted at the time of the purported admissions in multiple felony prosecutions by Cook County Assistant State's Attorney Nicholas Trutenko.

13. At Petitioner's 2020 retrial, over Petitioner's repeated objection, the Special Prosecutors informed the Court that Mr. Coleman was unavailable to testify, designated his direct examination testimony from 1989, and read it into the record in support of their twin theories of guilt.

14. In response, Petitioner read into the record: (1) Mr. Coleman's cross-examination from the 1989 trial; (2) excerpts from two 1989 depositions of Coleman in the civil-litigation Andrew Wilson v. City of Chicago, et al; and (3) portions of Coleman's testimony against Andrew Wilson in the federal lawsuit.

15. Additionally, Petitioner presented this Court with a wealth of evidence further eviscerating Coleman's credibility: (1) his international criminal records of deceit, fraud, dishonesty and violence that spanned decades; (2) records relating to his criminal cases in the United States; (3) plea consideration that Coleman received, which was undisclosed prior to Jackie Wilson's 1989 trial; (4) official findings of Coleman's mendacity; (5) and a litany of additional materials bearing upon Coleman's lack of truthfulness. Mr. Coleman's lack of credibility was further evidenced by the testimony of former Cook County State's Attorneys' Kunkle and Trutenko, though for different reasons.

16. According to Mr. Kunkle, Mr. Trutenko reached out to him in the spring of 1989 about William Coleman while Kunkle was representing Jon Burge and several of his Area Two confederates in Andrew Wilson's civil trial. Ex. 39 to COI, September 30, 2020 Kunkle Tr. at 42:15-19. In that conversation, Mr. Trutenko revealed that Coleman might have information relevant to Kunkle's clients. *Id*. at 42:20-23.

17. As a result of Trutenko's outreach, Mr. Kunkle ultimately traveled to Virginia and/or Washington D.C. for the purpose of interviewing Coleman. *Id*. at 43:8-18. Mr. Kunkle became very skeptical of Coleman, considering him to be a con man. *Id*. at 43:23-44:3. According to Mr. Kunkle, Coleman was "always a con man. He was well-publicized in the [British] press long before there was first contact with any of us." *Id*. at 44:4-6.

18. Although Mr. Kunkle used Coleman as a witness to defend Jon Burge and the City of Chicago, he admitted that "if one had hindsight or a back in time machine

then I wouldn't have put him on." *Id*. at 48:16-18. Mr. Kunkle also shared his concerns about the reliability of Coleman's testimony before having him testify in defense of Burge. *Id*. at 49:19-23.

19. After testifying for Mr. Kunkle in the federal civil lawsuit, Coleman called and wrote letters to Mr. Kunkle. *Id*. at 50:8-15. According to Mr. Kunkle, "well, he was always trying to leverage everybody for benefits as far as I could tell." *Id*. at 51:5-8.

20. When shown his own notes, Mr. Kunkle agreed that his notes document that Coleman likely received $35,000 from the State "when he was testifying regarding the jail break…" *Id*. at 61:18-21. When asked, Mr. Kunkle agreed "that's for the State for $35,000" and that it could have to do with Mr. Trutenko. *Id*. at 64:5-12.

21. Mr. Kunkle also revealed that by 1991, Coleman was "extorting more money from me which I don't have because I'm not representing anyone …" *Id*. at 63:17-20.

22. Nonetheless, in 1992, Mr. Kunkle represented to the Chicago Police Board at Jon Burge's termination hearing that he intended to call Coleman to testify on Burge's behalf. *Id*. at 73:11-14.

23. By then, Coleman was alleging that Andrew Wilson confessed to him that he self-inflicted the radiator burns on his body to manufacture a false confession – all to supposedly trick the trial court into suppressing his statement prior to his 1988 retrial. The problem for Coleman was that Andrew Wilson's statement had been previously suppressed in 1987 by the Illinois Supreme Court and there would be no need to allegedly deceive a court given its exclusion. See Defendant's Trial Exhibits 20, 21, 23, and 24.

24. Ultimately, Mr. Kunkle did not call Coleman to testify on Burge's behalf because:

> Well, we talked about various possible reasons regarding use of him before . . . I'm not going to repeat all that. But assuming all these reasons are in my head somewhere and for whatever reason a combination of all of them the way he'd been acting on the phone and the way he'd hiding or not hiding and this and that. Some of his idiot demands, I probably decided I was not going to call him.
> *Id*. at 73:22-74:6.

25. This Court finds that Mr. Kunkle's testimony regarding Coleman is credible. This Court further finds that on its own, Mr. Kunkle's testimony demonstrates the unreliability of Mr. Coleman's 1989 testimony.

26. This Court was likewise presented with additional evidence demonstrating the unreliability of Coleman's prior testimony.

27. Coleman's prior testimony is also rendered unreliable by the testimony of his former wife, Sheila Coleman, who credibly testified to her personal knowledge of Coleman's character for untruthfulness. *Ex.* 40 to COI, October 1, 2020 Full Tr. at 5.

28. Ms. Coleman, a former academic and employee for a trade union in England, was previously married to William Coleman. *Id.* at 7:8-10. Though reluctant at first, Ms. Coleman eventually agreed to speak about her experiences with William Coleman, stating:

> The basis of me changing my mind was for many years I have been involved in miscarriages of justice and issues around justice and right and wrongs, and I thought it would be hypocritical of me in trying to save my own reputation at the expense of someone else's liberty when I had information which might have someone aware to actually re-enforce what the people know about the man that I had the misfortune to be married to.

Id. at 8:16-9:2

29. Ms. Coleman recounted her life's experiences with Coleman, describing a relationship built on lies:

> Coleman falsely told her that he immigrated to Australia and was in the Australian Army. *Id.* at 9.
>
> Coleman falsely claimed to be in the Vietnam war. *Id.* at 9.
>
> Coleman stole her brother's identity when stopped by police. *Id.* at 11-14.
>
> Coleman stole checks from her and cashed them. *Id.* at 15-16.
>
> Coleman stole social-security benefits from her and attempted to defraud the government, leaving Ms. Coleman and her child without basic necessities. *Id.* at 17-18.

30. Ms. Coleman described that this "very embarrassing information about him because all of his lies came forth quite frankly and relatively small things to begin with, but it just became a cycle of lies and trouble that was constantly brought to me or that I had to try to balance to try and save my own reputation." *Id.* at 10-11.

31. But Coleman wasn't just a violent liar – Ms. Coleman credibly explained that he was racist as well. *Id.* at 21. According to Ms. Coleman:

> He was very racist, and what emerged shortly after I was married to him is that we were totally – we were totally opposites in so many ways in terms of how I viewed things and things that were going on at the time. He was [an] incredible racist … he would use words that I won't use. He would use the N word, you know, freely and, yeah, just generally was racist.

Id. at 21:2-12.

32. Ms. Coleman further described receiving a phone-call from Coleman while he was imprisoned in the United States and she was living with a Black man, where

Coleman called her a "n**** lover" and that "he didn't want my son growing up with a black man…" *Id*. at 23:3-17.

33. Ms. Coleman further testified that with William Coleman, "there is no reputation for truthfulness whatsoever. His reputation is totally bound with being a fraud and a liar, a constant liar from the smallest to the greatest." *Id*. at 24:15-18. Going further, Ms. Coleman described how:

> he would have no qualms whatsoever in lying about a black person. He had no problems in lying about anyone, but more so if it was a black person he would feel even more justified. He would not have any moral compass whatsoever. He would quite happily lie if you offended him in anyway.

Id. at 24:23-25

34. This Court finds that Ms. Coleman's testimony regarding her former husband's character for untruthfulness is credible evidence demonstrating the unreliability of his testimony.

35. William Coleman's son, Emile, likewise testified credibly as to his father's reputation for racism, untruthfulness, and violence. *Id.* at 51.

36. Emile recalled William Coleman as a violent man:

> He did attack. My mother was a victim of systematic abuse from my father when I was young, and specifically he attacked both of us one evening where he tried to strangle me. He attacked my mother very, very badly, and we had to flee our home and make our way to a police station, which was quite a distance away. We lived in a rural area at the time, and we didn't have a vehicle or anything. So we had to flee on foot and present ourselves at the police station. So you can imagine it was very harrowing for both of us.

