E-FILED
Transaction ID: 1-20-1256
File Date: 7/6/2021 1:55 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-20-1256

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee,	)	Appeal from the Circuit Court of Cook County Criminal Division
v.	)	92 CR 25596
CLAYBORN SMITH, Petitioner-Appellant.	)	The Hon. Alfredo Maldonado, Judge Presiding

CORRECTED BRIEF OF PETITIONER-APPELLANT

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF CASE

As the United States reckons with police violence concentrated on Black people and other people of color, the devastating torture and injustice inflicted on Petitioner Clayborn Smith by detectives who worked under Chicago Police Commander Jon Burge remains unaddressed. For decades, Petitioner has maintained that Detectives Kenneth Boudreau, John Halloran, and James O'Brien tortured him into confessing—falsely—to the murder of two family members. Although Petitioner described the abuse shortly after it took place and filed a motion to suppress the confession, the Cook County Circuit Court found in 1994 that he confessed "freely and voluntarily." A1183. With the false confession admitted into evidence, Petitioner was convicted of a double murder of which he is innocent.

In the years following Petitioner's conviction, there has emerged an enormous amount of new evidence showing a systemic pattern of torture by Halloran, Boudreau, and O'Brien. These previous instances bear a striking resemblance to Petitioner's longstanding claims of abuse. Thus, in this case, the Illinois Torture Inquiry and Relief Commission (TIRC) referred Petitioner's claims for judicial review, finding that sufficient evidence made them credible. At the TIRC hearing held by the Cook County Circuit Court, Petitioner presented extensive evidence and previous findings of physical abuse by these three officers. Nonetheless, the circuit court found that Petitioner failed to show that the detectives "participated in systemic abuse." A817. The court denied both suppression of Petitioner's statement and a new suppression hearing. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether Petitioner is entitled to a new suppression hearing on the voluntariness of his confession because newly discovered evidence, had it been available to him at the time, likely would have altered the outcome of the original suppression hearing by showing that

Detectives Boudreau, Halloran or O'Brien may have participated in a systemic pattern of torture.

2. In the alternative: Whether Petitioner is entitled to suppression of his confession as involuntary, and a new trial with that false confession excluded.

JURISDICTION

This is an appeal under Supreme Court Rule 301 from a final judgment issued under the Illinois Torture Inquiry and Relief Commission Act, 775 ILCS 40/1 *et seq*. The circuit court denied Petitioner's TIRC claim on September 20, 2019, A774-830, and denied his motion for reconsideration on October 21, 2020, A2628. Petitioner noticed his appeal on November 4, 2020. A2629-30. Article VI, Section 6, of the Illinois Constitution, and Supreme Court Rule 651(a) confer jurisdiction on this Court.

STATEMENT OF FACTS

A. The Detectives Interrogate, Abuse, And Threaten Petitioner And Other Individuals In Connection With The Case.

Some 30 years ago, on October 17, 1992, Petitioner's family suffered a horrific attack. Someone stabbed, beat, and burned his grandfather Miller Tims; strangled his grandmother Ruby Bivens with a telephone cord; and set fire to the scene. A2280-96, 2290-91. Herbert Tims, Petitioner's great uncle, also suffered smoke inhalation. A2280-96, 2290-91.

Police arrested Petitioner around 9:30 a.m. on October 20, 1992, took him to Area 1 police headquarters, and interrogated him about the murders and related offenses. A779, 784. After thirty-nine hours of interrogation, around midnight on October 22, 1992, he confessed to the crimes. A781. Shortly thereafter, he made clear that Detectives Boudreau, Halloran, and O'Brien had obtained the confession through torture. A784-89. These three detectives were all known subordinates of Jon Burge. A321, 337-38; A446; A585; A1 n.1.

B. The Trial Court Refuses To Suppress Petitioner's Confession.

The circuit court denied Petitioner's motion to suppress his confession as involuntary, A1183, after hearing the following testimony. **Petitioner** testified that on the morning of October 20, 1992, he was arrested and taken to Area 1, where Boudreau and another detective (later identified as Halloran, A1004-05) placed him in an interview room and handcuffed him to a ring in the wall. A900-01. The detectives told Petitioner that they had his girlfriend Karen Tate, who was pregnant with their baby, in custody, and that it was in both of their interests for him to tell them what happened. A901. He repeated what he had already told the detectives: he did not know anything about what had happened. *Id*. In response, they yelled at him, hit him, kicked him, punched him, and yanked him around by his hair. A902-04, 908-09, 915-16, 920. Detectives Halloran and Boudreau told Petitioner that Tate would go to jail or lose their baby if he did not confess; Boudreau even insinuated that another detective was hurting her right then. A907, 909, 912-13, 915-16. Boudreau also told Petitioner that everyone else was pointing the finger at him and that he was the prime suspect. A910, 914, 926. Boudreau urged him to make something up and say that he committed the crimes in self-defense in a spur-of-the-moment incident; if he did this, they said, they could offer leniency. A914, 917. At one point, Halloran grabbed Petitioner by the hair and pushed his head against the wall, and Boudreau took his shoes and socks—throwing them in the corner. A911-12.

During the interrogation, ASA Rosenblum entered the room. A917. Petitioner asked him for a lawyer, but his requests were ignored. A918-21. The ASA, like the detectives, offered him leniency if he confessed. A922. After the ASA left, the detectives returned. Halloran pulled his braids and yanked him around again. A923-24. Then they took Petitioner to the lockup facility, fingerprinted him, took his picture, and took him to a cell.

A929. He was brought back to the interrogation room and handcuffed to a chair. A933-34. This time, ASA Laura Lambur was in the room. A936. When Petitioner refused to speak with her, Boudreau grabbed him by the neck and dragged him out of the room. A938-39. Then, Boudreau handcuffed him to a wall and showed him pictures of the crime scene. A939-41.

After some time, Lambur came into the room and began questioning Petitioner again. A942. Petitioner did not confess. A943-44. Instead, he told her that he was with his girlfriend all day except for a short time when he went to the store. *Id.* After Lambur left the room, two detectives, including O'Brien, came in and beat him, pulled his fingers back, and grabbed his head. A944-46. This pattern continued: Lambur came into the room, Petitioner did not confess, Lambur left, the detectives returned and abused Petitioner. A946-47. When Lambur returned for the third time, Petitioner—thoroughly worn down by the abuse—began answering questions and a court reporter took down his statement. A947-48. He reported information that Boudreau had told him about the crime. A949-50. Boudreau was in the room while Petitioner gave his statement and Boudreau told Petitioner what to say. A954-57.

At the end of the statement, Lambur told Petitioner that the court reporter would type everything up and he could make corrections to it. A953. Petitioner responded: "I just wish you type it from there. I don't want to change nothing. That is right there is all better when you do up the first." *Id.* Lambur then asked: "[Y]ou mean, when you and I first talked about it the first time?" *Id.* Petitioner said yes; he explained at the suppression hearing that he was referencing their earlier conversation when he told her he was with his girlfriend all day except for when he went to the store. *Id.* Ultimately, Petitioner signed the confession.

He explained that he signed it because he was abused, he thought confessing would keep his girlfriend safe, and he was promised leniency if he confessed. A962.

Roderick Sisson, a minor, testified that he was brought to an interrogation room at Area 1 for questioning. A887, 872. He heard Petitioner in the adjoining room telling officers to leave him alone and then heard "a loud bumping on the wall, like boom, boom, boom, boom." A879. A little later, he tapped on the wall and asked who was in there and whether they were okay. A880. Petitioner responded that the detectives had roughed him up. *Id*. Sisson explained that he knew Petitioner and was able to recognize his voice. A880-81. Speaking about his own treatment during the interrogation, Sisson explained that the detectives said they would "smack the shit out of [him]" if they did not hear what they wanted. A875. While Sisson had not mentioned this abuse to the grand jury, he explained at trial that at the time he "was scared" and "just went by whatever [the detectives] said." A889.

Karen Tate, Petitioner's girlfriend, testified that she was six months pregnant when detectives brought her in for interrogation and held her from October 19-21. A891-93; A783. While Tate was at the station, the detectives told Petitioner to turn around so that he would be sure to see her. A894. Tate testified that Petitioner's "hair was real wild," that he "didn't have on no shoes," and that "his clothes were . . . kind of tore off of him." *Id*.

Boudreau testified that he arrested Petitioner and brought him to Area 1, where he and Halloran interviewed him. A835-37. At that time, Petitioner denied committing the murders and gave an alibi. A839. Later, Boudreau and Halloran interviewed Petitioner again, at which time Petitioner confessed to the crime. A841-42. Boudreau claimed that ASA Lambur joined them in the interview room and that Petitioner again confessed. A843.

A court reporter then took down Petitioner's statement with ASA Lambur and Boudreau in the room. A844. Boudreau denied physical abuse and other misconduct. A848, 850, 867. **O'Brien** testified that he attended an in-service training on October 20 and 21, 1992, and denied entering an interview room with Petitioner during the evening hours of October 21. A1017-19. He was asked whether he brought his time sheet with him; though he said yes, the time sheet was not viewed or entered into evidence. A1018. **Halloran** denied abusing or threatening Petitioner. A1022-23. He testified that he first saw Petitioner the morning of October 20, 1992 before he was arrested and brought to Area 1; he could not recall whether he brought Petitioner to Area 1. A1025.

ASA Lambur testified that she spoke with Petitioner twice. A973. The first time lasted about 45 minutes. A985. She also testified that Petitioner's hair was "part braid, part out." A983. The next time she spoke with him was to take his statement; Boudreau and the court reporter were both present for this interview. A976.

C. Petitioner Is Convicted.

Following the denial of the motion to suppress, Judge Strayhorn held a bench trial from May 19-20, 1994. A1187, 1307. Petitioner's confession provided a pivotal piece of evidence, with the prosecution referencing the confession again and again and claiming that it "outlined in detail the horrendous crime." A1339-41; *see also* A1053.

The prosecution called **Karen Tate**, Petitioner's girlfriend, and asked her if she told the grand jury that she overheard Petitioner describe an assault on his family. A1120-22. She explained that she had testified falsely before the grand jury because the detectives "said if [she] didn't tell them what they wanted to hear, they would be standing outside to arrest [her]." A1126. She testified that during her interview, she was pregnant and feared

for her child, because the detectives "were threatening if [she] didn't tell them what they wanted to hear, they were going to take [her] baby from [her]." A1125-26.

