Case No. 127952

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-16-3024
Respondent-Appellee,	)	
v.	)	There heard on Appeal from the Circuit Court of Cook County, Illinois, No. 93 CR 14676
WAYNE WASHINGTON,	)	
Petitioner-Appellant.	)	The Honorable Domenica Stephenson, Judge, presiding.

BRIEF OF PETITIONER-APPELLANT WAYNE WASHINGTON

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NATURE OF THE CASE

No one disputes that Appellant Wayne Washington is innocent of the murder for which he was convicted. Nonetheless, the Circuit Court denied Washington a certificate of innocence, and the Appellate Court affirmed. Washington appeals with leave of this Court. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. When a person who sensibly pled guilty to a crime later proves their innocence, does the guilty plea categorically prohibit a court from granting a certificate of innocence?
2. When an innocent person subjected to an illegal and coercive interrogation gives a false confession, is that their fault such that the false confession prohibits a court from granting a certificate of innocence?

JURISDICTIONAL STATEMENT

Rule 315 confers jurisdiction. The appellate court issued its decision on June 28, 2021, affirming the Circuit Court's judgment denying the petition for a certificate of innocence. A timely petition for rehearing was filed on July 19, 2021, and the appellate court issued an order denying the petition on November 12, 2021. Washington filed a Petition for Leave to Appeal in this Court on January 12, 2022, and this Court granted leave on March 30, 2022.

STATEMENT OF FACTS

A. Washington's Arrest And False Confession

Appellant Wayne Washington was arrested out of the blue on May 27, 1993, seemingly because he happened to be in the same store when police arrived to arrest his ultimate co-defendant, Tyrone Hood. This was the second time that Hood had been arrested for the

murder of Marshall Morgan, Jr. A.398; A.408-09; A.327, 329, 341. The first time Hood had told the police he did not commit this crime and that an individual named "Wayne" could confirm his alibi. A.311. Washington, then nineteen years old, had no previous arrests. A.86; A.415-20.

Washington was taken to the police station and handcuffed to a chair while former subordinates of Jon Burge, notorious for abusing suspects—John Halloran and Kenneth Boudreau—interrogated him, beat him, and repeatedly kicked his chair over. A.409-10; A.320. James O'Brien, another infamous Burge subordinate, was also involved in the investigation and witness interrogations. After enduring this abuse for an extended period, and being held for at least a day and a half, Washington signed a written statement containing information fed to him by the police and falsely confessing to the murder of Marshall Morgan, Jr. A.414-15.

The only information tying Washington to the murder was his own coerced statement and the coerced statement of Jody Rogers. Rogers implicated Washington because detectives abused him and threatened to charge him with the murder. A.101. He repudiated his statement shortly thereafter. A.101-02, 114, 116. Rogers' statement was obtained by the same detectives. A.95.

B. Washington's First Trial And Guilty Plea Before His Second Trial

At Washington's trial, the jury was unable to reach a verdict. A.421. On the morning he was to be retried, Washington spoke with Hood, his equally innocent co-defendant, who was about to be transferred to IDOC to serve the 75-year sentence Hood received following his conviction at trial. A.420. Hood told Washington that "he was praying for [him]." A.420. Washington knew that he could not spend 75 years in prison, so, despite his innocence, he took a plea deal that included a 25-year sentence (with the time to be served

at 50%). A.421. To Washington, the plea deal meant that after serving his sentence, he would still have "a chance at a life." A.531 ¶ 15.

C. Washington's Exoneration And Undisputed Innocence

On February 9, 2015, the State moved to vacate both Hood's and Washington's convictions and grant the two men a new trial. A.529 ¶ 6. The State proceeded to dismiss all charges. *Id.*

Today, no one disputes Washington's innocence. The victim's father, Marshall Morgan, Sr., killed his son to collect on a life insurance policy. A.82-84; A.131. Morgan, Sr. is a twice-confessed and convicted murderer: first, in 1977, of his friend, William Hall, who owed him $700; and later, in 2001, of his fiancée, Deborah Jackson, on whom he had taken out a life-insurance policy, which he collected after killing her. [*See* A.125; A.146-49.] He also likely killed another girlfriend, Michelle Soto, on whom he had also taken out a life-insurance policy; after her death, Morgan, Sr. collected on the life insurance policy and fraudulently sold Soto's home. A.133; A.160. Both Jackson and Soto were "shot and left to die, partially nude, inside the rear of [their] own car[s]." A.2.

The modus operandi of these murders strongly implicates Morgan, Sr. in the murder of Morgan, Jr. Like the other victims, Morgan, Jr. was a family member or friend of Morgan, Sr. Like Jackson and Soto, Morgan, Jr. was shot and found partly nude in his own car. A.69. Like Jackson and Soto, Morgan, Jr. was the subject of a life-insurance policy on which Morgan, Sr. collected immediately after his death. A.74. And the policy on Morgan, Jr. is all the more damning given that Morgan, Jr. was a healthy teenage college basketball player and that Morgan, Sr. had been estranged from him for over fifteen years at the time he took out the policy. A.196; A.67.

D. Washington's Petition For A Certificate Of Innocence In The Circuit Court

One week after the Circuit Court vacated his conviction, Washington filed a petition for a certificate of innocence. The State did not oppose the petition. A.3 ¶ 10, A.4 ¶ 18.