Id. at 52:3-14.

37. In the end, having conducted a lengthy investigation of his father, including his own experiences and those of his relatives, business people, and others, Emile testified to his father's reputation for truthfulness:

> Every single individual that I spoke to in his family, my family would always basically describe him as a liar and con man, and that is how my opinion was formed also from my dealings with him as well. If you ask my personal opinion he was a liar, a con man, and a racist and using the word truth and my father together it just doesn't work, and it will never go hand in hand with my father. It's a very sad thing that, you know, as his son I have to deal with that legacy.

Id. at 67:15-24.

38. This Court finds that Emile Coleman's testimony regarding his father's character for untruthfulness is credible evidence demonstrating the unreliability of William Coleman's 1989 testimony.

39. Petitioner, and not the Special Prosecutor, called Assistant Cook County State's Attorney, Nicholas Trutenko, to testify. *Ex.* 40 to COI, October 1, 2020 Full Tr. at 107. At the time of his testimony, Mr. Trutenko was still employed by the Cook County State's Attorney's Office. *Id.* at 107:8-10.

40. Mr. Trutenko testified that he was hired for a second tour at the State's Attorney's Office on May 27, 2008 and that he was currently assigned as a deputy supervisor in the felony-review division. *Id.* at 108:1-6; 110:18-21.

41. In that capacity, Mr. Trutenko acknowledged to coming into contact with witnesses before they testify. *Id.* at 110:5-17. Trutenko approximated that happened "at most a small handful of cases where I personally would have talked to witnesses." *Id.* at 110:16-17.

42. Mr. Trutenko admitted that the 1989 prosecution was the "crown jewel" of his "body of work" and was " definitely the case that I'm most proud of … if I had to pick, I would say that the Wilson brothers' case was probably the one that was the most meaningful in my life as a prosecutor, and it even touched [me] personally." *Id.* at 137:19-20; 137:24-138:3; 138: 6-15.

43. With regard to his relationship with Coleman, Mr. Trutenko made the following admission:

Q: After the prosecution you formed a friendship or bond with a witness in this case?

A: Yes, sir.

Q: Who is that witness?

A: That would be Mr. Bill Coleman.

Id. at 172:1-10.

44. Mr. Trutenko testified that his contacts with Coleman continued after he left the State's Attorneys' Office in 1991 and referred to Coleman as "Billy." *Id*. at 173, 174:23-175:1.

45. Mr. Trutenko met William Coleman through a Class X prosecution of Coleman in 1987. *Id*. at 175:17-177:19. In fact, he filed the State's Answer to Coleman's discovery request. *Id*. at 177:15-17.

46. In that case, Mr. Coleman was charged with illegal delivery of a controlled substance, knowingly and unlawfully possessing with the intent to deliver more than a kilogram of cocaine. *Id*. at 178:14-21. His bail was set at $1,000,000 and he was facing between six to thirty years in prison. *Id*. at 178:22-24; 179:4-10.

47. Prior to Jackie Wilson's 1989 trial, Mr. Trutenko was also in charge of another felony prosecution of Coleman for his August 1987 escape from the County Jail. *Id*. at 179:16-21. As Trutenko acknowledged: "I would have been properly considered the lead prosecutor on that as well." *Id*. at 179:19-20.

48. During this period of time, Mr. Coleman was also charged with federal offenses. *Id*. at 180:5-15.

49. Mr. Trutenko was questioned about the length of his close bond with Coleman. The following exchange ensued:

> Q: Well, you formed a bond with Mr. Coleman, correct?
>
> A: Yes.
>
> Q: How many years did that bond last, sir?
>
> A: To this day.
>
> Q: When was the last time you talked to Bill Coleman?
>
> A: The last time I heard from him was the day before the presidential debate, which when was that? Two to three days ago?

Id. at 181:20-182:5

50. Mr. Trutenko went on to admit to having contact with Coleman over the last three decades, (Id. at 184:21-185:6) but refused to provide the Court and counsel with Mr. Coleman's email address; phone number; and location in England when on the stand. *Id*. at 185.

51. Mr. Trutenko testified to last seeing Coleman, "probably around some time in the 90's, maybe 25 years ago or so … I saw him out in England." *Id*. at 186:1-5.

52. When confronted with a January 1992 baptismal certificate establishing that before Jackie Wilson's conviction became final, Trutenko flew to England to become the Godfather to Coleman's daughter, this inquiry ensued:

> Q: You knew Jackie Wilson was in prison for a murder that Mr. Coleman testified at, correct?
>
> A: I did, yes.
>
> Q: And you flew to England and became the godfather to William Coleman's daughter. Is that your testimony?
>
> A: Absolutely, yes, sir.
>
> Q: Tell everybody in this courtroom when you documented that information in an investigative memo or informed anybody about this.
>
> A: I would have no such obligation. I was in private practice.
>
> Q: But you knew that somebody was sitting in prison where Coleman testified against them, and you thought it was ethical to go to England and become the godfather for his child?
>
> A: Yes. There is nothing wrong with it.

Ex. 40 to COI, October 1, 2020 Full Tr. at 186:10-187:8.

53. Mr. Trutenko admitted that he did not make any disclosures about his decades-long relationship with jailhouse informant Coleman to the Cook County State's Attorneys' Office after he was rehired in 2008. *Id*. at 187:9-24. In his words, "of course not … I don't think I documented my personal relationship with any of my friends." *Id*. at 188:8-15.

54. Notably, Mr. Trutenko traveled to England, with his airfare provided for by Coleman, and stayed at Coleman's residence for at least a night during the baptismal trip. *Id*. at 190:20-24

55. Mr. Trutenko admitted that he never made a single attempt at disclosure, even after learning of Jackie Wilson's efforts of obtaining a new trial. *Id*. at 199:11-20; 200; 24-201:6.

56. Petitioner's evidence also established that the deal that Mr. Trutenko arranged for Coleman in exchange for his 1989 testimony was not fully disclosed to the defense or the Court, either by Trutenko or by Coleman in his testimony, including that his state court time would run concurrently with his federal time and that he would receive a greater amount of time considered served. Id. at 204:18-22; Defendant's Trial Ex. 12.

57. Additionally, when confronted with Mr. Kunkle's notes revealing that Coleman may have either been paid $35,000 by the State or owed that amount for his testimony, Mr. Trutenko testified "I have no recollection of whether there were expenses paid for him…" Ex. 40 to COI, October 1, 2020 Full Tr. at 210:24-211:1.

58. These apparent promises and payments were not disclosed to the defense or the Court by Trutenko or by Coleman in his 1989 testimony.

59. Mr. Trutenko also acknowledged that the deals Coleman received were contingent on the substance of his testimony at Jackie Wilson's trial. *Id*. at 234.

> Q: If Mr. Coleman testified that the story was a lie and that Jackie Wilson had never made any admissions to him, would he have gotten that deal on May 7, 1989?
>
> A: No, no. If he would have – another term of art if he were to flip us - - if he would have taken the witness stand and recanted then all deals were off. He wouldn't have gotten the deal from the State. He had to testify truthfully.

Id. at 234:22-235:6.

60. During his trial testimony, Mr. Trutenko acknowledged his prior admissions to a Chicago Tribune reporter that the jury rejected Coleman's testimony at the 1989 trial. *Id*. at 231:6-232:24.

61. During his testimony, Mr. Trutenko falsely denied that he had discussed Coleman during a September 27, 2020 meeting with the Special Prosecutor, which ultimately led to the dismissal of all charges on October 1, 2020 and his immediate firing by State's Attorney Kim Foxx. *Id*. at 241-242; 249-250; Ex. 5 to COI, October 2, 2020 CCSAO Foxx Email at 1.

62. In 1993, the Seventh Circuit Court of Appeals, in the case of *Andrew Wilson v. Jon Burge*, found that Coleman was a "peripatetic felon" and further determined that "on the basis of his personal contacts with Coleman [reputation witness Miskiw] formed the apparently well-substantiated opinion that Coleman was 'a consummate liar.'" Defendant's Trial Ex. 19.