Israel Moore, a minor, had told the grand jury that he heard Petitioner say that he hit the victims. A1310-11. But he explained that he had testified falsely before the grand jury "because [he] was scared" and the detectives were "hitting [him] . . . so [he] said what they wanted to hear." A1312. **Clinton Tramble** testified that the State charged him with obstruction of justice, but he made a deal for the dismissal of charges in exchange for testifying against Petitioner. A1085-86. Tramble claimed that Petitioner told him that he did something bad and needed help withdrawing money from a cash card. A1073. Later, Tramble went to a cash station and tried to withdraw money using Miller Tims's card. A1076. When Tramble returned home, Petitioner supposedly told Tramble that "he had done his uncle and auntie." A1078. The next day, according to Tramble, Petitioner came to his room with a checkbook belonging to Miller Tims and asked for help cashing a check. A1080. But, Tramble no longer had the cash card or checkbook—he claimed that he threw them into a vacant lot. A1081-82, 1096. **Leo Green** testified that Tramble had a cash card and asked him to take money out with it. A1104. When he was unable to withdraw cash, he gave the card back to Tramble. A1103. At trial, he explained that he "assumed" Tramble got the card from Petitioner. A1107.[1]

ASA Lambur testified that she took a court-reported statement from Petitioner at midnight on October 22, 1992, after taking an oral statement to the same effect. A1135. She explained that Boudreau was present during both statements and asked questions

[1] Although he was not called at trial, **Maurice Martin** alleged that he was physically beaten for two days before his statement was taken. A1364. Indeed, Martin's court file showed that he requested medical attention after his interrogation. *Id.*

during the oral statement. A1137. She further testified that Petitioner's "hairstyle was coming undone" during the interview. A1138.

The parties stipulated that various objects at the crime scene showed the presence of human blood that matched the victim's, A1332-34, that a t-shirt recovered from Petitioner's rooming house revealed the presence of Type A blood, A1330-31, 1334, and that a pair of jeans recovered from Petitioner's rooming house revealed the presence of blood but that the condition of the garment prevented further tests, A1330-31, 1334.

Petitioner's attorney did not call witnesses. Judge Strayhorn found him guilty of the first-degree murder of Miller Tims and Ruby Bivens, the attempted murder and aggravated battery of Herbert Tims, and aggravated arson. A797. This Court affirmed. A774.

D. TIRC Finds "Sufficient Evidence Of Torture" And Concludes Petitioner's Claim Is "Credible And Merits Judicial Review."

Nearly two decades after his conviction, Petitioner filed a claim with TIRC. A775. On May 20, 2013, TIRC concluded that "there is sufficient evidence of torture to conclude that [Petitioner's] claim is credible and merits judicial review." A1. It determined that his claims of torture have been "consistent" since his motion to suppress, these claims are "strikingly similar" to other documented claims of torture, the accused officers "are identified in other cases alleging torture," and there are "conflicts between the confession and other evidence in the case." A4-5. In reaching this conclusion, the Commission found: During Petitioner's 39-hour interrogation at the hands of Halloran, Boudreau, and O'Brien, he was threatened, beaten, and jerked around by the hair. A1. The testimony he gave during the suppression hearing was corroborated by his girlfriend and an acquaintance. A1-2. Since Petitioner's motion to suppress, all three detectives have been accused of abuse and coercion in dozens of other cases—including by individuals who have since been

exonerated. A2-3. And all three detectives have invoked the Fifth Amendment when questioned about perpetrating abuse. A3. In light of these findings, the Commission referred the matter to the Circuit Court of Cook County. A775.

E. The Circuit Court Holds A TIRC Referral Hearing

At the TIRC referral hearing, and through post-hearing motions that added additional exhibits to the record, the circuit court received extensive evidence, unavailable at the time of Petitioner's suppression hearing, showing a systemic pattern in which Boudreau, Halloran, and O'Brien extracted false confessions through physical abuse.

1. ***Previous Judicial Finding Of "Staggering" Evidence Of Abuse*****:** Petitioner introduced into evidence a transcript in which Judge Crane ordered a new trial for Cortez Brown, finding evidence against O'Brien and other detectives "staggering" and "damning." A1511. After being arrested and taken to Area 3, Brown was handcuffed to a wall, given no food, and no opportunity to sleep for hours. A1676-80. He repeatedly asked for an attorney, but each request was denied or ignored. A1683-84. When he refused to answer questions, the detectives, including O'Brien, slapped and punched him in the chest and head. A1685-86; A337.

2. ***Torture Findings By the City of Chicago And This Court's Finding of An "Oppressive Atmosphere"*****:** In cases investigated by Boudreau, Halloran, and O'Brien, there have been multiple findings of abuse pursuant to the Chicago Reparations Ordinance. The ordinance provides that individuals with a "credible claim" shall receive reparations of up to $100,000 from the City of Chicago. Reparations Ordinance § 3. At least eight individuals who alleged abuse by O'Brien, Boudreau, or both detectives have received reparations from the City under this ordinance, reflecting a determination by the City that their claims of torture are "credible." *See id.*

First, **Curtis Milsap** reported being "slapped, punched, and repeatedly struck in the testicles by Detectives O'Brien and Meyer." A2445. This abuse was "corroborated by contemporaneous testimony at a motion to suppress by a physician's assistant and by medical records" which indicated that he "was suffering from radiating pain and tenderness in his testicles." A2446-47. The Independent Third Party determined these allegations of abuse were credible and Milsap was awarded $100,000 in reparations. A2406. Second, **Enrique Valdez** testified that Boudreau slapped him so hard that his eardrum popped. A2200. The City awarded him $100,000. A2406.

In addition, exhibits showed that the City awarded reparations to six other individuals abused by O'Brien and Boudreau during the course of a murder investigation: **Clinton Welton**, **Marcus Wiggins**, **Jesse Clemon**, **Damoni Clemon**, **Imari Clemon**, and **Diyez Owens**. A2404-07. The City of Chicago determined these individuals had credible claims of torture and awarded them a total of $505,000 in reparations. A2405-06.[2] Moreover, in

[2] Indeed, the torture they described was horrific. Damoni Clemon said that a detective put a gun to his head and pulled the trigger repeatedly and another one hit him in the throat and groin. A2528. Marcus Wiggins explained that the detectives interrogating him put his hands on a black box that burned his hands, hit him with a flashlight, and spat in his face. A2451; A2521; A1356-58. The others also described being beaten, hit with a flashlight, and slapped in the face. A2394-97, A2547-48; A2561.

The pages cited in this footnote comprise Attachments B, I, J, K, L, and M to Petitioner's motion asking the circuit court to admit these attachments as exhibits in connection with Petitioner's motion for reconsideration. A2372-74. The circuit court denied the request. A2600. These documents are transcripts, litigation documents, and an Office of Professional Standards investigation that help establish a pattern and practice of abuse. They should have been admitted as their initial omission at the evidentiary hearing was inadvertent rather than calculated, the State would not have been surprised or unfairly prejudiced as it is well aware of these cases and allegations, the documents are relevant to Petitioner's case, and there are no cogent reasons to deny the request. *People v. Mandarino*, 2013 IL App (1st) 111772, ¶ 44. In addition, "greater liberty should be allowed in the matter of opening the proofs" where, as here, "the case is tried before the court without a jury." *In re Marriage of Suarez*, 148 Ill. App. 3d 849, 858 (1986).

granting Jesse Clemon's motion to suppress his statement, the circuit court credited the statements of a witness who described hearing screaming during the interrogations in Clemon's case and ruled that the officers created a "horrendously oppressive" environment. *People v. Clemon*, 259 Ill. App. 3d 5, 10-11 (1994). In upholding suppression, this Court made it clear that the record supported a finding that suspects were screaming and—at least—had been threatened with physical abuse, noting that a witness "testified that [Jesse Clemon] himself was screaming periodically for about 15 minutes when three or four officers were in his room with the door closed. The circuit court had the right to infer from this evidence the existence of some type of threat, at the minimum, of physical coercion . . ." *Id.* at 11.

3. ***Torture Inquiry and Relief Commission Review of Ivan Smith Case*****:** While the TIRC does not determine conclusively whether torture occurred in a given case, it does determine whether "there is sufficient evidence of torture to merit judicial review." 775 ILCS 40/50. Petitioner submitted documentary evidence showing that TIRC found such sufficient evidence in Ivan Smith's case. Smith asserted that O'Brien hit him on the head, punched him in the chest, and beat him with a wooden stick through a phonebook until he agreed to confess. A2414. In finding these claims of abuse credible, TIRC explained that "the pattern and practice evidence against the police officers in this case, *especially Detective O'Brien*, is concerning." A2440 (emphasis added). Another factor bolstering the credibility of these claims was the fact that they were "disturbingly similar to the allegations raised by Robert Wilson," a man who also confessed in O'Brien's presence, but was later exonerated. *Id*.

4. ***Eight Exonerations After False Confessions*****:** Petitioner also entered evidence that eight people (1) confessed to serious crimes during interrogations by Boudreau, Halloran, and O'Brien, (2) were later determined not to have committed the crimes to which they confessed, and (3) claimed that they gave the false confessions because Boudreau, Halloran, and O'Brien physically abused them.

(1) Derrick Flewellen alleged that Boudreau punched him, choked him, and hit him in the face, and that another detective slammed a chair on his already-injured foot. A1622-24. Halloran also participated in this abuse, hitting and kicking him. A1623. He eventually signed the confession because of the continuous brutality he experienced. A1624. Flewellen was acquitted due to DNA evidence, A495-96; A1366, and the presiding judge said the "objective scientific evidence is a complete contradiction to the . . . statements." A1367. **(2) Peter Williams** confessed to a crime he did not commit after Boudreau handcuffed him to the wall, slapped his face, and then hit him in the legs and chest with a blackjack while Halloran watched. A1706-10, 1722-24. Williams testified that Boudreau fed him details of the crime. A1713-28. Williams repeated those details in his confession. A1733-34. The State dropped charges against him when it realized he was incarcerated when the crime occurred. 435, 437. **(3) Oscar Gomez** testified that Halloran and Boudreau yelled and screamed at him, Halloran repeatedly grabbed him by his hair and pushed him against the wall, O'Brien held a gun to his head while Boudreau watched, and Halloran knocked him off his chair. A1752-63. He also testified that the detectives hit him in the head, pushed him against the wall, and kicked him. A1763. Then Boudreau started recounting Gomez's supposed confession to the State's Attorney even though Gomez had never made such statements. A1767-68. Gomez ultimately signed the statement because

he was scared and believed he would be locked up if he did not sign it. A1768-69. He was acquitted at trial. A343, 347. The confessions of **(4) Nevest Coleman**, **(5) Harold Hill**, **(6) Eric Gomez**, **(7) Abel Quinones**, and **(8) Arnold Day** followed the same pattern: Boudreau, Halloran, and/or O'Brien obtained a confession, the defendant alleged physical abuse at their hands, and the confession they obtained was proven false.[3]

5. ***Other Sworn Statements Detailing Physical Abuse*:** Petitioner also submitted into evidence sworn statements from ten other people describing physical abuse at the hands of Boudreau, Halloran, and O'Brien.[4]

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[3] **Coleman:** testified that an officer who was 6'5" or 6'6", which is O'Brien's height, called him a "lying-assed [n-word]" and hit him in the face with a closed fist; falsely confessed; exonerated by DNA evidence; granted a certificate of innocence. A2074-77; A752; A2441-43; *Nevest Coleman*, THE NATIONAL REGISTRY OF EXONERATIONS (last updated July 23, 2018), https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5242. **Hill:** testified that Halloran and Boudreau hit him, slapped him in the face, punched him in the rib cage, and told him what to say in a murder confession; exonerated by DNA evidence and released; received $1.25 million settlement from the City. A1521-24, 1530; A2205. **Gomez**: stated that the detectives punched him in the stomach, kicked him off his chair while he was handcuffed, hit him in the head, and pulled his hair; gave false inculpatory statement; acquitted at trial. A1773-77, 1779-80; A343, 347. **Quinones**: testified that Halloran punched him in the head, Boudreau threw him against the wall, and both detectives verbally abused him and deprived him of sleep for 30-32 hours; signed a confession after this brutal interrogation; acquitted at trial. A1797-1804, 1808-10, 1817-19; A2023. **Day**: swore in an affidavit that Boudreau stood by and watched as another detective grabbed him by the neck and choked him; told Boudreau and the other detective that he would cooperate by lying to the ASA; confessed falsely based on information he received from Boudreau; received a certificate of innocence. A1517; A2402-03; *Arnold Day*, THE NATIONAL REGISTRY OF EXONERATIONS (last updated Jan. 15, 2020).