1. Evidence Of Washington's Coerced Confession At The Certificate Of Innocence Hearing

At the hearing on his certificate of innocence, Washington presented uncontroverted evidence showing that he confessed falsely because notorious confederates of Jon Burgecoerced his confession. At the hearing, the State did not ask a single question, offer any evidence, or present any witnesses. A.377, A.402, A.421, A.443. Washington's evidence showed the following:

Washington testified that he was initially arrested along with Hood, and "wrestled to the [police car]"; he then "was locked in [a] room for four and a half hours before anybody said anything to [him]." A.410. After those four-and-a-half hours elapsed, the officers announced that "they didn't like that police station" and transported Washington, along with Hood, to a different station; Washington observed that Hood "already looked like he had been beaten up." *Id.* At the new police station, Washington had "both hands handcuffed to the handles of [his] chair" and was again "left in there for a couple of hours." A.411. After those couple of hours elapsed, Detective Boudreau came in and "started . . . telling [Washington] about the murder." *Id.*

When questioned, Washington told Detective Boudreau that he "didn't know anything about a murder." A.412. But Detective Boudreau was not satisfied with that answer. Washington described what happened next: "I was pushed around, slapped around. The chair was knocked over a few times, picked back up, knocked over again. And they kept on telling me to tell them about a murder." *Id.* Amid this abuse, Washington recounts, the

officers made clear how he could obtain his freedom: "The police [told] me basically everything everybody else said and what everybody else said to go home. And if I said the same thing, I could go home too." A.415. Under these circumstances—after spending seven hours handcuffed alone to a chair, then being beaten and told a confession would be the ticket to freedom—Washington gave a false confession. Washington's testimony about this abuse was uncontroverted.

In addition to his own undisputed testimony, Washington also submitted evidence that the detectives physically abused other witnesses in this case. Hood, Washington's co-defendant, "was slapped to his head, with an open hand, by [Detective] Halloran," and another detective "put a gun in [his] face." A.52. Terry King, another suspect in Washington's case, was struck by three detectives who then "stepped on his penis" and "threw him to the floor, stepped on his neck and put a gun in his mouth"; the City of Chicago later settled a lawsuit by King regarding his abuse. A.198. And the same group of detectives held Joe West, another suspect in Washington's case, for "many hours," during which they "pointed [a] gun at various parts of Joe's body" and "kept yelling at him 'you did it, we know you did it just tell us how it happened.'" A.176. All this evidence was also undisputed.

In addition, Washington introduced uncontroverted evidence that Boudreau, Halloran, and O'Brien engaged in a systemic pattern of physically abusing suspects. The record in this case contains the expert report of former Chicago Police Superintendent Richard Brezezek, who concluded that a "pattern of investigative malpractice on the part of these detectives [Boudreau, Halloran, and O'Brien] is significantly and obviously present in this investigation." A.94, 95, 97. According to Superintendent Brezezek: "Kenneth Boudreau,

John Halloran and/or James O"Brien . . . have been previously identified as engaging in patterns of similar coercive conduct." A.95.

Washington's submissions included specific, detailed allegations of abusive conduct by Detectives Boudreau, Halloran, and O'Brien in over twenty cases; invariably, the allegations accuse the detectives of "holding persons in custody for extended periods of time, physically abusing and threatening to lodge charges against witnesses, withholding food, and denying access to an attorney." A.221; *see also* A.220-34. Among the allegations: a man who "was hit in the face, stomach, and side, including with a flashlight," by Detectives Boudreau and Halloran, A.226; a man who was "handcuffed to a wall, beaten and electro-shocked" by Detectives O'Brien and Boudreau, A.225; a man who was "grabbed . . . by the neck" and forced to identify a particular suspect in a lineup by Detective O'Brien, A.222; a man who was "forcefully grabbed . . . by the neck and choked" by Detective Boudreau, A.227; a man who was "kicked and slapped about the face and body and choked during 30 hours of interrogation by Detectives Boudreau, O'Brien, and Halloran," A.228; a man who was "smacked on the face and head and punched in the ribs by Boudreau and Halloran," A.228-29; and a man who was "interrogated for more than 36 hours, during which time he was slapped, kicked, and punched in the face and body by Boudreau [and] Halloran," A.230. Most of these cases produced false confessions, and in several related civil suits the detectives have refused to answer questions and invoked their Fifth Amendment right against self-incrimination. A.220-34. This evidence was also undisputed.

Finally, Washington submitted evidence showing that the detectives had taken the Fifth Amendment to avoid answering questions about whether they beat him into confessing. In

other proceedings, Detective Halloran asserted the Fifth Amendment right against self-incrimination in response to questions about whether he struck Washington during his interrogation. A.171-73. Detective Halloran took the Fifth, again, in response to questions about whether he struck Hood, whether he pointed a gun at Hood's head during his interrogation, whether he observed another detective point a gun at Hood's head during his interrogation, whether he fabricated an incriminating statement by Hood, and whether he struck Jody Rogers, the supposed witness who incriminated Washington and later recanted. A.163-68. Likewise, Detective O'Brien asserted his Fifth Amendment right against self-incrimination in response to questions about whether he struck Joe West, whether he observed Detective Halloran strike West, whether he struck Hood, whether he observed injuries to Hood's face during his interrogation, whether he pointed a gun at Hood during his interrogation, whether he fabricated an incriminating statement by Hood, whether he observed Detective Boudreau repeatedly beat Hood, whether he observed Detective Halloran repeatedly beat Hood, and whether he had a conversation with Detectives Halloran and Boudreau about getting Hood to give a false confession. A.180-90.