63. In 2006, then Special Prosecutors Judge Edward Egan and Robert Boyle made the following finding concerning Coleman in their July 19, 2006 Report:

> Last, Burge's attorney introduced the testimony of William Coleman, a British national, who was in the County Jail for possession of cocaine. He had previously done time in England for extortion. (We have been unable to locate Coleman.) He testified in 1989 that Wilson told him in August, 1987 that although the police beat him, Wilson had actually draped himself on the radiator to inflict the burns on himself as a means of getting out of the confession. The first time Coleman ever told anyone about his conversation with Wilson was in April or May of 1989 when Coleman told his lawyer, who was a former assistant state's attorney. (Coleman's testimony was also introduced at the second civil trial). Thus, according to Coleman, Wilson, after the Supreme Court had already reversed his conviction and held that the confession should not have been introduced, told a stranger that he had, in

> effect, "put one over" on the Illinois Supreme Court and that he was going to claim the police burned him at his upcoming trial where no confession could be introduced. As the Seventh Circuit Court of Appeals noted, this was indeed "an odd suggestion." And thus, those opposing Wilson's testimony have gone from no burns, to burns caused by wagon men, to self-inflicted burns. *The Chicago Police Board rejected the testimony of William Coleman and the various theories advanced in opposition to Wilson's testimony, and so do we.*

Defendant's Trial Ex. 18, 2006 OSP Report at 52-53 (emphasis added).

64. The Court's review of Coleman's 1989 testimony reveals that it is not only unreliable and repeatedly inconsistent, but that it is also apparently false in its most crucial aspect - - - the purported admissions made by Petitioner to Coleman in the jail library.

65. Specifically, the 1989 cross examination, and the jail library records used by Petitioner therein show that Coleman and Petitioner were not together in the library at any of the times that Coleman originally claimed that the conversations took place. See, generally, 1989 cross examination of William Coleman.

66. Due to the withholding of evidence prior to Petitioner's 1989 retrial, the record establishes that Petitioner was not given a fair opportunity to cross-examine Mr. Coleman in 1989 or in 2020. The Court finds that questioning regarding topics including: (1) the parameters of the federal consideration; (2) the apparent promises and/or payments of financial compensation that may have been as much as $35,000 and/or $50,000; (3) his extortion attempts of Mr. Kunkle; (4) the false statements Mr. Coleman gave about Andrew Wilson during this same time period; (5) his deportation and post 1989 career of fraud, deception and violence; and (6) the multi-decade international

relationship between Coleman and Trutenko, among a host of other topics, constitute material evidence that goes directly to the heart of Coleman's credibility as a witness. Petitioner did not have an opportunity to question Coleman about this evidence in 1989 either because the State was withholding this or that it developed or was otherwise revealed after the 1989 trial.

67. The Court finds that exclusion of Coleman's 1989 testimony under Rule 804 is appropriate given these circumstances. "A criminal defendant's right to confront the witness used against him or her is protected by the confrontation clauses contained in both the federal constitution, by the sixth amendment, made applicable to the state through the fourteenth amendment, and the Illinois Constitution." *People v. Hood*, 2014 IL App (1st) 113534, ¶ 17.

68. This Court recognizes that it may admit preexisting testimony of a witness only if the witness is unavailable at trial and the prosecution has made a showing of particularized guarantee of trustworthiness or the testimony is marked by adequate "indicia of reliability." *People v. McCambry*, 218 Ill. App. 3d 996, 1001 (1st Dist.1991). This Court finds that the Special Prosecutor has failed to do so here.

69. As part of this Court's analysis, this Court looks to whether the Petitioner had an adequate opportunity to effectively cross-examine the witness when the prior testimony was given. *People v. Torres*, 2012 IL 111302, ¶ 53 (quoting *Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). However, "the question is [just] not whether there was an opportunity for full and complete cross-examination, but rather, whether there is adequate indicia of reliability." *People v. McCambry*, 218 Ill. App. 3d at 1001.

70. Importantly, the Illinois Appellate Court reaffirmed the proper analysis for determining whether an adequate opportunity to cross-examination existed at the time of the original testimony, holding: "[t]o determine whether [the Defendant] had an adequate opportunity to cross-examine [the witness], we must examine whether the 'motive and focus' of the cross-examination at the [prior proceeding] was the same as it would have been at trial, whether [Defendant's] cross-examination was unlimited, and what counsel knew when conducting the cross-examination." *People v. Weinke*, 2016 IL App (1st) 141196, ¶¶ 58, 61-62. (emphasis added).

71. Unlike *Weinke*, this is not an instance where the State made an untimely disclosure to the Defendant prior to the underlying examination. Rather, the State continued to withhold such evidence from Petitioner at the time Coleman testified in past proceedings.

72. Moreover, the record at the 2020 trial definitively establishes, by the "cross examination" of the absent Coleman, wherein counsel posed a myriad of relevant unanswered questions and introduced 15 relevant exhibits, that Petitioner's right to confrontation has been, and continues to be, unconstitutionally denied.

73. Put simply, there was no opportunity to prepare as the State buried the very evidence that would have further established the unreliability of the witness' testimony at issue, and that the actions and inactions of the State (and the witness) have continued to preclude the further development of that evidence.

74. Moreover, the State not only buried the evidence, but also collectively hid the witness - - - and his potential availability - - - making the Court's unknowing finding

of unavailability a finding that was not only in error but based on false premises and deception.

75. As a result, this Court determines and must now absolutely find that the 1989 testimony of Coleman is excluded under Rule 804 is now stricken.

76. This Court likewise finds that exclusion of Coleman's 1989 testimony is warranted and necessary in the interests of justice as the Petitioner has demonstrated that material portions of that testimony are objectively false. This Court declines to consider decades-old testimony where the witness committed perjury.

77. The record now demonstrates that Mr. Coleman lied about even the most basic of facts. For instance, Coleman testified in 1989 as Alfred Clarkson, even though that was not his legal name.

78. The Court is also now presented with unrebutted evidence that Mr. Coleman lied about the consideration that he was promised and provided during his 1989 testimony. There, Mr. Coleman testified that there were no promises regarding his federal cases, whereas Mr. Trutenko now acknowledges that Coleman did receive benefits on those cases in addition to the state court cases.

79. This Court finds that Mr. Coleman's testimony on the merits was frequently impeached, and indeed, likewise false. Substantively, Coleman was frequently impeached on the merits in 1989, most particularly the about the library meetings, which he set on dates when he and the Petitioner were not even together in the library.

80. Additionally, after Petitioner's 1989 trial, Coleman fabricated a similar false inculpatory story against Andrew Wilson, a tale that the Office of the Special Prosecutor found in 2006 was false. Defendant's Trial Ex. 18.

81. Coleman's reputation as a liar, fraudster, racist and felon was and is notorious, as attested to by everyone from his former wife, his son, the Seventh Circuit Court of Appeals and is further demonstrated by his international rap sheet.

82. Further, former Judge Kunkle now admits Coleman was a con man and extortionist who he worried would "flip" concerning his Wilson testimony, and Coleman maintained a decades-long, undisclosed relationship with Trutenko.

83. Coleman's former wife and his son continue to live in fear of him, and the Special Prosecutor was forced to dismiss its prosecution because of Trutenko's lies in relation to him.

84. In short, Coleman is simply a jailhouse informant and rightfully convicted felon whom this Court determines to have no credibility whatsoever and who the Court finds testified falsely in 1989. Given the above, this Court recognizes that the "State's knowing use of perjured testimony to obtain a criminal conviction violates a defendant's right to due process of law." *People v. Hansen*, 352 Ill. App. 3d 40, 48–49, 815 N.E.2d 848, 855–56 (2004); *People v. Page*, 193 Ill.2d 120, 156 (2000); *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

85. These principles likewise apply where the State, although not soliciting the false testimony, allows it to go uncorrected. *Page*, 193 Ill. 2d at 156–157. This is true even

where a witness's false testimony goes only to his credibility. *Olinger*, 176 Ill. 2d at 345; see also *People v. Hansen*, 352 Ill. App. 3d 40, 48–49 (2004).

86. This Court is not the first trier of fact to reject Coleman's testimony. As Mr. Trutenko has conceded, the jury in 1989 rejected Coleman's testimony. Petitioner's PSOF to COI at ¶295.

87. As is explained below, Coleman's testimony was not credited because it stands in stark contrast to the objective evidence in this case.