[4] A1540-41, 1543 (**(1) Nicholas Escamilla:** Halloran and Boudreau "would punch and slap [him] in [the] head, chest, stomach, and back"; O'Brien kicked him in the legs and slapped him in the face; Halloran and Boudreau threatened to arrest his wife and take his daughter away if he did not cooperate and make a statement.); A1644-46, 1648-49. (**(2) Antoine Anderson:** Halloran and O'Brien handcuffed him to a pole, punched him in the head and chest, and threatened to take his children away; O'Brien placed his gun in his face.); A1635-37 (**(3) Joseph Jackson:** He was handcuffed to a wall; Boudreau slapped him in the face until he was numb; Boudreau placed a phone book on his midsection and Halloran hit the phonebook with a flashlight while Boudreau looked on; Halloran punched him in

6. ***FBI Report That Boudreau Fed Confessions To Suspects*****:** The circuit court also admitted a critical piece of FBI evidence showing that Boudreau fed suspects information about crimes in order to extract false confessions in another case from the 1990s. As set forth in an FBI report, former ASA Johnson reported to FBI agents that CPD detectives "coached and fed the subjects information during the court reported and handwritten statements." A218. He specifically implicated Boudreau: "Boudreau wanted to rehearse the responses from the subject" before the court reported statement, and as they went through the questions, "Boudreau often corrected the subject's responses." A2184. ASA Johnson explained that these "corrections . . . made the facts more consistent with the other statements." *Id*. He also noted how the detectives "circulated a document that detailed what the detectives and ASAs should say when questioned regarding the circumstances of the . . . investigation" so that "they all would provide a consistent statement." A2185.

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the stomach, placed a bag over his head until he started to suffocate, and administered electric shocks to his body; Boudreau coached him on what to say to the ASA and threatened to harm his fiancée and charge her with crimes if he did not cooperate.); A1534 (**(4) Willie Lee Hughes:** He was handcuffed to a pole and beaten with flashlights through a phone book laid over his chest, with Halloran as a key perpetrator.); A1361 (**(5) Rudy Davila:** The three detectives smacked him in the head, slammed his head down on the table, and choked him.); A1555 (**(6) Kylin Little:** O'Brien and Halloran held him down while Boudreau repeatedly hit him in the head and chest.); A1557 (**(7) Jason Miller:** O'Brien and Halloran held him while Boudreau beat him; he "went along" and "lie[d] for them" to avoid further beatings.); A1562 (**(8) Antwan Holiday:** He confessed after Boudreau slapped him in the face and told him that the detectives would "beat [him] all night, if necessary, to get the confession.); A1545-46 (**(9) Michael Taylor:** After he refused to sign a confession, Halloran used his arm to clothesline him "backwards out of [his] chair onto the floor," and Boudreau kicked him in the groin while he was on the floor; the detectives interrogating him wrote up a statement and asked him to sign it—even though it included statements he never made.); A1515 (**(10) Kilroy Watkins:** He was handcuffed to a ring in the wall by Boudreau and Halloran; he signed a false confession after Boudreau repeatedly choked him and assaulted him while Halloran watched and did nothing.).

7. Live Testimony: At the TIRC referral hearing, **Petitioner** explained that Halloran beat him, threw him against a wall, pounded him on the head, and yanked him around by his braids. A62, 64, 58-68, 74-75, 79, 100, 118, 123-24. O'Brien joined in the abuse by beating him and pulling his fingers back. A98-100. Boudreau described the crime scene, A58-59, 113-14, 233-34, told him when the murder took place, A79, and showed him pictures of the victims, A96. Consistent with the FBI report about Boudreau feeding suspects false confessions, Boudreau advised Petitioner to say he committed the murders in self-defense, A69, 93, 236, and manufactured motives for the altercation, A231-33. Boudreau and Halloran repeatedly threatened Petitioner's pregnant girlfriend and unborn baby. A59, 65-67. Petitioner repeatedly asked for a lawyer to no avail. A170. He finally relented and gave a statement because he felt the abuse would not stop "until [he] gave in and did what they wanted [him] to do." A102. During his statement to Lambur, Boudreau continued to feed him information about the crime and tell him what to say. A104-06, 108, 111, 115, 240-42. The circuit court found Petitioner's testimony "consistent with his testimony in 1994 in the hearing on his motion to suppress." A798.

The ASAs involved in the case stated that they did not observe abuse. A799-800. ASA Lambur testified that Petitioner never denied involvement in the murders, A800; A426, and that Boudreau did not interject during the reported statement. A800; A394. **Boudreau** denied abusing Petitioner. A801; A462-63. But he admitted to previously asserting his Fifth Amendment right against self-incrimination when called to testify in another case about abuse at Area 3—where he worked under Jon Burge before investigating this case at Area 1. A490-91, 446. He also admitted that Chicago paid out millions of dollars to settle cases where he was accused of abusing people in custody and that he also paid from his

own pocket. A491-92, 515-16. He acknowledged having elicited confessions from individuals who were later acquitted or exonerated by DNA evidence. A506, 515, 525. He admitted telling Petitioner the results of the investigation, including what was at the crime scene. A478. Finally, he testified that he had previously been reprimanded for interrogating a juvenile without an adult present. A488. He could not recall whether there was an adult in the room when he interviewed Roderick Sisson, a juvenile, in this case, A487.

Halloran testified that he was assigned to Area 1 in October 1992 and worked at Area 3 before then. A557. He denied abusing Petitioner, A576-78, 614, admitted that he had invoked the Fifth Amendment when asked about abusing Petitioner, A624-25, and when asked about other instances of torture, A732-33. He acknowledged involvement in several cases where people were exonerated after falsely confessing. A638-60. In one such case, Chicago paid out more than a million dollars and he *personally* paid out $7,500. A639-40.

O'Brien claimed—as he did in the suppression hearing—that he was attending a training at another location when Petitioner was in custody. A803. He then denied abusing suspects in several other cases, *id*., but admitted that he had previously invoked the Fifth Amendment in response to allegations of abuse. A342-43.

F. The Circuit Court Denies Relief.

The circuit court denied Petitioner's claim and his subsequent motion for reconsideration. A774-830, 2628. The court focused on the fact that the abuse in this case occurred at Area 1 rather than Area 2, instead of the fact that all three of the detectives had been known subordinates of Jon Burge when previously working at Area 2. A817. The court believed that "none of the allegations [against Boudreau, Halloran, and O'Brien] have resulted in a finding directly sustaining the allegations." *Id.* The circuit court did not mention the Cortez Brown case, where Brown claimed physical abuse by O'Brien, and

Judge Crane found the evidence of abuse by the involved detectives "staggering" and "damning." A1511. The court noted but discounted the Jesse Clemon case, which involved O'Brien, where this Court found that the evidence reflected "the existence of some type of threat, at the minimum, of physical coercion . . ." *People v. Clemon*, 259 Ill. App. 3d 5, 10-11 (1994). The court did not note that in many cases, people who alleged torture by Boudreau, Halloran, and O'Brien have received reparations from the City of Chicago based on a finding that they made a credible claim of torture. Next, the court dismissed evidence that the detectives physically abused juveniles because Smith was not a juvenile at the time the detectives abused him. A816. Ultimately, the court determined that Petitioner failed to "*establish conclusively* that the officers involved in Smith's interrogation participated in systemic abuse." A817 (emphasis added).

Turning to whether the newly discovered evidence of abuse could have changed the outcome of the suppression hearing, the circuit court correctly stated that Petitioner "claimed abuse as soon as his preliminary appearance; he has consistently maintained his account; several other suspects who gave inculpatory statements [in his case] alleged the same officers abused them." A823. The court acknowledged that the officers had taken the Fifth Amendment when asked about torturing suspects, but did not draw an adverse inference, *id.*, nor did the court mention that Halloran took the Fifth Amendment when asked in another proceeding about physically abusing *Mr. Smith specifically*. *See* A1385-87. Addressing contradictions between Petitioner's statement and the crime scene, the court opined that "[t]here is nothing special about a confession that renders it false in total or proves it was coerced merely because of a conflict with some aspect." A812. The opinion

does not mention the FBI report, which states that Boudreau "coached and fed the subjects information during the court reported . . . statements." A2183.

In a series of oral statements accompanying and subsequent to the written order denying relief, the circuit court acknowledged that the "allegations against these detectives . . . are disconcerting," A2633, expressed "grave concerns about these detectives," A2592, "agree[d]" that "a lot of very troubling information" has "come to light since [Petitioner's] original trial," A2614, and cautioned that its ruling was "*not to be read* as a judicial determination that the detectives involved in this case were not involved in any abuse or torture on a systemic level." A2634 (emphasis added). Nonetheless, the court denied Petitioner's motion for reconsideration.

STANDARD OF REVIEW

An evidentiary hearing under the Torture Inquiry Relief Commission Act "has been likened to" a third-stage post-conviction hearing. *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 51. In such proceedings, the standard of review differs for factual findings and legal conclusions. This Court "review[s] fact-finding and credibility determinations for manifest error and questions of law *de novo*.'" *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 195 (citing *People v. Morgan*, 212 Ill. 2d 148, 155 (2004)).