2. The Circuit Court's Demand For Material Outside The Record

After the close of evidence in Washington and Hood's certificate-of-innocence hearing, the Circuit Court demanded that they provide extra-record materials from the original criminal proceedings, including the transcript of Hood's trial and the transcript of Washington's testimony at his suppression hearing and first trial. A.448; A.257. Over the objection of Washington and Hood, the Circuit Court *sua sponte* announced its intention to take judicial notice of these materials after the close of evidence, even though no party had submitted these materials into evidence. A.448.

3. The Circuit Court's Denial Of A Certificate Of Innocence Based On Material Outside The Record

Although no party objected to Washington's petition for a certificate of innocence, the Circuit Court denied it *sua sponte*. The court did not question Washington's innocence, denying the petition solely on the ground that Washington "voluntarily brought about his own conviction." A.255. First, the Circuit Court held that Washington voluntarily brought about his own conviction because he pled guilty. A.255-56. The court viewed Washington's guilty plea as a "procedural bar" to relief. A.255.

Second, the court rejected Washington's alternative argument that even if a plea ordinarily precludes a certificate of innocence, Washington had little choice but to plead guilty because the police coercively extracted a confession from him, which the prosecution would use to secure a conviction if Washington insisted on a trial. A.256. In rebuffing this contention, the court relied entirely on Washington's decades-old testimony at his suppression hearing and first trial, material that the court considered over Washington's objection that it was not in the record and had not been offered into evidence. A.448; A.257. Based on perceived discrepancies between Washington's previous, extra-record testimony and his testimony at the certificate-of-innocence hearing, the Circuit Court found his claims of physical abuse non-credible. A.257.[1]

The Circuit Court also denied Hood's petition for a certificate of innocence. *People v. Hood*, 2021 IL App (1st) 162964 ¶ 17. As in Washington's case, the Circuit Court relied

[1] As Washington recently described, his lack of a certificate of innocence affects him in several ways, including by preventing him from being approved to chaperone his daughter's fieldtrips and from passing employment background checks. *See* *https://www.cbsnews.com/chicago/news/wayne-washington-wrongfully-convicted-innocence-certificate/*.

heavily on transcripts of the original criminal proceedings, which no party introduced into evidence. *Id.* ¶ 32.

E. Appellate Court Proceedings

Washington and Hood both appealed to the First District, and their appeals were consolidated. A.529.[2] The State did not oppose either appeal. In Washington's case, the Appellate Court affirmed the denial of a certificate of innocence. Like the Circuit Court, the Appellate Court did not question Washington's innocence, explicitly stating that its refusal to grant a certificate of innocence was "not an issue of whether Washington proved by a preponderance of the evidence that he is innocent." A.535 ¶ 27.

Instead, the First District majority adopted a categorical rule that precludes innocent people who plead guilty from obtaining certificates of innocence: "A defendant who has pled guilty 'cause[d] or [brought] about his or her conviction' and is not entitled to a certificate of innocence." A534 ¶ 25 (quoting 735 ILCS 5/2-702(g)(4)).

While that categorical holding sufficed to resolve the case, the Appellate Court also set forth an alternative ground, opining that Washington caused his own conviction because he failed to show that detectives extracted his confession through coercion. A.534-36 ¶¶ 26, 29. The majority ignored Washington's argument that the Circuit Court improperly relied on extra-record materials to discredit Washington's testimony that he was physically abused into confessing.

Justice Walker dissented. Whereas the majority posited that a guilty plea categorically precludes a certificate of innocence, Justice Walker explained that "a guilty plea should

[2] Because the certificate-of-innocence hearings in *Washington* and *Hood* were combined, A.359, and because the cases were consolidated on appeal, A.529, excerpts from both records are included in the appendix.

foreclose relief only when the person falsely accused culpably misled police or other officials." A.543 ¶ 48 (Walker, P.J., dissenting). Justice Walker also concluded that Washington deserved a certificate of innocence because he "proved by a preponderance of the evidence from multiple witnesses . . . that police used physical coercion and threats to obtain [his] wrongful conviction." A.541 ¶ 43 (Walker, P.J., dissenting). Justice Walker faulted the Circuit Court for disregarding Washington's compelling evidence of coercion on the basis of decades-old testimony that appears nowhere in the record: "Washington deserves an answer as to why the circuit court may find him not credible based on evidence no party presented, where the circuit court does not even permit Washington to respond to the evidence the circuit court found." A.540-41 ¶ 42 (Walker, P.J., dissenting).

More fundamentally, Justice Walker asserted that majority opinion threatened to "continue[] the difficulty associated with the too many wrongful accusations against black and brown people. Wrongful convictions and accusations like these can devastate families, foreclose career opportunities, and undermine the integrity of our justice system." A.544 ¶ 50 (Walker, P.J., dissenting).