88. Additionally, this Court gives substantial weight to the testimony of former prosecutor William Kunkle, who repeatedly testified to Coleman's lack of credibility and extortion abilities. According to Mr. Kunkle, Coleman was "always trying to leverage everybody for benefits as far as I could tell." *Ex.* 30 to COI, September 30, 2020 Tr. at 51:5-8. Going further, he testified that Coleman was "extorting more money from me which I don't have because I'm not representing anyone." *Id.* at 63:1-12.

89. In the end, Mr. Kunkle agreed that Coleman was "always a con man. He was well-publicized in the [British] press long before there was first contact with any of us." *Id.* at 44:4-6. Because of his credibility issues, Kunkle conceded that "[i]f one had hindsight or a back in time machine then I wouldn't have put him on." *Ex.* 30 to COI, September 30, 2020 Tr. at 48:16-18.

90. It is the role of the trier of fact to determine what weight to give evidence. Having reviewed the record, this Court finds that Mr. Coleman's 1989 testimony is neither credible, reliable nor believable, and is false in its most important parts. Thus,

this Court declines to give Mr. Coleman's 1989 testimony any weight when considering the Petition pending before this Court.

91. Without the suppressed tortured statement and the unreliable and false testimony of William Coleman, the Court now turns to the remaining evidence in determining whether Petitioner is deserving of a Certificate of Innocence.

92. As noted above, the critical question in this case is whether the evidence supports a finding that Andrew Wilson's actions on February 9, 1982 were done "within the same course of conduct" of the common design to free Edgar Hope from the Cook County Hospital. If Petitioner can prove by a preponderance of the evidence that the crimes committed were not done "within the same course of conduct" of the common design to free Hope, then he has proven his innocence and is entitled to a Certificate of Innocence.

93. The circumstances leading to Jackie Wilson's arrest are not reasonably in dispute. Petitioner first relies upon the 1983 testimony of Tyrone Sims in support his innocence claims.

94. On January 24, 1983, the State's star eyewitness, Tyrone Sims, testified to witnessing the entire series of events unfold from his living room window. *Ex.* 17 to COI, January 24, 1983 Sims Excerpt.

95. Mr. Sims testified that as he watched from his living room window on February 9, 1982, he saw a brown Chevrolet being pulled over by Chicago police. *Id.* at 3222-3223. The brown vehicle was driving southbound on the 8100 block of South Morgan Street. *Id.* at 3223-3224.

96. After the brown vehicle was pulled over, Sims witnessed Jackie Wilson exit the vehicle and speak with Officer O'Brien on the driver's side of the vehicle. *Id.* at 3224-3225.

97. Around this time, Mr. Sims saw Andrew Wilson throw his jacket into the back of the vehicle apparently in order to avoid Officer Fahey finding something inside its pockets. *Id.* at 3226-3227.

98. At this point, Officer Fahey attempted to handcuff Andrew Wilson, prompting a struggle to ensue. *Id.* at 3227.

99. Mr. Sims then witnessed Andrew Wilson shoot and kill both officers before taking their weapons. *Id.* at 3228-3230. After doing so, Sims heard Andrew Wilson shout to Jackie, "Let's get out of here." *Id.* at 3230:10.

100. During this series of events, Jackie Wilson was "still standing in the same position. He was still standing by the open door on the driver's side." *Id.* at 3230:15-17.

101. On cross-examination, Mr. Sims admitted that Jackie Wilson stood by the driver's side door during the entirety of the events. *Id.* at 3282:12-14.

102. Mr. Sims further testified that Jackie Wilson did not assist nor aid Andrew Wilson. *Id.* at 3282:12-23. Instead, Jackie Wilson stood by the driver's side door in a "state of shock" while his brother committed these crimes. *Id.* at 3286:6-14.

103. Based on the evidence presented, this Court finds Tyrone Sims' 1983 testimony to be credible when he explained his recollection of events. Mr. Sims testimony that Jackie Wilson pulled the vehicle over, cooperated with law-enforcement, stood by the driver-side door during the entire sequence of events, and appeared to be in a "state

of shock" while Andrew Wilson committed these crimes is credible and powerful evidence of Petitioner's innocence.

104. Further, the Court likewise recognizes that Mr. Sims's 1983 testimony establishes that Jackie Wilson did not state anything to his brother, and in fact, it was Andrew Wilson who shouted at Petitioner, "let's get out of here." This, too, the Court finds, weighs in favor of Petitioner's innocence.

105. Petitioner next relies upon the 2020 retrial testimony of DeWayne Hardin to support his innocence claim.

106. In 2018, DeWayne Hardin came forward and revealed that his prior testimony against Jackie Wilson was a product of coercion and fabrication by law-enforcement. *Ex.* 37 to COI, Hardin 2018 Affidavit.

107. Specifically, Mr. Hardin averred that Cook County Prosecutors threatened to "violate my probation and send me to jail for five years unless I repeated their false story that Jackie Wilson was driving the brown car from the scene of the shooting while smiling." *Id.* at ¶26.

108. In his six-page affidavit, Mr. Hardin described in great detail that he saw the entire scene unfold and that Jackie Wilson stood by in a "state of shock" as his brother committed the murders. *Id.*

109. Ignoring this, and over Petitioner's objection, the Special Prosecutor designated Mr. Hardin's coerced testimony from Jackie Wilson's 1989 retrial for admission at the 2020 trial and further seeks to rely upon this earlier testimony in opposition to Petitioner's Certificate of Innocence.

110. At the 2020 trial, Mr. Hardin was called by the defense to be examined live. *Ex.* 38 to COI, September 23, 2020 Tr. at 8. This Court viewed Mr. Hardin's live testimony and is well positioned to make credibility determinations.

111. Mr. Hardin testified to seeing the Chevrolet driving southbound on Morgan Street while driving in a car with friends. *Id.* at 9:18-10.

112. As Mr. Hardin approached the scene, he recalled seeing Andrew Wilson "wrestling with someone." *Id.* at 11:13-16.

113. After witnessing Officer Fahey fall to the ground, Mr. Hardin saw Andrew fire a "gun at the – over the car and the other officer fell down in the street." *Id.* at 12:7-9.

114. Mr. Hardin testified that during this entire period of events, "Jackie Wilson was standing by the driver's side door," and further stated:

> Q: …did you ever see Jackie Wilson leave the driver's side door?
>
> A: No, not at that time.
>
> Q: Did you ever see Jackie Wilson during this sequence of events struggle with any police officer?
>
> A: No.
>
> Q: During this sequence of events, did you see Jackie Wilson do anything to assist Andrew Wilson in shooting either officer?
>
> A: No, he was just standing there.
>
> Q: During this sequence of events, Mr. Hardin, did you see Jackie Wilson walk to any officer after they were shot and bend over their body?

A: No, he was just standing there.

Q: During this sequence of events, did you see Jackie Wilson steal any of the officers' guns?

A: No

Q: During this sequence of events, did you see Jackie Wilson saying anything to Andrew Wilson?

A: No.

Id. at 12:16-17; 14:2-15:2

115. Mr. Hardin also testified to witnessing Andrew Wilson walk from the passenger side of the vehicle to the driver's side of the street and said that Andrew "was looking down at [Officer O'Brien] while he was in the street." *Id*. at 15:3-9.

116. During this sequence of events, Jackie Wilson continued to stand by the driver's side door and did nothing to assist Andrew Wilson. *Id*. at 15:10-24.

117. Hardin unequivocally reaffirmed what he stated in his 2018 affidavit - that Jackie Wilson stood there "in a state of shock." *Id*. at 15:23-24.

118. Mr. Hardin also testified that Jackie Wilson said nothing to Andrew Wilson as he fatally shot the two officers: "No, I didn't see him … saying anything, he was just standing there in a state of shock." *Id*. at 16:6-8.

119. Mr. Hardin also denied seeing Jackie Wilson smile during the series of events at issue. Id. at 18:1-14. Specifically, Mr. Hardin testified:

Q: Did you ever see Jackie Wilson smiling this day?

A: No, I did not.

Q: Did you ever see Jackie Wilson smiling as he was getting into the brown car?

A: No, he was not.

Q: Did you ever see –

A: He was not smiling.