For legal conclusions, "*de novo* consideration means that the reviewing court performs the same analysis that a trial judge would perform." *Tyler*, 2015 IL App (1st) 123470, ¶ 195. For factual findings, the manifest error standard "is not a rubber stamp" and the appellate court must "examine factual findings and determine whether the court's finding was unreasonable, arbitrary, or not based on the evidence presented." *People v. Harris*, 2021 IL App (1st) 182172, ¶ 56 (quotation marks and citations omitted).

A petitioner may seek a new suppression hearing *and* suppression itself. *Wilson*, 2019 IL App (1st) 181486, ¶ 52. To obtain a new suppression hearing, "the petitioner has the burden of showing only that newly discovered evidence *would likely have* altered the result of the suppression hearing," and need not prove "the ultimate issue of whether [their] confession was coerced." *Id*. (emphasis in original) (citation omitted). Accordingly, the circuit court was tasked with determining "(1) whether any of the officers who interrogated defendant may have participated in systemic interrogation abuse" and "(2) whether those officers' credibility at the suppression hearing might have been impeached as a result." *Harris*, 2021 IL App (1st) 182172, ¶ 50. In conducting these analyses and determining whether to grant a new suppression hearing, "[p]robability, not certainty, is the key." *People v. Coleman*, 2013 IL 113307, ¶ 97.

If the petitioner meets this burden *and* the state cannot "prov[e] petitioner's statement was voluntary," then the court must go farther. *Wilson*, 2019 IL App (1st) 181486, ¶ 54. In that case, the court must order suppression itself, rather than a new suppression hearing. *Id.* at ¶ 55.

ARGUMENT

I. Summary Of Argument.

In the years following Petitioner's conviction, overwhelming evidence has proven a systemic pattern of torture by Burge and his subordinates. Indeed, the detectives whom Petitioner has always accused of beating him—John Halloran, Kenneth Boudreau, and James O'Brien—have emerged as key perpetrators of this abuse. In discounting this evidence and ultimately denying relief, the circuit court both made a host of legal errors and committed manifest error in its analysis and weighing of the evidence. This Court

should order a new trial with Petitioner's statement suppressed or, at minimum, grant him a new suppression hearing.

First, in analyzing whether Petitioner met his burden of showing a pattern of physical abuse, the court inflated the legal standard, demanding that Petitioner "establish *conclusively* that the officers involved in [his] interrogation participated in systemic abuse," A817 (emphasis added), when his actual burden was to show that the detectives "*may* have participated" in systemic abuse. *People v. Harris*, 2021 IL App (1st) 182172, ¶ 50 (emphasis added). *Second*, the court wrongly focused on the location of the torture (Area 1) rather than the fact that the three detectives were Burge disciples. *Third*, the court discounted overwhelming evidence of a pattern of torture by Boudreau, Halloran and O'Brien by: (a) disregarding judicial and municipal findings of physical abuse, (b) minimizing evidence that at least eight people who allege the detectives tortured them gave confessions now known to be false, (c) discounting sworn statements of physical abuse; and (d) dismissing TIRC referrals and settlements in cases involving torture by these men. *Fourth*, the court made a legal error by failing to draw an adverse inference based on prior invocations of the Fifth Amendment by the three detectives when questioned about torturing suspects—including a case where Halloran refused to answer questions about torturing Petitioner specifically. *Fifth*, the court did not mention the shocking FBI report, in which an ASA explains that Boudreau fed suspects details of crimes to obtain confessions. Petitioner has always said that Boudreau did just that in this case.

The court also manifestly erred in concluding that all of this new evidence would not have altered the outcome of the suppression hearing. Petitioner has consistently alleged that O'Brien, Boudreau, and Halloran abused him, these three officers were identified in

numerous other accounts and findings of torture, and Petitioner's claims are strikingly similar to other claims of torture. Under this Court's caselaw, no more is required for a new suppression hearing. Yet here, the case for a new hearing is even stronger: the detectives' testimony is full of contradictions and the statement they extracted from Petitioner blatantly conflicts with evidence from the crime scene. Finally, the circuit court relied heavily on ASA Lambur's testimony regarding Petitioner's court reported testimony, but the newly discovered FBI report undermines Lambur's credibility by noting that Boudreau coached suspects about the details of crimes during court reported statements.

The evidence of abuse is so compelling that this Court should order a new trial with the statement suppressed—or, at a minimum, a new suppression hearing.

II. The Circuit Court Erred In Finding That The Pattern And Practice Evidence Did Not Establish That Officers Boudreau, Halloran, And O'Brien Participated In Systemic Abuse.

A. The Circuit Court Applied The Wrong Legal Standard By Requiring Petitioner To "Establish Conclusively" That Boudreau, Halloran, And O'Brien Engaged In A Systemic Pattern Of Torture.

The circuit court misunderstood Petitioner's burden and incorrectly required conclusive proof of a systemic pattern of torture. The circuit court opined that Petitioner failed "to establish *conclusively* that the officers involved in [his] interrogation participated in systemic abuse." A817 (emphasis added); *see also* A813 (finding a lack of "*conclusive validation* for allegations against the specific officers implicated here.") (emphasis added).

This repeated mischaracterization of the relevant standard constitutes serious legal error. As the Illinois Supreme Court has explained, the term "'conclusive' proof is akin to proof beyond a reasonable doubt." *Baggett v. Indus. Comm'n*, 201 Ill. 2d 187, 202 (2002). In the TIRC referral proceeding, however, Petitioner was under no obligation to "conclusively" establish systemic abuse or to prove it beyond a reasonable doubt; rather,

he was required to show that the detectives "*may* have participated" in systemic abuse. *People v. Harris*, 2021 IL App (1st) 182172, ¶ 50 (emphasis added).

Indeed, the circuit court recognized the probability that the three detectives did in fact participate in systemic abuse but *still held* that Petitioner failed to meet his burden. In an oral statement accompanying the written order, the circuit court said that the "allegations against these detectives . . . are disconcerting." A2633. And in subsequent hearings, the circuit court reported "grave concerns about these detectives," A2592, and "agree[d]" that "a lot of very troubling information" has "come to light since [Petitioner's] original trial," A2614. Most importantly, in the oral statement accompanying its written order, the circuit court said that its denial of the petition was "*not to be read* as a judicial determination that the detectives involved in this case were not involved in any abuse or torture on a systemic level." A2634 (emphasis added). Moreover, after the written decision in this case, another Cook County Circuit judge correctly determined that "the pattern or practice of police abuse by Detective Boudreau . . . did occur." App. Vol. III at A2572, *Plummer v. People*, No. 1-20-0299 (Ill. App. Ct. Sept. 11, 2020).

The circuit court's legal error must not stand. Courts should not bend over backwards and distort standards of proof to avoid the ugly truth: Boudreau, Halloran, and O'Brien engaged in a systemic pattern of torturing people of color like Petitioner.

B. The Circuit Court Erred In Making Petitioner's Burden Dependent On The Particular Police Station Where He Was Tortured.

The circuit court did not attach sufficient weight to Boudreau, Halloran, and O'Brien's history as subordinates and associates of Burge—and instead fixated on the fact that Petitioner's abuse occurred at Area 1. At the evidentiary hearing, all three detectives admitted working under Burge. A321, 337-38, 446, 585. The Independent Third Party

made a finding that "Detective O'Brien was a known subordinate of Jon Burge," A2445, and a news report states that Boudreau "sold raffle tickets and donated money to help fund Burge's legal defense," A1368.

Despite the clear connection to Burge, the circuit court determined that Petitioner should face a "harder" task than other victims of abuse simply because he was interrogated and abused at Area 1. A811, 817. This makes little sense, and is a further example of the circuit court artificially inflating Petitioner's burden of proof. Indeed, in *People v. Whirl*, the appellate court rejected "the significance placed by the trial court on the fact that Burge was no longer at Area 2 at the time of [the petitioner's] arrest." 2015 IL App (1st) 111483, ¶ 104. It explained that where an accused officer previously worked under Burge, "[t]here is no basis to assume [his] use of physical force to obtain confessions ceased" simply because Burge was no longer his supervisor. *Id*. By the same token, here it is hardly surprising that Boudreau, Halloran, and O'Brien would continue the abusive practices they employed while working under Burge when they moved to Area 1. Thus, applying the reasoning in *Whirl*, the fact that Burge was not present at Area 1 when the detectives abused Petitioner makes their histories of abuse no less salient.

C. The Circuit Court Erroneously Denied Relief Because It Mistakenly Believed That No Previous Finding Had Been Made "Directly Sustaining the Allegations" Against the Three Detectives.

In ruling against Petitioner, the circuit court posited: "[N]one of the allegations" against the three detectives "have resulted in a finding directly sustaining the allegations." A817. That is flatly incorrect. It is a legal error in that it reflects a misunderstanding of the legal significance of previous findings by Illinois courts and the City of Chicago.

In fact, there were multiple judicial and administrative findings that these men abused suspects. Judge Crane found the evidence of abuse against O'Brien and other detectives

"staggering" and "damning," A1511, in the Cortez Brown case, where Brown stated that O'Brien slapped and punched him for refusing to answer questions—all of which occurred after he was refused an attorney, deprived of sleep, and handcuffed to a wall. A1676-80, 1683-84, 1685-86; A337. On top of that, O'Brien was involved in the Jesse Clemon case, where Judge Strayhorn ruled that officers in the case created a "horrendously oppressive" environment. *People v. Clemon*, 259 Ill. App. 3d 5, 8, 10-11 (1994). And this Court itself affirmed, finding that Judge Strayhorn "had the right to infer from [the] evidence"—including shocking testimony that the suspects were heard screaming at the police station for fifteen minutes—"the existence of some type of threat, at the minimum, of physical coercion . . ." *Id.* at 11. Judicial findings of torture have continued to accumulate even after the circuit court's decision in this case. Judge Gaughan found in Johnny Plummer's case not only abuse, but *systemic abuse* by Boudreau, determining that "the pattern or practice of police abuse by Detective Boudreau . . . did occur." App. Vol. III at A2572, *Plummer v. People*, No. 1-20-0299 (Ill. App. Ct. Sept. 11, 2020).

The circuit court's incorrect conclusion that "none of the allegations" against the three detectives "have resulted in a finding directly sustaining the allegations," A817, also reflects a misunderstanding of City of Chicago awards of reparations for torture. Contrary to the circuit court, these awards *do* reflect a legal finding by the City. The Chicago Reparations Ordinance authorizes reparations only if the City finds that a torture victim has established a "credible claim" of torture. Reparations Ordinance § 3. As stated above, the circuit court admitted evidence showing that the City awarded reparations to Curtis Milsap and Enrique Valdez based on their assertions that O'Brien, Boudreau, and other detectives physically abused them. *See supra* at 10. These reparations awards amount to a

finding that Milsap and Valdez both presented credible claims of torture. The City also granted reparations to six other men who were interrogated and tortured in the same case, finding that they all had credible claims of torture and awarding them a total of $505,000 in reparations. A2405-06; *supra* at 11.