Meanwhile, the same First District panel decided Hood's case. Reversing the Circuit Court, the panel granted Hood's petition for a certificate of innocence—correctly, but also in a way that contradicts its decision in Washington's case. Not only do the decisions leave two equally innocent codefendants in vastly different circumstances, but the appellate decision in *Hood* reversed the Circuit Court for considering transcripts from the original criminal proceedings that were not in evidence—the same error that the majority ignored, over Justice Walker's dissent, in this case. In *Hood*, the Appellate Court reversed the Circuit Court because "it was error for the circuit court to rely on prior sworn testimony at

Hood's underlying criminal trial in reaching its decision because that testimony was not offered or placed in evidence." 2021 IL App (1st) 162964, ¶ 32. As the Appellate Court explained in *Hood*, the Circuit Court had "embark[ed] on its own fact-finding mission, independently research[ing] the record and history of the original criminal proceedings to inform and influence its judgment in the certificate of innocence proceeding." *Id.* This expedition "create[ed] an inherent tension and conflict with the circuit court's role as an independent, disinterested fact finder." *Id.*

Washington sought and obtained this Court's leave to appeal.

ARGUMENT

A. Summary Of Argument

Washington's guilty plea does not preclude a certificate of innocence. Washington's innocence is obvious and unquestioned. Contrary to the First District majority, a guilty plea does not automatically prevent an innocent person from obtaining a certificate of innocence. The Court should adopt the standard urged by Justice Walker in dissent: "[A] guilty plea should foreclose relief only when the person falsely accused culpably misled police or other officials." A.543 ¶ 48 (Walker, P.J., dissenting).

If the legislature had intended the categorical rule adopted by the Appellate Court—no certificates of innocence for all innocent people who plead guilty—it would have said so in the statute itself, as certain other states have chosen to do. Moreover, categorically denying certificates of innocence to people who plead guilty directly contradicts the intent of the certificate of innocence statute in three ways.

First, the legislature acted to sweep away "a variety of substantive and technical obstacles in the law" that prevented innocent people from obtaining certificates of innocence. 735 ILCS 5/2-702(a); *People v. Palmer*, 2021 IL 125621, ¶ 54. The First

District majority turned the statute on its head by inventing a new and damaging "obstacle in the law" that would automatically bar certificates of innocence for nearly one-fifth of exonerees. *See People v. Reed*, 2020 IL 124940, ¶ 33. This newly minted barrier to restoring one's name radically breaks with settled practice: At least 77 Illinoisans who pled guilty have already obtained certificates of innocence, sometimes even receiving judicial commendation for the "the sacrifice [they] made in their effort to bring the rule of law to Chicago." *People v. Glenn*, 2018 IL App (1st) 161331, ¶ 22 (Neville, J.).

Second, the Appellate Court's rule contradicts the intent of the statute by denying relief to people like Petitioner who plead guilty through no fault of their own. The purpose of the certificate of innocence statute "is to benefit 'men and women that have been falsely incarcerated through no fault of their own.'" *People v. Dumas*, 2013 IL App (2d) 120561, ¶¶ 18-19). Washington is the archetypal example of an exoneree who cannot be faulted for pleading guilty. Washington first pled not guilty, but after the jury hung at his first trial and another jury convicted his innocent co-defendant, he quite sensibly changed his plea to guilty to avoid a *de facto* life sentence.

Third, the General Assembly enacted the certificate-of-innocence statute to provide job training, mental health services, and other benefits to the wrongfully convicted. It makes no sense to condition these benefits on whether one went to trial: the wrongfully convicted need these benefits regardless of how they happened to plead.

Excluding innocent people who plead guilty from the reach of the statute not only contravenes legislative intent but creates an equal protection problem. An arbitrary distinction between innocent people based on the vagaries of plea bargaining would flunk

rational basis review. To avoid that constitutional infirmity, the Court should interpret the statute to protect innocent people who plead guilty.

In any event, the ultimate vacatur of Washington's conviction reduced the plea to a nullity. *See People v. Shinaul*, 2017 IL 120162, ¶ 14. It therefore cannot provide a basis to deny him a certificate of innocence. On top of that, Washington could not have given a knowing and voluntarily waiver of his right to seek a certificate of innocence. When he pled guilty in 1996, Washington could not have foreseen that the legislature would authorize certificates of innocence over a decade later, so he could not have knowingly relinquished his right to seek one under a *future* statute.

The First District majority and the Circuit Court also erroneously discounted Washington's evidence that detectives coerced his confession. The coercion used by the detectives to wrench a false confession out of Washington further undermines any argument that his guilty plea precludes a certificate of innocence. Having given a false confession due to physical abuse, he had little choice but to accept a plea offer.

As Justice Walker correctly explained in his dissent, "Washington proved by a preponderance of the evidence from multiple witnesses . . . that police used physical coercion and threats to obtain [his] wrongful conviction." A.541 ¶ 43 (Walker, P.J., dissenting). Washington presented overwhelming evidence that three notorious former subordinates of John Burge extracted his false confession through physical abuse. This evidence was entirely uncontroverted: the State did not present evidence or witnesses, or even ask a single question at the certificate-of-innocence hearing.