Q: Did you ever see Andrew Wilson smiling as he got into the brown car?

A: No, I did not.

Q: Did you ever see Andrew Wilson smiling as he was driving away?

A: No, I did not.

Id. at 18:1-14.

120. Mr. Hardin also testified to his extensive interactions with law-enforcement during the underlying investigation. Area Two Detectives O'Hara and Hill told Mr. Hardin "that I qualify for the reward money" before putting "pressure on [him] in a way to come back" from Texas to testify. Id. at 22:10-16.

121. Prior to the 1983 trial, Mr. Hardin participated in a meeting with Assistant Cook County State's Attorney's' Bill Kunkle and Mike Angorola. Id. at 23:15-21.

122. In this meeting, Mr. Hardin informed the prosecutors that Jackie Wilson was not involved in the robbery and murder of the two police officers, and that he stood by the door of the car the entire time. *Id*. at 25:4-11.

123. The following series of events ensued at this meeting:

> After I told them what I saw, and that's when Mike Angarola really harassed me to say, No, you saw Jackie [get] into the driver's side. And I said, no, that's not what I saw. So then that's when Mike Angarola kept threatening me that, you know, I'll bring up an old probation that you had when I was a kid or something. I said, I was a kid with that. How do you know that? And that's when they really

started making a lot of threats toward me, and I really didn't say anything that I – you know, at that point. I really didn't say nothing, I was just looking at them.

Id. at 28:7-17.

124. After leaving this meeting, Mr. Hardin described how the police came to his house and told him that he "better do what the State's Attorney wants me to do" as they put a "plastic bag over my face to make me say what Mike Angarola and them want me to say." *Id*. at 29:5-10.

125. This physical torture that Mr. Hardin endured occurred approximately two days after meeting with prosecutors and prior to the 1983 trial. *Id*. at 29.

126. Mr. Hardin admitted that he ultimately testified in 1983 consistent with what the detectives and prosecutors wanted him to say. *Id*. at 31:14-21.

127. He further admitted that his 1983 testimony was untruthful when he claimed that that the passenger was smiling as entering the vehicle and explained that he gave this false testimony because "that was something they told me to say," and due to the threats made to him. *Id*. at 31:22-32:4.

128. Mr. Hardin additionally testified that he met with Assistant State's Attorney Trutenko prior to testifying at Jackie Wilson's 1989 retrial. *Id.* at 36:6-14.

129. Mr. Trutenko was the prosecutor who prepared Mr. Hardin to testify in 1989. *Id.* at 37:1-7.

130. When Hardin was asked during his live 2020 cross-examination about his 1989 testimony that Jackie Wilson was smiling as he entered the vehicle and that Andrew

Wilson was smiling as he was fleeing the scene, Mr. Hardin admitted that this testimony was false. *Id.* at 37:8-11; 37:21-38:4.

131. Mr. Hardin testified that he gave his false testimony in 1989 at the request of Assistant Cook County State's Attorney Nicholas Trutenko, and explained that he "was just going along with whatever they told me to say." *Id.* at 38:5-14; 40:4-5.

132. On redirect examination, Mr. Hardin reaffirmed the egregious misconduct that prompted his false testimony in Jackie Wilson's 1989 retrial, responding that, "I just said whatever they wanted me to say in [19]89 not to perjure myself period … I went along for what Nick Trutenko wanted me to say." *Id.* at 63:6-12.

133. When asked on redirect about what Jackie Wilson did during the sequence of events at the scene, Mr. Hardin not only reaffirmed his testimony that Jackie stood in shock, but amplified it to include the fact that Jackie could not have intervened to stop his brother:

> Q: At any point, did Jackie seem to try to stop his brother from doing whatever he did?
> A: No.
> Q: to Andrew Wilson?
> A: No, he was standing there shocked.

Id. at 70:18-22.

* * * * * * * * * * * *

> Q: On February 9, 1982, did you see Jackie Wilson do anything, like push his brother away –
> A: No.
> Q: Yell out something, put his hands out to try to stop his brother?
> A: He was standing there in a state of shock.

> Q: Okay. So your answer to my question is he didn't do anything that you saw of any sort to try to stop Andrew Wilson from doing what he did to the first police officer, correct?
> A: Well, one thing, he was not – he was not close to his brother. He was not in the vicinity the way his brother was when his brother did both the shootings … . He was standing on the other side by the passenger side.

Id. at 72:3-1

* * * * * * * * * * *

> Q: So…the answer to my question is correct, you didn't see Jackie Wilson do anything to try to stop his brother from shooting the second police officer, correct?
> A: He couldn't – he couldn't stop him because he was not close to his brother when he was shooting.

Id. at 74:11-16.

134. On re-cross examination, Mr. Hardin reiterated his reasons for testifying falsely at the 1989 retrial:

> Q: And did you go along with whatever Mr. Trutenko told you to say?
>
> A: Anything he wanted me to say.

Id. at 80:7-9.

135. In several respects, Mr. Trutenko's testimony corroborates the reliability of Mr. Hardin's 2020 retrial testimony. Mr. Trutenko admitted that he was the "lead prosecutor" and would have been involved the preparation of witnesses regardless of whether he personally put them on the stand to testify. Ex. 40 to COI, October 1, 2020 Full Tr. at 150:9-120.

136. At the 1989 trial, part of Mr. Trutenko's strategy was to present evidence designed to establish that Jackie Wilson was doing something incriminatory at the scene of the murders. Id. at 154:14-23.

137. In preparing this theory, Mr. Trutenko acknowledged that he was particularly cognizant of what eyewitnesses like Tyrone Sims were going to testify to. Id. at 154:16-24. Because of this, he helped prepare Sims and Hardin to testify in 1989. Id. at 155:15-156:8; 156:16-19.

138. As part of this preparation process, Mr. Trutenko testified that he would have reviewed the prior testimony with Mr. Hardin in light of his future anticipated testimony at Jackie Wilson's trial. Id. at 158:3-24.

139. Mr. Trutenko admitted that he would have kept his theory of the prosecution in mind when preparing Hardin to testify and would have thought to himself: "how can I use this witness to get Jackie Wilson convicted." Id. at 159:5-14.

140. Mr. Trutenko admitted to preparing Mr. Hardin to testify in 1989 that Jackie Wilson entered the car while smiling but claimed to not have an independent recollection of anything he said to Hardin during their preparation sessions. Id. at 160:2-10; 163:14-164:13.

141. Mr. Trutenko had no explanation for how Mr. Hardin's testimony in 1989 was different in important respects from his 1983 testimony where he did not implicate Jackie Wilson. Id. at 169-170.

142. This Court finds that Mr. Trutenko's testimony supports Petitioner's evidence that DeWayne Hardin was manipulated and coerced into testifying falsely at his 1989 retrial.

143. Based on the evidence presented, this Court further finds DeWayne Hardin's 2020 retrial testimony to be credible when he explains his recollection of events.

144. Mr. Hardin's testimony that Jackie Wilson pulled the vehicle over, cooperated with law-enforcement, stood by the driver-side door during the entire sequence of events, and appeared to be in a "state of shock" while Andrew Wilson committed these crimes is credible and powerful evidence of Petitioner's innocence.

145. Further, the Court likewise recognizes that Mr. Hardin's testimony establishes that Jackie Wilson did not state anything to his brother, nor was he in a position to intervene to stop his brother from shooting officer O'Brien This, too, the Court finds to weigh in favor of Petitioner's innocence.

146. Petitioner's evidence that he did nothing at the scene to aid or assist his brother in robbing and killing Officer Fahey and O'Brien is unrebutted.

147. Given this, the State spends the majority of their brief addressing evidence relating to their common-scheme theory. The State's common-scheme theory rests on several pieces of evidence: (1) Petitioner's testimony at his 2010 deposition in *Logan v. City of Chicago, et al.*; (2) the recovery of physical evidence where Andrew Wilson was known to hide; (3) the recovery of a hospital smock and gloves at Andrew Wilson's arrest; and (4) a statement made by Petitioner to a Cook County Correctional Officer in 1988.

148. In sum, the State's common-scheme theory rests on the premise that "Jackie and Andrew were on their way to the hospital when they were pulled over," and because of this, the Special Prosecutor argues that Petitioner cannot demonstrate his innocence of the crimes his brother committed. *See* OSP Resp. at 13.