D. The Circuit Court Erred In Discounting Evidence That At Least Eight People Who Alleged That Detectives Boudreau, Halloran, And/Or O'Brien Tortured Them Gave Confessions Now Known To Be False.

In addition to the findings described above, eight additional people swore they were tortured into confessing by Boudreau, Halloran, and/or O'Brien—and all eight of them were later shown to be innocent. *See supra* at 12-13. The circuit court erred in dismissing allegations of torture by these individuals because they prevailed "for reasons apart from torture allegations." A814-16. Contrary to the circuit court's ruling, the very fact that the detectives were involved in so many cases that produced false confessions supports an inference that the confessions were physically coerced. *People v. Galvan*, 2019 IL App (1st) 170150 makes this clear.

In *Galvan*, the petitioner filed a successive postconviction petition based on new evidence that the detective who interrogated him had a pattern of using abusive tactics to coerce confessions. *Id*. at ¶ 66. During the evidentiary hearing, the trial court heard testimony from seven men who claimed that the same officer abused them during their interrogations. *Id.* at ¶¶ 44-52, 71. Despite recognizing that some of the men "had their convictions reversed by the Illinois Appellate Court," the trial court discounted their testimony for essentially the same reason advanced by the trial court here: it "d[id] not believe any of these persons" because "none have secured any ruling from the Circuit Court or the Appellate Court that their purported confessions were the product of coercion." *Id*. at ¶ 73. The appellate court rejected this rationale and concluded that their testimony was

sufficient to grant a new suppression hearing. *Id*. at ¶ 74. It "was manifestly erroneous" for the circuit court to find otherwise. *Id*.

There is even more reason to grant Petitioner a new suppression hearing in this case where there are *eight* allegations of abuse by people who were ultimately deemed not guilty of the crimes to which they confessed, whether through exoneration, acquittal, abandonment of charges, or a certificate of innocence. *Supra* at 9-13. Of course, this does not *prove* that torture occurred in each of these cases, but when eight people who gave false confessions all say they were tortured by Boudreau, Halloran, and O'Brien—and their cases are unrelated to each other—torture is a more plausible explanation than mere coincidence. Indeed, even the media recognized the importance of this trend, noting in 2001 that "Boudreau has helped to get confessions from more than a dozen defendants in murder cases in which charges were dropped or the defendant was acquitted," A1366, and that he "helped solve at least five murders with dubious confessions that ended with acquittals," A1369. Even more so than in *Galvan*, then, the trial court's disregard of this evidence was manifestly erroneous.

E. The Circuit Court Erred In Discounting Ten Other Sworn Statements Alleging Physical Abuse By Boudreau, Halloran, And/Or O'Brien.

If that were not enough, the record includes sworn statements by at least ten other individuals alleging that the three detectives tortured them. *Supra* n.4. The circuit court opined that "compiling a list of accusers and allegations" is insufficient. A817. But this Court has explained that where there are "countless instances of claims of police misconduct," they "establish a troubling pattern of systemic abuse." *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 189; *see also id.* at ¶ 186 ("Even one incident of similar misconduct by the same detectives can be sufficient to show intent, plan, motive, and could impeach

the officers' credibility."); *People v. Jakes*, 2013 IL App (1st) 113057, ¶ 31 ("Evidence of other cases in which Kill and Boudreau coerced confessions directly relates to the issues here."). The allegations have even greater relevance in this case because they resemble Petitioner's allegations. *See People v. Harris*, 2021 IL App (1st) 182172, ¶ 58.

F. The Circuit Court Erred In Disregarding Settlements And TIRC Referrals Involving Boudreau, Halloran, And O'Brien.

The circuit court erred further by disregarding TIRC's conclusion in the Ivan Smith case and a host of settlements in cases alleging physical abuse by Boudreau, Halloran, and O'Brien. In referring Ivan Smith's case for judicial review, TIRC stated that "the pattern and practice evidence against the police officers in this case, *especially Detective O'Brien*, is concerning." A2440 (emphasis added).

Turning to settlements, the circuit court in this case found it "troubling that Boudreau and Halloran entered into settlements on claims of abusive police behavior." A813. The court nonetheless determined that it could not "construe these settlements as conclusive validation for allegations against the specific officers implicated here." *Id.*[5] While the circuit court is correct that the settlements may not provide "conclusive validation" on their own, the court erred in wholly disregarding them as evidence of systemic torture.

During the evidentiary hearing, Boudreau admitted that the City of Chicago settled "maybe eight, nine, somewhere around there; maybe ten" lawsuits brought against him. A491-92. He further admitted that he was involved in the Harold Hill and Dan Young cases where the City of Chicago paid out 1.25 million dollars after the two men had their

[5] Below, the State argued that settlements are not admissible as evidence. A2575. But the Rules of Evidence "do not apply at evidentiary hearings" arising under the TIRC Act. *People v. Gibson*, 2018 IL App (1st) 162177, ¶ 133. The circuit court was correct not to adopt this argument.

convictions vacated based on DNA evidence. A514-15; *see also* A2205. And as the circuit court observed, "Boudreau and Halloran each agreed to pay some money *personally* to resolve the suit involving Harold Hill and Dan Young." A813 (emphasis added); *see also* A515-16; A640.

Surely, the enormous settlements and payouts attributed to these three detectives is more than just "troubling." To the contrary, the sheer number of allegations against these detectives in conjunction with the many settlements and payouts suggest that they engaged in systemic abuse.

G. The Circuit Court Erred In Failing To Draw A Negative Inference From The Detectives' Invocation Of The Fifth Amendment When Questioned About Torturing Petitioner And Many Others.

The circuit court wrongly stated: "Here, none of the officers invoked the Fifth Amendment in response to any question concerning Smith or any other suspect." A658. In fact, Halloran *did* invoke the Fifth Amendment in a previous case when asked if he held Petitioner down while Boudreau punched him, A1386, if he grabbed Petitioner by the hair, *id*., if he threatened Petitioner's girlfriend and their unborn baby, A1387, if he observed Boudreau pulling Petitioner's fingers backwards, A1388, and if he threatened Karen Tate, Israel Moore, and Clinton Tramble with force and incarceration if they did not implicate Petitioner, A1389-92.[6]

Aside from its failure to recognize that Halloran indeed invoked the Fifth Amendment when asked specifically about abusing Petitioner, the circuit court clearly erred in brushing aside the fact that all three detectives invoked the Fifth Amendment in connection with

[6] Clinton Tramble is referred to as "Quinton Trambell" in this exhibit; Petitioner uses the spelling the circuit court used here.

torture of other suspects. Halloran refused to answer not only when asked specifically about Petitioner, but also about abusing or coercing *over fifty other suspects*.[7] Halloran also took the Fifth Amendment in response to questions from Special Prosecutor Egan. A732-33. O'Brien invoked the Fifth Amendment when asked whether he slapped, punched, and hit Cortez Brown with a flashlight. A1-5, 10-12; A1655-61. And Boudreau invoked the Fifth Amendment in response to questions concerning the investigation of the Office of the Special Prosecutor regarding abuse physical abuse of suspects A2192-93.

Shockingly, the circuit court determined that none of these "prior invocations carry enough significance to draw a negative inference in this case." A823. This is wrong: "[T]he decision of government actors to invoke their fifth amendment privilege against self-incrimination" is "judicially deafening," *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 66, and a court should attribute "special significance" to such invocations by law enforcement officers, *People v. Gibson*, 2018 IL App (1st) 162177, ¶ 105 (citation

[7] Antoine Anderson, A1433-41, 1496-97; Charles Breckenridge, A1422-23; Andre Brown, A1458-60; Sheila Crosby, A1496; William Ephrain, A1460-62; Nicholas Escamilla, A1451-55, 1457-58, 1495-96; Fred Ewing, A1462-64; Derrick Flewellen, A1423-33, 1495; Jerry Gillespie, 1455-58; Eric Gomez, A1380-81; Oscar Gomez, A1378-80,1382-84, 1489, 1494-95; Reginald Henderson, A1411-17; Tyrone Hood, A1393-96, 1400, 1402-03, 1404; Harold Hill, A1489-90, 1492-98; Joseph Jackson, A1465-67, 1490; Cassanova Johnson, A1435-37; Jerome Lewis, A1447-49; Stacy Lewis, A1449-50; Kylinn Little, A1467-68; Kenneth McGraw, A1406-07; Jason Miller, A1468-69; Israel Moore, A1390; Miquel Morales, A1469-71, 1476-77; Andrea Murray, A1421-22; Johnnie Plummer, A1471-74, 1492; Abel Quinones, A1381-82; Arnell Robinson, A1445-47; Rafael Robinson, A1476-78; Mario Rodriquez, A1441-43, 1445-47; Jody Rogers, A1396-1400; Michael Rogers, A1400-01; Tyrone Ruina, A1475-76, 1493-94; Michael Sardin, A1478; Antonio Segoviano, A1444-45; Anthony Simms, A1478; James Stillwell, A1443-44; Darnell Stokes, A1464-65; Karen Tate, A1388-89, 1392; Quinton Trambell (Clinton Tramble), A1390-92; Malik Taylor, A1478-80; Michael Taylor, A1418-21; Jonathan Tolliver, A1480-81; Kilroy Walkins (Watkins), A1482-86; Antoine Ward, A1404-06; Wayne Washington, A1403-04; William Washington, *id.*; Joe West, A1402-03; Emmett White, A1497-98; Marcus Wiggins, A1410-11; Anthony Williams, A1486-88; Robert Wilson, A1488-89.

omitted). Indeed, this Court has explained that judges "should take careful note" when "an officer of the court is unwilling to assure the court that he and his colleagues did not physically coerce a confession." *Wilson*, 2019 IL App (1st) 181486, ¶ 66 (quoting *Gibson*, 2018 IL App. (1st) 162177, ¶ 108); *see also People v. Serrano*, 2016 IL App (1st) 133493, ¶ 30 (explaining that a trial court may "draw an adverse inference that, had the questions been answered truthfully, the answers would have been damaging to the person invoking the privilege"). It is particularly problematic when an officer invokes the Fifth Amendment in response to questions about *physically torturing suspects*, because "the law reserves a special place for physically coerced confessions, not only because they pervert the truth-seeking function but because they undermine the overall integrity of the trial process." *Gibson*, 2018 IL App (1st) 162177, ¶ 106.[8]

"[A] failure to draw an adverse inference may be error, even though the inference is permissive, if there is no good reason why the inference should not have been drawn." *Id.* at ¶ 86. In this case, where O'Brien, Halloran, and Boudreau have all refused to testify about torturing people—and where Halloran has refused to testify about torturing Petitioner in particular—there is simply no good reason for the circuit court's refusal to draw an adverse inference.