The courts below disregarded Washington's evidence of physical abuse based on transcripts that were not properly in the record and that no party sought to admit as

evidence. Relying on this extra-record material constituted a clear legal error. In addition, both the Circuit Court and the Appellate Court erred by refusing—without explanation—to draw an adverse inference from the detectives' assertion of the Fifth Amendment in response to all questions about whether they physically abused Washington and Hood.

Finally, even ignoring Washington's testimony about physical abuse and assuming for the sake of argument that the detectives interrogated him *without* violating the Constitution, Washington still cannot be faulted for giving a false confession in the face of a prolonged police interrogation. "Custodial interrogation is, of course, inherently coercive and 'trades on the weakness of individuals.'" *People v. Braggs*, 209 Ill. 2d 492, 513 (2003) (quoting *Dickerson v. United States*, 530 U.S. 428, 435 (2000)). In the certificate-of-innocence statute, the General Assembly intended to authorize certificates of innocence for innocent people who were not at fault for causing their own convictions. There is simply no plausible scenario in which Washington can be faulted for giving a statement implicating himself after a prolonged series of interrogations designed to make him do just that.

B. Standard Of Review

This Court's review is *de novo* because this appeal presents issues of law. *People v. Woodrum*, 223 Ill. 2d 286, 300 (2006).

C. Washington's Innocence Is Manifest And Unquestioned.

Washington's innocence is not disputed, nor could it be. The State itself moved to vacate Washington's conviction and then dismissed the case. A.529 ¶ 6. The State did not oppose the petition for a certificate of innocence, nor did it participate in any way in Washington's appeal from the Circuit Court's denial of a certificate of innocence. A.530 ¶ 10, A.531 ¶ 18. In fact, the State wrote a letter to the Appellate Court stating that it would not be "a party to these appeals." A.520. As the First District majority put it, "this is not an

issue of whether Washington proved by a preponderance of the evidence that he is innocent." A.535 ¶ 27.

The First District granted a certificate of innocence to Washington's co-defendant, Hood, summarizing the overwhelming evidence that inculpated Morgan, Sr., and thereby exonerated Washington and Hood: "Although Morgan Sr., was in significant debt and his house was in foreclosure, he had taken a $50,000 life insurance policy out on Marshall, his healthy 20-year-old, college athlete son. Within months of his insurance application, Marshall was shot to death." *Hood*, 2021 IL App (1st) 162964, ¶ 8. This was Morgan, Sr.'s modus operandi: "Hood also alleged that Morgan Sr. had previously taken out a life insurance policy on a former girlfriend, who was also murdered and found in the same manner as Marshall—wedged between the front and back seats of an abandoned car." *Id.* ¶ 9. On top of that, "Morgan Sr. also confessed to murdering another girlfriend in 2001 . . . . He shoved her body into the trunk of a car." *Id.*

D. Washington's Guilty Plea Does Not Preclude A Certificate of Innocence.

1. The Appellate Court Decision Directly Contradicts Legislative Intent By Categorically Preventing Innocent People Who Plead Guilty From Obtaining Certificates Of Innocence.

"In construing a statute, our primary goal is to ascertain and give effect to the intent of the legislature." *People v. Schoonover*, 2021 IL 124832, ¶ 39. The Appellate Court's decision in this case undermines the statute's purpose in three ways. First, the legislature intended to sweep away "technical obstacles," 735 ILCS 5/2-702(a), that had prevented innocent people from clearing their names. The Appellate Court, however, turned the statute on its head by creating a new technical obstacle that prevents innocent people from restoring their good names based on the happenstance of how they pled years or decades ago. Second, the legislature intended to deny innocent people a certificate of innocence

only if their conviction was their own fault. The Appellate Court takes fault out of the equation and adopts a categorical rule that a guilty plea prohibits a certificate of innocence, regardless of fault. Third, the legislature intended to provide job training and mental health services to exonerees in need of them. Pleading guilty has nothing to do with whether an innocent person needs job training and mental health access when returning to society after years in prison. Moreover, if the legislature had wanted to prevent all innocent people who plead guilty from obtaining certificates of innocence, it would have done what several other states have done—refer to guilty pleas explicitly in the certificate of innocence statute. The Illinois legislature did not do so because it did not intend to categorically deprive innocent people who plead guilty from obtaining certificates of innocence.

a. The Appellate Court Decision Contradicts Legislative Intent By Creating A New Barrier That Prevents Innocent People From Clearing Their Good Names.

The Appellate Court invented a technical barrier that thwarts innocent people from obtaining a certificate of innocence—the very thing the General Assembly commanded courts *not* to do when it enacted the statute. In this case, there is no need to guess at legislative intent because the legislature wrote its intent into the statute:

> The General Assembly finds and declares that innocent persons who have been wrongly convicted of crimes in Illinois and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of *substantive and technical obstacles in the law* and that such persons should have an available avenue to obtain a finding of innocence so that they may obtain relief . . .

735 ILCS 5/2-702(a).

This Court recently described this exact portion of the statute as "a clear statement of legislative intent." *People v. Palmer*, 2021 IL 125621, ¶ 54. In *Palmer*, the Court rejected a restrictive reading of the certificate-of-innocence statute on the ground that it "would defeat the legislative purpose of section 2-702 by effectively imposing a technical legal

obstacle on a petitioner seeking relief from a wrongful conviction." *Id.* ¶ 65. This Court explained: "[T]he legislature plainly stated its intent to ameliorate, not impose, technical and substantive obstacles to petitioners seeking relief from a wrongful conviction." *Id.* ¶ 68.