149. The Court first points out that the only direct "evidence" advanced by the OSP in support of its argument that "Jackie and Andrew were on their way to the hospital when they were pulled over," is Coleman's totally unbelievable claim that Petitioner told him this in one of the purported jailhouse library meetings.

150. The OSP subsequently abandoned the Coleman evidence at the December 8, 2020 argument before this Court, and the Court has likewise rejected this testimony (see above.)

151. Petitioner responds with the following uncontested evidence, which the Court details below.

152. Petitioner presented this Court with the undisputed fact that the brown Chevrolet was traveling southbound on the 8100 block of South Morgan Street at the time it was pulled over by Officers Fahey and O'Brien. *Ex.* 6 to COI, January 24, 1983 Tr. at 3224:6-16 (vehicle pulled over); 3225:1-13 (Jackie identified as driver); *Ex.* 17 to COI, January 24, 1983 Sims Excerpt at 3222-3224.

153. In 1982, the Cook County Hospital was located at 1835 West Harrison Street in Chicago, Illinois, a location eight miles north of 8100 S. Morgan *Ex.* 44 to COI, City of Chicago Website at 1.

154. Although the Petitioner raised this critical issue repeatedly during the 2020 retrial and also in his opening brief, the Special Prosecutor has declined to respond to this objective fact.

155. Given that the Wilson brothers were driving southbound on the 8100 block of South Morgan, the Court finds that this is credible objective evidence demonstrating that Andrew Wilson and Jackie Wilson were not on their way to free Hope at the time of the events at issue, but rather, in all likelihood, were headed to their family home at 11409 South May.[1]

156. The State's common-scheme theory rests on the proposition that Andrew and Jackie Wilson intended to free Hope using disguises such as hospital smocks. *See* OSP Resp. at 16-17. Yet, Tyrone Sims testified that Andrew and Jackie Wilson were dressed in regular clothing at the time their vehicle was pulled over. *Ex.* 17 to COI, Sims 1983 Tr. at 3278-3279.

157. As Sims describes it, Jackie Wilson was wearing a "long black trench coat or full-length coat, shall I say, " while Andrew Wilson was wearing "tan or brown corduroy pants, brown shirt, with white stripes down the sleeve and he had a brown jacket." *Id.* at 3278-3279.

158. Again, the Court finds that this is credible, objective, and unrebutted evidence demonstrating that Andrew and Jackie Wilson were not on their way to free Hope at the time of the events at issue.

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1 Solomon Morgan testified to the Wilson family home was located at 11409 South May St. in February 1982. *Ex.* 38 to COI, September 23, 2020 Tr. at 152.

159. The State's common-scheme theory is that the Wilsons were pulled over while driving to the hospital to free someone in custody. If the Wilsons were pulled over while driving to the hospital to free Hope, as the State argues, one would expect that Jackie Wilson would have assisted his brother in accomplishing the common-scheme after being pulled over.

160. Yet, the eyewitnesses uniformly describe Jackie Wilson as cooperative with law-enforcement and standing by the driver's side door during the entire series of events. *Ex.* 6 to COI, January 24, 1983 Tr. at 3224-3228; *Ex.* 38 to COI, September 23, 2020 Tr. at 8-22.

161. Both Sims and Hardin describe Andrew committing the crimes at issue *after* Officer Fahey discovered something in Andrew's jacket. *Id.*

162. Sims' observation that Officer Fahey discovered something in Andrew Wilson's jacket supports the conclusion that Officer Fahey discovered something that could have led to Andrew's immediate incarceration and criminal charges. *Ex.* 17 to COI, January 24, 1983 Sims Excerpt at 3226-3227.

163. According to the eyewitness testimony, Petitioner pulled over and fully cooperated with police, while Andrew committed the crimes after Officer Fahey recovered his jacket. In short, Andrew Wilson's motive for committing these crimes appears to be a spontaneous attempt to save himself, not as part of a plot to free Hope.

164. Petitioner was arrested on February 14, 1982 by Chester Batey and other Chicago Police Department officers at 5157 South Prairie. *Ex.* 8 to COI, February 1988 Tr. at 62; Ex. 14 to COI, Police Reports at 17.

165. No weapons or any circumstantial evidence linking Petitioner to the crimes charged were recovered from the apartment. *Ex.* 8 to COI, February 1988 Tr. at 62.

166. Conversely, the Special Prosecutor points to George Karl's 1989 testimony regarding the arrest of Andrew Wilson. Andrew Wilson was arrested at 5301 West Jackson Boulevard in the possession of weapons, a single white hospital smock, gloves, toiletries, and ammunition. *Ex.* M to COI Resp., April 26, 1989 Tr. at 1277-1280.

167. The Court notes that the Wilson brothers were arrested nearly a week after the incident at issue, hours apart, and in locations distant from each other.

168. Although the authorities recovered evidence at Andrew Wilson's arrest that could have linked him to a plot to free Edgar Hope at some point in time, no such evidence was recovered during Jackie Wilson's arrest.

169. There is likewise no temporal link to the items recovered at Andrew Wilson's arrest. Andrew could have obtained these items after the February 9, 1982 encounter with Officers Fahey and O'Brien.

170. Thus, the Court finds that the evidence seized from Andrew during his arrest, when taken together with the absence of evidence seized from Jackie, does not support an inference in support of the OSP's common scheme theory.

171. The Court next addresses Petitioner's testimony in *Alton Logan v. Jon Burge, et al.*

172. The Special Prosecutor argues that Petitioner's testimony in *Logan* is sufficient evidence to prevent Petitioner from meeting his burden of proving his innocence. The Petitioner counters that his testimony is not sufficiently linked to the date

and time of the underlying events to establish a common-scheme. The Court addresses these topics in turn.

173. As an initial matter, the Court first notes that Petitioner's 2010 deposition was taken in a closed room at Statesville Correctional Center, that Petitioner, who was a prisoner, was not represented by counsel, was not given *Miranda* warnings nor advised about his Fifth Amendment rights, and was examined by experienced anti-torture lawyers who represented Jon Burge, Patrick O'Hara, Thomas McKenna, and the City of Chicago, supposedly about a case that was unrelated to the Fahey and O'Brien murders.

174. The deposition transcript captures Petitioner admitting to returning to Chicago to help his brother free Edgar Hope, who was recently hospitalized and in custody at the Cook County Hospital. *See Ex.* B to OSP Resp. at 128-129. Petitioner likewise admits that he was going to help his brother and wouldn't let him die alone.[2] *Id.* at 129-130.

175. Despite being extensively grilled at this deposition about the irrelevant issue of the Fahey and O'Brien murders by lawyers representing Burge and the City, Petitioner did not testify that he and Andrew were on their way to free Hope at the time they encountered Officer's Fahey and O'Brien, and his refusal to do so is fully supported

[2] The Special Prosecutor points to other portions of the deposition transcript to establish that Petitioner and his brother regularly carried weapons. *See* OSP Resp. at 7. Petitioner was not charged with possessing a weapon nor have any eyewitnesses testified that he had a weapon at the time of the underlying events even though he was patted down by one of the officers, nor was he armed at the time of the arrest. Given this, the Court gives no weight to this evidence and finds it is irrelevant to the consideration of the issues at hand.

by the objective evidence discussed above, that they were not on their way to break out Hope at the time of the murders.

176. This Court therefore finds that Petitioner's admissions only go to support the inference that he was in Chicago to potentially assist his brother at some undetermined future point in time with an ill-conceived plan to break out Hope, and do not support the OSP's common-scheme argument.

177. Further, Petitioner repeatedly maintained his innocence throughout the Logan deposition. For instance, Petitioner testified:

> And I thank God for it, you know. And I am a firm believer that, **although I am innocent, I got to be here for a reason.** The Lord just ain't going to let me sit like this for nothing at all. It's got to be a bigger purpose, bigger picture that I am missing. **And once it unfolds to me, I probably the – the gates probably just fall down. And I will be able to just walk out of here.** It's going to hit me…like a ton of bricks. I know it. And my father believes it, so I have to believe it.