[8] In declining to draw a negative inference, the circuit court erroneously relied on *People v. Gonzalez*, 2016 IL App (1st) 141660, ¶ 61; A823. But *Gonzalez* is inapposite. There, the appellate court did not consider the petitioner's Fifth Amendment arguments because the petitioner alleged that the detective took the Fifth Amendment in certain depositions "without including this deposition testimony" and "without any citation to the record." *Gonzalez*, 2016 IL App (1st) 141660, ¶ 61. Of course, that is not true of this case: Petitioner included the relevant deposition testimony of Halloran, A1375-1502, Boudreau, A2192-93, and O'Brien, A1-5. On top of this, all three detectives admitted to asserting their Fifth Amendment rights during the evidentiary hearing in this very case. A490-91, 446 (Boudreau); A342-43 (O'Brien); A624-25, 732-33 (Halloran).

H. The Circuit Court Erred In Ignoring The FBI Report Showing That Boudreau Fed Confessions To Suspects.

The circuit court's opinion completely ignores an important piece of record evidence. As set forth in an FBI report, former ASA Johnson explained how CPD detectives including *Boudreau specifically* fed suspects information about crimes in order to obtain false confessions. A2183-85. This tactic allows an interrogator to "help create [a] false confession by pressuring the suspect to accept a particular account and by suggesting facts of the crime to him." *Harris v. Thompson*, 698 F.3d 609, 631 n.12 (7th Cir. 2012) (quoting Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. AM. ACAD. PSYCHIATRY & L. 332, 337 (2009)).

The circuit court made *no mention* of this shocking evidence even when it rejected Petitioner's contention "that Boudreau was interjecting and feeding him what to say . . ." A820. This is wrong: where there is "evidence from a Chicago police detective" (or in this case, from an ASA) "that worked alongside [the accused detective]" that is "corroborative of the other allegations" against him, a trial court's rejection of that evidence "is truly puzzling." *People v. Serrano*, 2016 IL App (1st) 133493, ¶ 33. The circuit court's resolution of this issue simply was "not based on the evidence presented," *People v. Harris*, 2021 IL App (1st) 182172, ¶ 56, and must be reversed.

III. The Circuit Court Erred In Finding That The New Evidence Is Unlikely To Alter The Outcome Of The Suppression Hearing.

To obtain a new hearing, Petitioner is "not require[d] . . . to prove that his confession actually resulted from coercion." *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 51. Rather, Petitioner "has the burden of showing only that newly discovered evidence *would likely have* altered the result of a suppression hearing" had the detectives been subject to impeachment. *Id.* at ¶¶ 52, 55 (emphasis in original). And "[e]ven one incident of similar

misconduct by the same detectives can be sufficient to show intent, plan, motive, and could impeach the officers' credibility." *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 186.

Here, there is so much more. Petitioner has consistently alleged that O'Brien, Boudreau, and Halloran abused him, *infra* Section III.A, these three officers have been identified in numerous other allegations of torture, *infra* Section III.B, and Petitioner's claims are now and have always been strikingly similar to other claims of torture, *infra* Section III.C. Illinois courts have routinely identified these very factors as "conclusive enough" to alter the outcome of a suppression hearing. *People v. Harris*, 2021 IL App (1st) 182172, ¶¶ 58-60; *see also People v. Patterson*, 192 Ill. 2d 93, 145 (2000). Here, there are several other factors undermining the credibility of the detectives, including their history of abusing juveniles, their inconsistent statements about the arrest and interrogation, their inconsistent statements regarding Petitioner's shoes, and material conflicts between the false confession and the crime scene. *Infra* Section III.D. Finally, the new evidence undercuts ASA Lambur's credibility. *Infra* Section III.E.

A. Petitioner's Allegations Have Remained Consistent.

The circuit court correctly observed that Petitioner "claimed abuse as soon as his preliminary appearance" and that he has "consistently maintained his account." A823. This is noteworthy: when a claimant's "allegations have remained substantially the same" for decades, it corroborates his claims of torture and the credibility of his allegations. *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 64; *see also People v. Gibson*, 2018 IL App (1st) 162177, ¶¶ 120, 125-26 (explaining circuit court erred in questioning a defendant's credibility where his "core allegations ha[d] remained the same").

B. O'Brien, Boudreau, And Halloran Have Been Identified In Other Allegations Of Torture.

"[I]t is material" that "the officers that defendant alleges were involved in his case are officers that are identified in other allegations of torture." *People v. Patterson*, 192 Ill. 2d 93, 145 (2000). Here, the circuit court found that "several other suspects who gave inculpatory statements alleged the same officers abused them." A823. Indeed, allegations of abuse against Boudreau, Halloran, and O'Brien have been thoroughly documented and are legion. *See supra* §§ II.C-II.E. As this Court has stated, "countless instances of claims of police misconduct cited in defendant's petition establish a troubling pattern of systemic abuse by . . . detectives" including Boudreau, Halloran, and O'Brien and "call[] into question whether defendant's confession was in fact the product of physical coercion." *People v. Tyler*, 2015 IL App (1st) 123470, ¶¶ 163-86, 189.

If the judge at the suppression hearing (Judge Strayhorn) knew about the detectives' extensive history of abuse, he might well have suppressed the statement. Indeed, in Cortez Brown's case, Judge Strayhorn stated that if Brown presented evidence "that other suspects had complained of being abused by any of the three detectives," including O'Brien, who interrogated him, "he might have granted Brown's motion to suppress." A1570. There is every reason to believe that the same evidence could have changed the outcome of Petitioner's suppression hearing as well.

C. The New Evidence Includes Allegations And Findings That Are Strikingly Similar To Petitioner's Allegations Of Abuse.

This Court has held "that the outcome of the suppression hearing would likely have changed" where a petitioner's "allegations of coercion are comparable to the acts of coercion set forth in the new evidence." *People v. Harris*, 2021 IL App (1st) 182172, ¶¶ 57-58; *see also People v. Patterson*, 192 Ill. 2d 93, 145 (2000). Indeed, even one prior

complaint of a similar act of coercion is "probative as to the conduct [the detectives] employed in the present case." *People v. Banks*, 192 Ill. App. 3d 986, 994 (1989). Here, there are *many* allegations that are nearly identical to Petitioner's. These allegations corroborate Petitioner's longstanding claims about (1) the specific methods of physical abuse, (2) threats to his girlfriend and unborn child, and (3) coaching from Boudreau. Accordingly, the circuit court's conclusion that the new evidence did not show "enough similarity" to Petitioner's allegations, *see* A823, is manifestly erroneous.

First, Petitioner's testimony about the specific methods of abuse match the new evidence. At the suppression hearing, long before the pattern and practice evidence became available, Petitioner testified that he was hit in the head and slapped while handcuffed to a ring in the wall. A900-03, 939-941. Now, we know that several others experienced the same type of abuse. Nicholas Escamilla swore to a nearly identical experience, explaining that he was handcuffed to a ring in the wall while Boudreau, Halloran, and O'Brien "punch[ed] and "slap[ped]" him. A1541, 1543. Enrique Valdez testified to a similar account: He was handcuffed to a ring on the wall when Boudreau slapped him in the face so hard that it popped his eardrum, A2199-2201. Many others suffered this type of abuse at the hands of the three detectives. *See* A1516-17 (Arnold Day abused while handcuffed to steel ring on wall); A1534 (Willie Lee Hughes beaten by Halloran while handcuffed to pole); A1623-24 (Derrick Flewellen hit by Boudreau and Halloran while handcuffed to metal bar); A2409 (George Anderson handcuffed to wall and ceiling while all three detectives abused him); A2561[9] (Diyez Owens abused while handcuffed to gate); A1635

[9] A2559-68 (submitted as Attachment M) was not admitted into the evidentiary record below. It should have been admitted under *People v. Mandarino*, 2013 IL App (1st)

(Joseph Jackson handcuffed to wall while Boudreau slapped him in the face); A1681, 1685 (Cortez Brown handcuffed to ring on wall while detectives slapped and punched him); A1800, 1803-04 (Abel Quinones handcuffed to steel ring on wall while Halloran punched him); A1706-09 (Peter Williams handcuffed to wall and slapped by Boudreau).

Petitioner's testimony that he was dragged around by the hair also finds corroboration in the new evidence. He testified at the suppression hearing that the detectives yanked him around by his hair. A902-04, 908-09, 911-12, 915-16. Roderick Sisson testified that during the interrogation he heard Petitioner ask someone to let his hair go. A884. And Petitioner's girlfriend testified that when she saw Petitioner at the station, his "hair was real wild." A894. Even ASA Lambur testified that Petitioner's hair was "part braid, part out." A983. The new evidence shows that several others have also accused Halloran and Boudreau of aggressively pulling their hair. *See* A1757 (Halloran repeatedly grabbed Oscar Gomez's hair and pushed his head against wall); A1776-77 (Boudreau "smack[ed Eric Gomez's] face" and "pulled [his] hair"); A1972, 1975 (Boudreau and Halloran were two interrogating detectives when Lindsey Anderson had been held back and her hair pulled out).

Second, like many accounts in the new evidence, Petitioner has long maintained that the officers threatened his girlfriend and unborn child during the abuse. At his suppression hearing, he said the detectives told him to confess if he did not want to see his girlfriend go to jail or lose the baby, A907, 912-13, 915-16, 919, and explained that he signed the confession because he thought confessing would keep them safe, A962. These allegations

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111772, ¶ 44, and *In re Marriage of Suarez*, 148 Ill. App. 3d 849, 858 (1986). *See supra* n.4.

have remained consistent over the years: In a 2009 affidavit, Petitioner explained that Boudreau told him that his girlfriend was crying, hurting, and wanting to go home—and insinuating that she would go to jail and lose the baby if he did not talk. A1581 at ¶ 11. Indeed, these allegations were further corroborated by his girlfriend, who testified at the suppression hearing that the detectives threatened to take her baby from her if "she didn't tell them what they wanted to hear." A1266.

The new evidence corroborates these claims. At least four other people have stated that the detectives at issue here threatened their families—including one person who was acquitted after giving a false confession. The interrogating detectives (including Boudreau) threatened to incarcerate Alfonzia Neal's wife and put his children in state custody. A2341, 2346; A2219-20. Neal explained that he confessed because he was scared they would "take [his] kids away from [him]" and that he "would do anything" to prevent that. A2219-20. Despite his confession, he was acquitted at trial. A525. Three other men reported similar tactics. *See* A1543 (Boudreau and Halloran threatened to arrest Nicholas Escamilla's wife and put his daughter in care if he did not make a statement); A1644-46 (Halloran and O'Brien threatened to take Antoine Anderson's children away); A1635-37 (Boudreau threatened to harm Joseph Jackson's fiancée and charge her with crimes if he did not cooperate).