Less than two months after *Palmer*, the Appellate Court decided this case. The Appellate Court did the very thing to Washington that *Palmer* said not to do—it "impos[ed] a technical legal obstacle on a petitioner seeking relief from a wrongful conviction," *see id.* ¶ 65, by categorically prohibiting innocent people who pled guilty from obtaining certificates of innocence. The Appellate Court failed to acknowledge *Palmer*, and it also ignored the "clear statement of legislative intent" on which *Palmer* is based. *See id.* ¶ 54.

Exonerating an innocent person of a heinous crime is among the most important decisions a court can make. As the U.S. Supreme Court has stated, "[c]oncern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system." *Schlup v. Delo*, 513 U.S. 298, 325 (1995). Denying an innocent person a certificate of innocence because they pled guilty years or decades ago is the very definition of an arbitrary "legal obstacle." *Palmer*, 2021 IL 125621, ¶ 65

This Court said as much in *People v. Reed*. There, this Court held that "a defendant whose conviction is the result of a guilty plea may assert an actual innocence claim." 2020 IL 124940, ¶ 57. Thus, "[w]hen met with a truly persuasive demonstration of innocence, a conviction based on a voluntary and knowing plea is reduced to a *legal fiction*." *Id.* ¶ 35 (emphasis added). In fact, "it is well accepted that the decision to plead guilty may be based on factors that have nothing to do with defendant's guilt." *Id.* ¶ 33. This is so because "[p]lea agreements . . . are not structured to 'weed out the innocent' or guarantee the factual

validity of the conviction." *Id.* (quoting *Schmidt v. State*, 909 N.W.2d 778, 788 (Iowa 2018)). On the contrary, "horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is." *Id.* (quoting *Missouri v. Frye*, 566 U.S. 134, 144 (2012)).

The Appellate Court created not only a "legal obstacle" to innocent people clearing their names, *see* 735 ILCS 5/2-702(a); *Palmer*, 2021 IL 125621, ¶ 54, but an entirely new one that upends both precedent and longstanding practice. Illinois courts have previously recognized that a guilty plea does not categorically prohibit issuance of a certificate of innocence. Rather, the Appellate Courts—including the First District—have held that innocent people who plead guilty can obtain certificates of innocence. Consistent with this doctrine, Illinois Circuit Courts have regularly granted certificates of innocence to people who have pled guilty. In this case, the Appellate Court threw out precedent and settled practice to slam the courthouse door on innocent people.

In *People v. Simon*, the circuit court had held that the "petitioner's guilty plea indicated that he was a willing participant in [a] corrupt scheme" to frame himself in order to free the person who had been convicted of the crime. 2017 IL App (1st) 152173, ¶ 22. The Appellate Court disagreed, "remanding the case for a hearing where petitioner has an opportunity to prove that he did not voluntarily cause his own conviction." *Id.* ¶ 31. Similarly, in *People v. Glenn*, the Appellate Court granted a certificate of innocence to Clarissa Glenn, an innocent petitioner who had pled guilty. Far from criticizing Glenn and her co-defendant for pleading guilty, the court commended "the sacrifice Glenn and [her co-defendant] made in their effort to bring the rule of law to Chicago." 2018 IL App (1st) 161331, ¶ 22 (Neville, J.).

Clarissa Glenn is but one of many innocent Illinoisans who cleared their names and restored "the rule of law," *id.*, by obtaining a certificate of innocence after pleading guilty. At least 77 innocent Illinoisans have done the same.[3] By upending this settled practice and barring innocent people who plead guilty from obtaining a certificate of innocence, the Appellate Court did the very thing that the certificate of innocence statute exists to