Ex. B to OSP Resp., January 28, 2010 Dep. Tr. at 117:20-118:6 (emphasis added)

178. Additionally, Petitioner maintained his innocence later in the deposition:

> Q: Okay. Now you said you were innocent of the killings, the murders of Fahey and O'Brien?
>
> A: Definitely.

Id. at 154:17-19.

179. Thus, the Court finds that Petitioner's affirmative declarations of innocence during his Logan deposition testimony give evidentiary support to his petition for a Certificate of Innocence. Further, the Court finds that Petitioner's testimony regarding his reasoning for returning to Chicago is not sufficiently or temporarily tied to the underlying events to rebut the evidence of innocence that Petitioner presents to the Court.

180. The Special Prosecutor points to other portions of the deposition relating to a burglary[3] that occurred earlier on the date of the shooting. In doing so, the Special Prosecutor argues that "Jackie further admitted that he participated in a burglary before the shootings to obtain the guns and ammunition for the break-out." See OSP Resp. at 7.

181. Such admissions, if true, might be relevant to this Court's consideration of Petitioner's COI. However, the Special Prosecutor's own block quote establishes otherwise:

> Q: Okay. Let me ask you this question. Were you – did you participate in the robbery – well, I can't say a robbery, I can say a burglary of a home in the 8000 block of South Carpenter during February of 1982.
>
> A: Oh, you talking about the White family, because that's how the police got a line on myself and my brother through them jackasses.
>
> Q: Was that a yes or a no?
>
> A: Yes.

Ex. B to OSP Resp., January 28, 2010 Dep. Tr. at 128:1-12.

[3] The Special Prosecutor likewise presents this Court with testimony from Willie Washington about the recovery of both officers' weapons from her beauty shop. Yet, as Petitioner points out, that testimony only points to the guilt of Andrew Wilson. Willie Washington testified to owning a beauty shop at 1440 West 115th Street. Ex. 24 to COI, Washington 1983 Tr. at 1223. Ms. Washington revealed that Andrew Wilson stayed at her shop in February 1983 and was one of two people who possessed keys to it. *Id.* at 1234. Ms. Washington further stated that Andrew Wilson arrived alone at her beauty shop on February 11, 1983 with two bags. *Id.* at 1237. Ms. Washington watched as Andrew Wilson put those bags in the back of the shop. *Id.* at 1238-39. She further testified that Jackie Wilson did not come to the beauty shop in February of 1983, did not stay there, and did not bring any bags there. *Id.* at 1241. As a result, this Court finds that Ms. Washington's testimony is not relevant to the issue of Jackie Wilson's innocence.

182. While Petitioner does admit to participating in a burglary during some unstated time in February, he does not admit that the purpose was to "obtain the guns and ammunition for the break-out" as the Special Prosecutor argues. The deposition citation relied upon by the Special Prosecutor says nothing about a goal of obtaining guns and ammunition, nor does it refer to a scheme to free Edgar Hope.

183. Given that Petitioner has never been charged or convicted of this burglary, and the citation relied upon by the Special Prosecutor does not stand for the proposition they claim it stands for (there is no link to a common-scheme, as shown), the Court gives this admission regarding a burglary no weight.

184. The Special Prosecutor submits former Cook County Correctional Lt. Henry Troka's 1989 testimony to this Court in an effort to corroborate portions of Mr. Coleman's testimony related to an escape plot. *See* OSP Resp. at 14.

185. Mr. Troka testified at the recent trial, and in 1989, that an escape attempt occurred in a separate division (ABO) of the Cook County Jail from the one that Petitioner was incarcerated within. In any event, given this Court's exclusion of Coleman's testimony, and/or alternatively, given its miniscule weight, the Court finds Mr. Troka's testimony to be irrelevant to the issues pending before this Court.

186. The Special Prosecutor also relies upon the 1989 testimony of Thomas Cavalone, a former Cook County Correctional Officer. There, Mr. Cavolone testified that Jackie Wilson informed him that "you should have killed me when you had the chance, because I already killed 2 Chicago Police Officers." *See* OSP Resp. at 14; *Ex.* I to OSP Resp. at 1387:1-4.

187. Petitioner has provided this Court with Mr. Cavalone's testimony from the 2020 retrial. *Ex.* 1 to COI Reply, September 29, 2020 Tr.

188. There, Mr. Cavalone revealed that he was prepared to testify in 1989 by Nicholas Trutenko. *Id.* at 120:1-8. He likewise testified to the events surrounding the supposed comments made by Petitioner.

189. In his 2020 testimony, Mr. Cavalone stated that Petitioner requested to speak with counsel and provided Richard Kling's phone number. *Id.* at 132. Petitioner was angry at the time and spitting blood from his mouth as he was escorted to the hospital where a doctor ultimately attempted to clean his wounds. *Id.* at 132-133, 139. Petitioner likewise requested to speak with internal affairs during his conversation with Mr. Cavalone. *Id.* at 136, 138. Later, Mr. Cavalone learned that Petitioner requested to file a grievance against Officer Williams due to a physical confrontation that caused his injuries. *Id.* at 140.

190. This sequence of events cast doubt on whether Petitioner made the supposed statement at all.

191. Regardless, assuming that Petitioner made the statement to Officer Cavalone, the following testimony is important to this Court's analysis:

> Q: And he didn't say, we killed two police officers, right?
>
> A: He said, I killed two Chicago Police Officers.
>
> Q: So he didn't say we, right. He didn't say my brother and I killed two police officers?
>
> A: Not that I recall.

Id. at 142:19-143:4.

192. The testimony of Mr. Cavalone stands in contradiction to the uncontested evidence in this case. It is undisputed that Jackie Wilson did not kill or take the guns from either officer, but rather stood by in shock while Andrew did so.4

193. Thus, either Mr. Cavalone was mistaken (or coached by Mr. Trutenko) when he testified to Petitioner's supposed comment from 1988, which he supposedly made at a time when he was awaiting retrial, or Petitioner was making an angry and false declaration about crimes he did not commit directly after he had been involved in a physical altercation with a correctional officer.

194. The 2020 testimony of fellow retired Correctional Officer Ronald Gamble further diminishes the seriousness of any supposed statement. Officer Gamble testified: "I don't recall what was said, but, you know, inmates mouth off all the time. So I don't recall." *Id.* at 118:21-1.

195. Accordingly, the Special Prosecutor's assertion that the supposed statement to Officer Cavalone in 1988 corroborates that "Jackie knew that they were going to blow the officers away when they were pulled over" is without a foundation in the record. Petitioner's supposed statement to Officer Cavalone says nothing of the sort. There are no inferences that can be drawn from Officer Cavalone's testimony that would support the Special Prosecutor's argument that there was a plan to rob and kill the officers.

[4] On this score, the jury rejected such testimony in 1989 when Petitioner was acquitted of killing Officer Fahey.

196. Thus, since the Petitioner did not kill either officer, and because the statement, if made at all, was made in anger and with false braggadocio, the Court declines to give weight to Mr. Cavalone's testimony when considering the pending Petition.

Conclusions of Law

This Court incorporates by reference and relies upon the whole of Wilson's Petition for Certificate of Innocence and his Reply in Support, along with all exhibits referenced therein fully in support of this ruling and order pertaining to the same. The filings submitted in response by the Office of the Special Cook County State's Attorney border on being frivolous

As stated *supra*, 735 ILCS 5/2-702, requires relief when a petitioner can show by a preponderance of the evidence that: (1) [he] was convicted of one more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment; (2) [a] judgment of conviction was reversed or vacated, and the indictment or information dismissed; (3) [he] is innocent of the offenses charged in the indictment or information; and (4) [he] did not by his own conduct voluntarily cause or bring about his conviction. See 735 ILCS 5/2-702(g).