Third, Petitioner's allegations that Boudreau fed him details of the crime and coached his confession have now been corroborated by an account from former ASA Terence Johnson and voluminous evidence from other suspects. At his suppression hearing, Petitioner explained how Boudreau showed him pictures of the crime scene, A940-41, and told him details of the crime, A925, that he later included in his confession, *Id.* He also

testified that Boudreau told him what to say during the court-reported statement. A954-57. At the TIRC evidentiary hearing, Petitioner again recounted how Boudreau described the crime scene, A58-59, 113-14, 233-34, told him when the murder took place, A79, showed him pictures of the dead victims, A96, and interjected throughout the court-reported statement, A264.

Now there is corroboration. As set forth in the newly-discovered FBI report, former ASA Johnson "felt the detectives coached and fed the subjects information during the court reported and handwritten statements." A2183. He specifically implicated Boudreau in this practice, explaining that "Boudreau wanted to rehearse the responses from the subject" before the court-reported statement, and that as they went through the questions, "Boudreau often corrected the subject's responses." A2184. ASA Johnson explained that these "corrections . . . made the facts more consistent with the other statements." *Id*.

Petitioner has also presented voluminous evidence showing that Boudreau had a history of feeding suspects details about the crime scene and coaching their confessions or statements. Arnold Day swore that he gave a false confession based on information he received from Boudreau about a shooting. A1617. His conviction was later overturned and he was awarded a certificate of innocence. A2402-03. In the same case, Ralph Wilson gave a statement implicating Day and others: He said "Boudreau came up with a whole story about that murder and just wanted [him] to sign off on it" even though it implicated someone who "was locked up on the day of the murder and could not have been involved." A2188 at ¶¶ 8, 10, 12. Wilson further explained that he "didn't even know about the murder, or know who the victim was, until Boudreau told [him] about it." *Id*. at ¶ 13. Harold Hill testified that "Boudreau and Halloran [] gave him details about the murder, to which

he later confessed." *Hill v. City of Chicago*, No. 06 CC 6772, 2009 WL 174994, at *7 (N.D. Ill. 2009). He explained that "Boudreau [was] constantly telling [him] about the crime and showing [him] photos of the crime scene [and] the victim," and that he "confessed to a crime [he] didn't commit." A1523-24; *see also* A1371; A516-17. The city settled Hill's case. A516-17. Peter Williams testified at length about how Boudreau fed him details of the crime and showed him pictures of the victim. A1713-28. Williams then repeated those details in his confession. A1733-34. But the confession was false—the State dropped charges when it realized he was incarcerated when the crime occurred. A435, 437. Terrill Swift and Harold Richardson, both minors, were fed details of the murders and coerced into confessing by Boudreau. A1950-51; A1903. Both were later exonerated by DNA evidence and awarded certificates of innocence. A1945; A1893. Oscar Gomez testified that Boudreau relayed a false confession to him in front of the State's Attorney. A1767-68. He explained: "As he was saying it, [the State's Attorney] started writing it down." A1768. At trial, Gomez was acquitted of murder. A343, 347. This pattern continued with many other men.[10]

This Court has counseled that a new suppression hearing is warranted where Petitioner's "allegations of coercion are comparable to the acts of coercion set forth in the new evidence." *Harris*, 2021 IL App (1st) 182172, ¶ 58; *see also People v. Tyler*, 2015 IL App (1st) 123470, ¶ 190; *People v. Cannon*, 293 Ill. App. 3d 634, 640 (1997). Here, though, the circuit court determined that "in light of the particular facts and circumstances of *this*

[10] *See* A1637 (Boudreau "coach[ed Joseph Jackson] on what [he] was to say"); A1557 at ¶ 15 (Boudreau, Halloran, and O'Brien told Jason Miller who did the shooting and he "went along with them so they wouldn't continue to beat [him] or charge [him] with the crime"); A1544 (detectives, including Boudreau, coached Nicholas Escamilla on what to say, and he "later repeated the statement they helped [him] make-up").

case," the new evidence "is not availing." A824. But if it is not availing here—where the similarities with Petitioner's consistent and longstanding allegations abound—it is hard to imagine a case the circuit court would find sufficient.

D. The New Evidence Impeaches The Detectives In Several Other Ways.

The three detectives would be subject to withering impeachment at a new suppression hearing based on evidence that they used abusive tactics in the interrogation of others. But this is not the only impeaching evidence in this case: there are several other factors undermining the credibility of the detectives that further supports Petitioner's right to a new suppression hearing. *People v. Galvan*, 2019 IL App (1st) 170150, ¶ 68 (framing the central inquiry as "whether those officers' credibility at petitioner's suppression hearing or at trial might have been impeached").

1. The Detectives' History Of Abusing Juveniles.

The circuit court erred in determining that evidence regarding the "treatment of juveniles" was "not on point" because Petitioner "was not a juvenile." A816. In fact, the pattern and practice evidence concerning juveniles is relevant because minors who implicated Petitioner in this case alleged, at the suppression hearing, that the detectives abused them. Surely, new evidence showing that the detectives also abused other minors is relevant and would likely change the result of a new suppression hearing, since the new evidence bolsters their claims of abuse and undermines the credibility of the detectives.

Sisson and Moore were minors at the time of the suppression hearing. A816. Sisson testified that he implicated Petitioner because the detectives interrogating him said they would "smack the shit out of [him]" if they did not hear what they wanted. A875. Moore said he testified falsely to the grand jury "because [he] was scared" and the detectives were "hitting [him] so [he] said what they wanted to hear." A1312.

Since the suppression hearing and trial, new evidence that the detectives abused minors has emerged. For instance, Boudreau and Halloran "solved" two murders "with confessions from two . . . teenagers" with intellectual disabilities, Fred Ewing and Darnell Stokes, who were later acquitted because no physical evidence linked them to the murders. A1369. In another case, Halloran took the Fifth Amendment when asked about abusing a minor named Tyrone Reyna. A1475-76, 1493-94.[11] And Reyna's mother has testified that she was not allowed to be present while he was questioned because officers "made [her] leave." A1837. In yet another case, Boudreau coerced confessions from two minors—Terrill Swift and Harold Richardson—who were later exonerated by DNA evidence. A1945, 1950-51; A1892-93. Boudreau also admitted that he was formally reprimanded for interrogating a juvenile without an adult present. A488.

The circuit court did not just disregard this evidence, but actively prevented additional such evidence from entering the record. During the evidentiary hearing, Petitioner was prepared to call Maxine Franklin, the mother of a young man who confessed but was later exonerated, to testify that Boudreau denied her access to her minor son during his interrogation. A758. The circuit court found this testimony irrelevant because Petitioner was not himself a juvenile and so denied her the opportunity to testify. A762. Thus, the circuit court refused to even consider whether the "officers' credibility at the suppression hearing might have been impeached as a result" of this testimony. *People v. Harris*, 2021 IL App (1st) 182172, ¶ 50. This too was error.

[11] Tyrone's last name is spelled "Ruina" rather than "Reyna" in the transcript. A1475-76, 1493-94.

2. Contradictory Statements By Halloran.

The circuit court also erred in ignoring two of Halloran's inconsistent statements over the years, even though they greatly undermine his credibility and would cast his testimony in an entirely new light at a suppression hearing held today. Indeed, these inconsistencies support an inference of perjury.[12] *First*, at the suppression hearing, Halloran testified that he did not recall who transported Petitioner to Area 1. A1025; A587. But more than twenty years later at the evidentiary hearing, he testified that he did in fact transport Petitioner back to Area 1 along with Boudreau and two other officers. A562-63. This is important because Petitioner has consistently testified that Halloran was in the car and that he was abused while being transported to the station. A901-04 (testifying at the suppression hearing that Boudreau's partner—*i.e.*, Halloran—rode in the car with them); A152-53 (testifying at the evidentiary hearing that Halloran was in the car and "smacked" him in the mouth). *Second*, at the evidentiary hearing, Halloran said that he was not present during Petitioner's court-reported statement to ASA Lambur and Boudreau. A575, 606. At trial, however, he said Petitioner "informed [him]" about his bloodied clothes during the late evening hours of October 21 to the early morning hours of October 22—the time of the court-reported statement. A1321; A606-10. The State, in closing, even admitted that Halloran was there when "they took the court reported statement from Clayborn Smith." A1341. When asked to explain this inconsistency—specifically, how he learned about the bloodied clothes if not during the court-reported statement—he said "I can't recall."

[12] Under 720 ILCS section 32-2(a): "A person commits perjury when, under oath or affirmation, in a proceeding or in any other matter where by law the oath or affirmation is required, he or she makes a false statement, material to the issue or point in question, knowing the statement is false."

A612.[13] The circuit court erred in declining to consider whether Halloran's "credibility at petitioner's suppression hearing . . . might have been impeached" as a result of these inconsistencies. *People v. Galvan*, 2019 IL App (1st) 170150, ¶ 68; *see also People v. Zurita*, 295 Ill. App. 3d 1072, 1077-78 (1998).

3. Contradictory Statements Regarding Petitioner's Shoes.

There were also four marked inconsistencies in the detectives' testimony concerning Petitioner's shoes and socks. *First*, Petitioner testified at the suppression hearing that the detectives took his shoes and socks. A911-12. Meanwhile, both Boudreau and Halloran testified otherwise, stating that while they took his shoes, they left his socks with him. A1066, 1023. But at the TIRC evidentiary hearing, Halloran acknowledged they took both the shoes and socks when he was confronted with the lab report, which shows that both the shoes and socks were tested. A728, 2195-98. *Second*, at the evidentiary hearing, Boudreau said he did not believe they gave Petitioner a second pair of shoes to wear, A450-51, while Halloran said they did, A730. *Third*, at trial, Halloran testified that he took Petitioner's shoes "[b]ecause they appeared to have blood on them." A1319. But at the evidentiary hearing, when he struggled to identify any blood on the shoes, Halloran offered a new reason for taking them: that Karen Tate said Petitioner wiped blood off the shoes. A723-24. But Tate's 1996 affidavit contradicts this new revelation. A1563 at ¶¶ 2-4 (stating that "[the detectives] had gotten some shoes that they had found blood on and asked me did

[13] The detectives also gave inconsistent testimony about Halloran's presence at a pre-statement interview. At the suppression hearing, Halloran said he interviewed Petitioner for about an hour at 8 p.m. on the 21st and that he was not there for the 10 p.m. interview with ASA Lambur. A1037-38. At the evidentiary hearing, however, Boudreau stated that Petitioner "g[a]ve a statement to me and my partner [Halloran] approximately around 10 [p.m.]." A456.

they belong to Mr. Smith and I said no."). *Finally*, the detectives have continued to misrepresent the laboratory report findings. The findings make clear why Halloran struggled to find blood on the shoes—there was not even enough blood to produce conclusive results. The report states only that there were positive results "for the presence of blood" and it did not note—as it did for the other tested items—that the results indicated the "presence of *human* blood." A2196. It also explained that "further testing [of the shoes] was precluded due to insufficient amount of sample." *Id*. Despite this, Halloran doubled down on his statement that the shoes had human blood on them. A567. These inconsistencies would help change the outcome of a new suppression hearing by undermining the detective's credibility even further.