[3] A partial list of those who originally pled guilty but then obtained certificates of innocence since 2016 includes: Demetrius Adams, 04CR17784, Chauncy Ali, 07CR421(03), Landon Allen, 04CR 5700(01), George Almond, 06CR19708(01), Ben Baker, 06CR810(01), Deandre Bell, 06CR22073(01) & 07CR11499(01), Harvey Blair, 04CR18641, Antwan Bradley, 08CR8917(01), Darron Byrd, 07CR10335(02), Raynard Carter, 07CR10335(01) & 06CR6565(02), Bobby Coleman, 03CR2644(01), Jermaine Coleman, 06CR12908(01), Craig Colvin, 04CR14263(01), Milton Delaney, 07CR6264(01), Gregory Dobbins, 04CR8728(01), Christopher Farris, 04CR18418(01), Robert Forney, 07CR3834, Marcus Gibbs, 07CR3741(01), Marc Giles, 03CR02644(04), Leonard Gipson, 03CR2644, 03CR12414 & 07CR20496, Clarissa Glenn, 06 CR 810(02), Cleon Glover, 06CR15063(01), Stefon Harrison, 06CR24269(01) & 07CR421(02), Sydney Harvey, 06CR25232(01), Eveless Harris, 07CR10335(03), Rickey Henderson, 02CR19048, 03CR21058, 05CR7952 & 06CR18229, Tyrone Herron, 07CR00421(04), Kenneth Hicks, 07CR22690(01), David Holmes, 07CR12171(01), Brian Hunt, 08CR5302(01), Allen Jackson, 06CR3375(01), Shaun James, 04CR10615(01), Goleather Jefferson, 06CR23620, Thomas Jefferson, 05CR14701, Zarice Johnson, 06CR18526(01) & 08CR4969(01), Derrick Lewis, 04CR17856 & 07CR22093(01), Robert Lindsey, 09CR20361(02), Larry Lomax, 03CR2644(06), Derrick Mapp, No. 06CR10364(01), Willie Martin, 06CR23620(02), David Mayberry, 06CR9651(03), Octayvia McDonald, 05CR21111(01), Gregory Mollette, 06CR22931(01), James Moore, 05CR28783(01), Jermaine Morris, 05CR2186(01) & 06CR8697(02), Terrence Moye, 08CR15102, Lloyd Newman, 06CR22250(01), Jajuan Nile, 07CR24156(02), George Ollie, 03CR2644(05), Bryant Patrick, 05CR01587(01), 07CR8410(01), Cordero Payne, 05CR28782(01), Mister Pearson, 07CR24156(02), Hasaan Potts, 03CR8635(01), Bruce Powell, 09CR14547, Lee Rainey, 03CR17007(01) & 05CR147, Clifford Roberts, 03CR02644(02), Calvin Robinson, 07CR3834(03), Jamell Sanders, 06CR14950(01), Frank Saunders, 07CR8562(01), Chris Scott, 06CR9651(01), Angelo Shenault, Jr., 06CR9651(02), 08CR6802, 09CR14548, Angelo Shenault, Sr., 04CR28832 & 07CR418, Germain Sims, 09CR20361(01), Taurus Smith, 04CR10615(02), Jabal Stokes, 06CR12908(02), Henry Thomas, 03CR4666(01) & 07CR421(01), Nephus Thomas, 08CR6109, Lapon Thompson, 06CR13950(01), Alvin Waddy, 07CR9386, Gregory Warren, 06CR8697(01), Isaac Weekly, 07CR18861(01), Lionel White, Sr., 06CR12092, Lionel White, Jr., 06CR19188, Kim Wilbourn, 06CR22542(01), Vondell Wilbourn, 04CR20636 & 05CR222312(02), Deon Willis, 02CR82903 & 08CR16767, Martez Wise, 06CR27677.

prevent—the court created a brand new "substantive and technical obstacle[ ] in the law," 735 ILCS 5/2-702(a), that bars innocent people from obtaining relief.

b. The Appellate Court's Decision Undermines Legislative Intent By Denying Certificates Of Innocence To People Who Faultlessly Plead Guilty.

The legislature intended to deny certificates of innocence to innocent people only if their conviction was their own fault. The majority opinion flouts that statutory purpose by inventing a *per se* rule that prevents exonerees who pled guilty from obtaining certificates of innocence, regardless of fault. The dissent understood the proper standard intended by the legislature: "[A] guilty plea should foreclose relief only when the person falsely accused culpably misled police or other officials." A.543 ¶ 48 (Walker, P.J., dissenting).[4]

As the Second District has explained, the "legislative history" of the certificate-of-innocence statute demonstrates that its purpose "is to benefit 'men and women that have been falsely incarcerated through no fault of their own.'" *People v. Dumas*, 2013 IL App (2d) 120561, ¶¶ 18-19 (quoting 95th Ill. Gen. Assem., House Proceedings, May 18, 2007, at 12 (statements of Representative Flowers) (hereinafter "House Proceedings")[5]). In the General Assembly, Representative Mary Flowers, the chief proponent of the legislation, repeatedly stated that the statute aimed to help innocent people clear their name if they were convicted through no fault of their own. She explained that a certificate of innocence "would be a rite of passage, Sir, for men whose lives have been turned upside down *through*

[4] The dissent's analysis of fault also tracks the Seventh Circuit's interpretation of the federal certificate-of-innocence statute, which bars relief only when an innocent person "has it within his means to avoid prosecution but elects not to do so, instead acting in such a way as to ensure it. In that sense, he is responsible for his own prosecution and deserves no compensation for his incarceration . . . [T]here must be either an affirmative act or an omission by the petitioner that misleads the authorities as to his culpability." *Betts v. United States*, 10 F.3d 1278, 1285 (7th Cir. 1993).

[5] Available at: https://www.ilga.gov/house/transcripts/htrans95/09500056.pdf.

no fault of their own." *See* House Proceedings 9-10 (emphasis added). She declared that barriers to compensation are "a disservice to the men and women that have been falsely incarcerated *through no fault of their own*." *Id.* at 12 (emphasis added).

If the legislature had wanted the categorical rule adopted by the Appellate Court—no certificates of innocence for innocent people who plead guilty—it would have said so in the statute itself. Representative Flowers was clearly aware of other models from other states; she mentioned on the record that other states had enacted certificate-of-innocence laws. House Proceedings 6. Many other states expressly prohibit innocent people who pled guilty from obtaining certificates of innocence or compensation for their wrongful conviction. These states do so with direct language in the statutes themselves, using the words "plead guilty," "guilty plea," or "plea of guilty" to exclude people who plead guilty from state statutes authorizing compensation for wrongful convictions.[6] If the General Assembly had wanted to do that, it would have said so, just as other state legislatures have done. The fact that the legislature took a different path shows that it did not intend guilty pleas to automatically veto certificate-of-innocence petitions.