It is undisputed that the Petitioner has satisfied the first two statutory requirements. Mr. Wilson was convicted in 1983 and 1989 of felonies and spent more than 36 years incarcerated. Further, on October 1, 2020, the Special Prosecutor dismissed the underlying prosecution against Petitioner with prejudice when the Special Prosecutor acknowledged, "Your Honor, in the interest of justice of the prosecutor we cannot go

forward on this case." *Ex.* 40 to COI, October 1, 2020 Tr. at 279:19-21. As a result, the Special Prosecutor only challenges the third and fourth elements of Mr. Wilson's Petition. *See* OSP Resp. at 5. Yet, a closer inspection of the Special Prosecutor's brief reveals that they only argue that Mr. Wilson has not met his burden of proving innocence. Nowhere in the Special Prosecutor's brief does the State provide even a cursory argument for how Petitioner brought about his own guilt. As a result, these arguments not only are without merit but also have been waived and forfeited. *US Bank, Nat. Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 34. Given the above, the Court finds that Petitioner has met his burden by a preponderance of the evidence as to elements 1, 2, and 4. This Court has undertaken an extensive analysis of element number three, namely, whether Petitioner has proven by a preponderance of the evidence that "[he] is innocent of the offenses charged in the indictment or information."

Based upon the Findings of Fact and the record and evidence presented in this case, this Court finds that Petitioner has proven by a preponderance of the evidence that he is innocent of the offenses charged in the indictment or information. Of critical importance to this Court's conclusion is the unrebutted and uncontested 1983 testimony of Tyrone Sims. Mr. Sims testified that Jackie Wilson stood by the driver's side door during the entirety of the events. *Ex.* 17 to COI. January 24, 1983 Sims Excerpt at 3282:12-14. Mr. Sims further testified to the jury that Jackie Wilson did not assist or aid Andrew Wilson. *Id.* at 3282:12-23. In fact, Mr. Sims recalled that Jackie Wilson stood by the driver's side door in a "state of shock" while his brother committed these crimes. *Id.* at 3286:6-14. In addition to Sims, the 2020 eyewitness testimony of DeWayne Hardin is

likewise credible and powerful evidence of Petitioner's innocence. Although the Special Prosecutor sought to cast doubt on Mr. Hardin's recantation, it is corroborated by the testimony of Nicholas Trutenko, who admitted to preparing Hardin to testify while thinking, "how can I use this witness to get Jackie Wilson convicted." *Ex.* 40 to COI, October 1, 2020 Full Tr. at 159:12-13.

In addition to eyewitness testimony, the Petitioner presents this Court with powerful uncontested and objective evidence demonstrating that the events that occurred were not performed as part of a common-scheme or design to free Edgar Hope, but rather were the spontaneous acts of Andrew Wilson, acting alone and unaided.

First, the vehicle was driving southbound on the 8100 block of South Morgan at the time it was pulled over, the complete opposite direction from Cook County Hospital. *Ex.* 6 to COI, January 24, 1983 Tr. at 3224:6-16 (vehicle pulled over); 3225:1-13 (Jackie identified as driver); *Ex.* 17 to COI, January 24, 1983 Sims Excerpt at 3222-3224. As Petitioner points out, the Cook County Hospital was located eight miles in the opposite direction at 1835 West Harrison Street in Chicago, Illinois. *Ex.* 44 to COI, City of Chicago Website at 1.

This objective evidence remains uncontested. Given that the Wilson brothers were driving southbound on the 8100 block of South Morgan, the Court finds that this is credible objective evidence demonstrating that Andrew Wilson and Jackie Wilson were not on their way to free Hope at the time of the events at issue. Next, the Court was presented with objective evidence demonstrating that the Wilson brothers were dressed in normal clothing at the time they were pulled over, not smocks that would be

corroborative of participating in a common-design to free Hope from the hospital. *Ex.* 17 to COI, Sims 1983 Tr. at 3278-3279.

Third, the eyewitness testimony uniformly describes Jackie Wilson as cooperative with law-enforcement and standing by the driver's side door during the entire series of events. *Ex.* 6 to COI, January 24, 1983 Tr. at 3224-3228; *Ex.* 38, September 23, 2020 Tr. at 8-22. Both Sims and Hardin describe Andrew Wilson committing the crimes at issue *after* Officer Fahey discovered something in Andrew's jacket. *Id.* In short, the Court finds that Andrew Wilson's motive for committing these crimes appears to be a spontaneous attempt to save himself, not as part of some plot to free Hope.

This Court has likewise given careful consideration to Petitioner's 2010 deposition testimony. This Court finds that Petitioner's admissions only go to support the inference that he came back to Chicago to potentially assist his brother in the Hope plan at some undetermined future time. Despite intense questioning and without counsel, Petitioner did not testify that he and Andrew were on their way to free Hope at the time they encountered Officer's Fahey and O'Brien. And, as shown above, the objective facts also establish that no such inference can reasonably be drawn from this testimony.

The Court further gives weight to Petitioner's repeated assertions of innocence during the *Logan* deposition:

> And I thank God for it, you know. And I am a firm believer that, **although I am innocent, I got to be here for a reason.** The Lord just ain't going to let me sit like this for nothing at all. It's got to be a bigger purpose, bigger picture that I am missing. **And once it unfolds to me, I probably the – the gates probably just fall down. And I will be able to just walk out of here.** It's going to hit me…like a ton of bricks. I know it. And my father believes it, so I have to believe it.

Ex. B to OSP Resp., January 28, 2010 Dep. Tr. at 117:20-118:6 (emphasis added)

* * * * * * * * * * * * *

Q: Okay. Now you said you were innocent of the killings, the murders of Fahey and O'Brien?

A: Definitely.

Id. at 154:17-19.

The Court has likewise considered the remaining evidence discussed above, including the evidence seized during Petitioner and Andrew Wilson's arrests and the testimony of Correctional Officers Cavalone and Troka. The Court finds this evidence to be of no real import in determining this Petition.

As set forth in great detail above, the Court has excluded and given absolutely no weight to the testimony of jailhouse informant William Coleman, but the Court would be remiss if it did not comment on the monstrous cloud that the tortured confessions of Andrew and Jackie Wilson, the false testimony of Coleman, and the unremitting prosecutorial misconduct by ASA Nick Trutenko and several other prosecutors has left over this entire case for decades.

It would be wholly appropriate for this Court to give weight to this unparalleled record of police abuse and prosecutorial misconduct in determining this Certificate of Innocence; however, the Court need not and has not done so in order to reach its decision in this matter.

While the 1935 *Bergen* opinion set forth a higher standard for prosecutors to follow, this much lower Court 85 years later only asks that prosecutors work at not committing

a dozen or more criminal acts in the course of prosecuting any case whatsoever. This Court would also ask that officials responsible for managing prosecutors do much better in discovering criminal conduct afoot among their own ranks and make prosecuting dirty prosecutors a part of their official duties. The families of Chicago Police Officers O'Brien and Fahey deserve better than they got from the Burge trained and inspired detectives and prosecutors. On February 9, 1982, two Chicago Police Officers were murdered. Andrew Wilson alone was their murderer. Every day since, the Cook County justice system itself has been tortured.

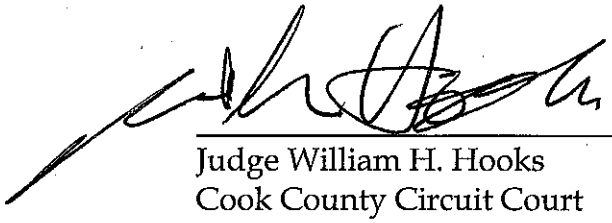
Jackie Wilson has also been physically tortured by a brutal electrical box torture ritual and has already wrongfully served a sentence that has taken roughly 70 percent of his life. Jackie Wilson will never be able to recoup the value of his life lost to the living hell he experienced at the hands of his government. While Jackie Wilson extraordinarily deserves and has earned this Certificate of Innocence others deserve to pay for what they have so unjustly caused both directly and indirectly.

It is clear that former ASA Trutenko has concealed for decades his covert relationship with his real deal criminal buddy William Coleman. By doing so, Trutenko has concealed from truth and justice the real evidence that would have freed Jackie Wilson decades ago. As stated above the whole of the so called accountability, evidence and arguments advanced by the State and its agents for more than a third of a century is the stuff of a horror movie written by convicted felon William Coleman and produced by former ASA Tretenko. Without the extraordinary expertise, trial preparation, and total

package of trial and appellate presentations of his trial team, Jackie Wilson would have died in the Illinois Department of Corrections and buried in an unmarked prison ground.

Conclusion

Consequently, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Jackie Wilson's Petition for a Certificate of Innocence be GRANTED.



Judge William H. Hooks
Cook County Circuit Court #1985
Criminal Division

Date: December 18, 2020