4. O'Brien's Presence At Area 1.

The new evidence corroborates Petitioner's allegation that O'Brien was present at Area 1 during his interrogation and undercuts O'Brien's contrary testimony (1) by showing it was O'Brien's *modus operandi* to claim he was not present during interrogations when other suspects alleged abuse, and (2) by demonstrating inconsistencies in O'Brien's timecard. This evidence casts O'Brien's testimony at the original suppression hearing—when he denied being present at Area 1 during Petitioner's interrogation—in a new light. The evidence would support a different result at the suppression hearing.

O'Brien has a history of claiming he was not present during interrogations of suspects who claim he abused them. He testified that he never interviewed Oscar Gomez, A1822, but Gomez testified that O'Brien interrogated him and put a gun to his head, A1759-60. Similarly, O'Brien says he did not interview Nevest Coleman, A355, while Coleman testified that an officer fitting O'Brien's description called him a "lying-assed [n-word]"

and hit him in the face with a closed fist. A2074-77.[14] O'Brien denied being present during Fred Ewing's interview. A364. Yet, Ewing filed a complaint against a group of detectives, including O'Brien, alleging that they used "psychological coercion and physical coercion to obtain a confession" from him. A1603. All three of these suspects were either acquitted or exonerated by DNA evidence. A363; A2441-43; A343, 347.

In addition, a time card showing O'Brien's whereabouts further undermines his credibility. During the original suppression hearing and again during the evidentiary hearing, O'Brien testified that he was attending in-service training at another location when Petitioner was in custody and so could not have abused him. A790, 803. Though he claimed a time card would support this story, the time card was *not* offered into evidence during the original suppression hearing. A821; A325. At the evidentiary hearing, O'Brien testified that a slash indicates being on duty and "IST" indicates in-service training; he further explained that being in in-service training was considered being on duty. A335. If that's the case, however, both a slash and an "IST" designation should be on all three days from October 19-21 as those are the days O'Brien says he attended in-service training; however, the October 19th box shows only "IST," while the boxes for October 20th and 21st (when Petitioner was in custody) have both "IST" and a slash. A2349. This suggests, contrary to O'Brien's testimony, that an IST designation would not necessarily be accompanied by a slash showing the officer was on duty. When asked to explain this issue at the evidentiary hearing, O'Brien said only "I don't create these records." A335.

[14] Nevest Coleman is referred to as "Nevin Coleman" in the transcript from the evidentiary hearing. A355.

It is certainly a reasonable inference that this discrepancy, which occurs only on the days Petitioner was in custody, was no coincidence and that O'Brien was in fact on duty in Area 1 on October 20th and 21st – and only added the IST designations after the fact. This is a particularly reasonable inference in light of the *modus operandi* evidence showing that O'Brien has a history of disclaiming his presence during abusive interrogations. In sum, this new evidence undermines O'Brien's testimony at the original suppression hearing and is therefore likely to change the outcome of a new suppression hearing.

5. Inconsistencies Between Petitioner's Statement And The Crime Scene

The inconsistencies between the confession and crime scene further support Petitioner's longstanding assertion that Boudreau fed him details of the crime. As Petitioner explained, during the interrogation, Boudreau "creat[ed] all of these different scenarios of how he knows that he thinks this crime happened," A245, and so during the court-reported statement, Petitioner "regurgitat[ed] them back from the best of [his] knowledge," A270. Boudreau interjected throughout the statement and prompted certain comments. A264. We now know from former ASA Johnson that Boudreau did this during other interrogations. As Johnson explained, "Boudreau wanted to rehearse the responses from the subject" before the court reported statement, and "often corrected the subject's responses" during the interview. A2184. This explains why Petitioner's statement contained several key statements at odds with the crime scene: He was not familiar with the crime and had only second-hand knowledge of it from Boudreau.[15]

[15] Research shows that law enforcement can "contaminat[e]" confessions by "leaking and feeding facts" to the suspect. Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1066 (2010). These leaks may include "mistaken facts due to [the officer's] incomplete knowledge about the crime scene evidence" at the time of the

Petitioner has long maintained that the inconsistencies between the crime scene and his statement were a product of being fed some details of the crime by Boudreau but not knowing the rest. These inconsistencies include the following. *First*, Miller Tims suffered 17 lacerations. A620; A1-5, 18-19. Petitioner's statement does not say a thing about stabbing Miller with a knife. A621. The closest thing in the statement is Petitioner stating that he "poked" Miller with a pronged fork—which could hardly cause 17 lacerations. *See* A1292; A3. *Second*, an arson investigator determined that there were "two separate and distinct points of origin [for the fire] with no communication what-so-ever between the two points." A1-5, 22. But Petitioner's statement mentions only one fire. A1297-98. *Third*, Ruby Bivens was found with a "telephone . . . cord wrapped around her neck." A1-5, 24. The confession makes no mention of this particularly vivid detail despite going into detail about other aspects of the crime. *Fourth*, Bivens' body was in a bedroom, A1129, but the confession states it was in the kitchen, A1148-51.

At this stage, the circuit court rightly noted that it must consider "old evidence with the new" in determining whether the outcome of the suppression hearing likely would have been different. A822. In light of the new evidence showing Boudreau's history of coaching confessions, the old inconsistencies between Petitioner's confession and the crime scene take on greater significance. That is, it becomes clear that the inconsistencies come from Petitioner improvising a confession based on limited information from Boudreau and without actual knowledge of the crime.

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interrogation. *Id*. at 1083. In fact, one study showed that the "vast majority of the[] exonerees [in the study] made statements in their interrogations that were contradicted by crime scene evidence." *Id*. at 1087.

E. The Circuit Court Incorrectly Analyzed ASA Lambur's Testimony.

The circuit court considered the impact of the new evidence on ASA Lambur's testimony at the suppression hearing, holding that "the pattern and practice evidence did not cast Lambur's testimony in a negative light" and that her testimony "was essential to the outcome of the suppression." A824.

In fact, the new evidence does undercut ASA Lambur's credibility. First, ASA Johnson has since told the FBI in another case from the 1990s that "the detectives coached and fed the subjects information during the court reported and handwritten statements." A2183. Boudreau specifically "rehearse[d] the responses from the subject" and "often corrected the subject's responses," A2184. Johnson further explained that the detectives "circulated a document that detailed what the detectives and ASAs should say when questioned regarding the circumstances of the . . . investigation" so that "they all would provide a consistent statement." A2185. This evidence of detective and ASA behavior—during the same time period that Lambur worked on Petitioner's case—undercuts her testimony.

Second, the evidence underscores Lambur's involvement in previous cases where confessions were obviously false. Notably, she prosecuted a case where Boudreau and Halloran interrogated and elicited a confession from Peter Williams that also implicated Harold Hill and Dan Young. A416-17, 1706-10, 1722-24. Later, it came out that Williams' confession was false: He was in jail at the time of the crime. A416-17. Even though Williams' statement implicating Hill and Young was obviously false, Lambur prosecuted them anyway. A1371; *see also* A417-18, 437-38, 1871. Unsurprisingly, both of these men were later freed based on DNA evidence. A438. This new evidence further affects Lambur's credibility.

Even if ASA Lambur's testimony were untouched by the new evidence, however, it makes little difference. At this time, "the questions are (1) whether any of the officers who interrogated petitioner may have participated in systematic and methodical interrogation abuse and (2) whether those officers' credibility at petitioner's suppression hearing or at trial might have been impeached as a result." *People v. Galvan*, 2019 IL App (1st) 170150, ¶ 68. One must not "ignore[] the plethora of evidence that corroborates petitioner's claim of torture," *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 64, but that is exactly what the circuit court did when it found the new evidence insufficient to warrant a new suppression hearing based on its relation to ASA Lambur's testimony. This analysis is particularly surprising as the great weight of the abuse occurred outside her presence and, as ASA Lambur herself acknowledged, she has little idea what happened between Petitioner and the detectives when she was not there. A433-34.

* * *

Almost two decades later: Petitioner's allegations remain consistent. The newly discovered evidence of systemic torture by Boudreau, Halloran, and O'Brien and the pervasive inconsistencies in the state's case entitle Petitioner to a new suppression hearing. The circuit court was wrong to find otherwise. To obtain a new hearing, the petitioner's burden "does not require him to prove that his confession actually resulted from coercion." *Wilson*, 2019 IL App (1st) 181486, ¶ 51. Rather, he "has the burden of showing only that newly discovered evidence *would likely have* altered the result of a suppression hearing." *Id.* at ¶ 52 (emphasis in original). At minimum, he presented evidence sufficient to meet that standard.

The Court Should Order Petitioner's False Confession Suppressed.

The relief granted in a TIRC evidentiary hearing need not be limited to a new suppression hearing—suppression itself can be the remedy. *People v. Wilson*, 2019 IL App (1st) 181486, ¶¶ 48-55. Suppression is appropriate if, at the TIRC hearing, it becomes apparent that the state would be unable to "prov[e] petitioner's statement was voluntary" at a new suppression hearing. *Id.* at ¶¶ 54-55.

IV.

In this case, the Court should order suppression outright. Given the consistency of Petitioner's testimony over a quarter-century, the confirmation of his account provided by Tate and Sisson, the flagrant inconsistencies between his confession and the crime itself, and the overwhelming evidence of a systemic pattern of torture by Boudreau, Halloran, and O'Brien, the state could not carry its burden at a new suppression hearing to demonstrate that the confession was voluntary. Therefore, this Court should order Petitioner's confession suppressed.

CONCLUSION

This Court should order suppression or grant a new suppression hearing.

Respectfully Submitted,

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. CLAYBORN SMITH, Petitioner-Appellant.	)))))))	Appeal from the Circuit Court of Cook County Criminal Division 92 CR 25596 The Hon. Alfredo Maldonado, Judge Presiding

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matter appended to the brief under Rule 342(a), is 49 pages.

s/ David M. Shapiro

David M. Shapiro

No. 1-20-1256

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PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee,	)	Appeal from the Circuit Court of Cook County Criminal Division
v.	)	92 CR 25596
CLAYBORN SMITH, Petitioner-Appellant.	)	The Hon. Alfredo Maldonado, Judge Presiding

PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

On June 30, 2021, the foregoing Corrected Brief of Petitioner-Appellant was filed with the Clerk of the Appellate Court using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system.

s/ David M. Shapiro
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