In addition, the statutory language also focuses on the petitioner's fault by making an innocent petitioner eligible for a certificate of innocence so long as the petitioner "did not

[6] See, e.g., Iowa Code § 663A.1(1)(b) (requiring that the petitioner "did not plead guilty to the public offense charged"); Mass. Gen. Laws. ch. 258D, § 1(c)(iii) (requiring that the petitioner "did not plead guilty to the offense charged"); Ohio Rev. Code Ann. § 2743.48(A)(2) (requiring that the petitioner "did not plead guilty to, the particular charge or a lesser-included offense"); Okla. Stat. Ann. 51, § 154(B)(2) (requiring that the petitioner "did not plead guilty to the offense charged"); D.C. Code § 2-425 (requiring that the petitioner's conviction did not result "from his entering a plea of guilty unless that plea was pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970)"); Fla. Stat. § 961.04 (holding ineligible petitioners who "pled guilty to … any violent felony"); NJ Stat. Ann. § 52:4C-3(c) (requiring petitioner "did not plead guilty"); Va. Code Ann. § 8.01-195.10 (requiring petitioner to have "entered a final plea of not guilty").

by his or her own conduct *voluntarily* cause or bring about his or her conviction." 735 ILCS 5/2-702(g)(4) (emphasis added). Certificate-of-innocence statutes and statutes authorizing compensation for wrongful convictions in other states often omit the word "voluntarily," thereby denying certificates of innocence to anyone who brings about or causes their own conviction, regardless of volition or fault. *See, e.g.*, NY Ct. Cl. Act § 8-b.4(b) ("[H]e did not by his own conduct cause or bring about his conviction."); NJ Stat Ann § 52:4C-3(c) (same); D.C. Code § 2-425 ("cause or bring about his or her own prosecution"); Md. State Fin. & Proc § 10-501 ("did not . . . by the individual's own conduct cause or bring about the conviction"); Mont. Code Admin. § 46-32-104 ("did not . . .by the claimant's own conduct cause or bring about the conviction"). By adding the word "voluntarily" to the Illinois statute, the General Assembly rejected this "strict liability" approach, refusing to deny certificates of innocence to innocent people who did not contribute to their own convictions in a volitional or blameworthy manner.

Washington is the archetypal example of someone who pled guilty through no fault of his own. At first, he pled not guilty, but his jury did not reach a verdict. A.421. On the morning of the retrial, Washington spoke to Hood—who had been sentenced to 75 years in prison after being convicted at trial. A.420-21. Washington pled guilty only after seeing his equally innocent co-defendant convicted and sentenced to *de facto* life in prison. Washington accepted a 25-year sentence "because he knew that Hood had been sentenced to 75 years' imprisonment." A.531 ¶ 15. To Washington, the plea deal meant he would have "a chance at a life" after serving his sentence for a crime he did not commit. *Id.* Far from blameworthy conduct, taking the plea is what any rational person would have done—or urged a loved one to do—in Washington's place.

c. The Appellate Court's Decision Undermines Legislative Intent By Denying Job Training And Mental Health Services To Exonerees Who Need Them.

The legislature enacted the statute in part to provide compensation, job training, and therapy to exonerees. It makes no sense and undermines legislative intent to deny these benefits to innocent people just because they pled guilty through no fault of their own.

As the First District has noted, "[o]ther statutes provide that persons granted certificates of innocence have rights to mental health services, job search and job placement services, and other assistance." *Glenn*, 2018 IL App (1st) 161331, ¶ 20 (Neville, J.) (citing 20 ILCS 1015/2; 20 ILCS 1710/1710-125: 730 ILCS 5/3-1-2(o)). In the legislature, Representative Flowers stated that exonerees "should have job training," explaining that "[y]ou're talking about people that have spent a vast majority of their youth incarcerated. You're talking about a marked man. You're talking about a person who still [has] to relearn how to maneuver around the system, who do[es] not know the programs are out there." House Proceedings 10-11. She continued: "They are entitled to therapy." *Id.* at 13.

The trauma caused by prolonged, wrongful imprisonment—and the consequent need for mental health services—is no less profound for an innocent petitioner who pled guilty. Nor does a plea determine whether an exoneree who "spent a vast majority of their youth incarcerated," *id.* at 10-11, needs job training. The appellate majority opinion undermines the statute's purpose by making one's plea a condition for access to these services.

2. The Court Should Interpret the Certificate-Of-Innocence Statute To Avoid The Equal Protection Problem That Arises From Denying Certificates Of Innocence To People Who Plead Guilty.

Making an arbitrary distinction between innocent people who plead guilty and innocent people who go to trial would flunk rational basis review under the state and federal equal protection clauses. *See* U.S. Const., amend. XIV, § 1; Ill. Const. 1970, art. I, § 2. The Court

should avoid this constitutional problem by construing the certificate-of-innocence statute to include innocent people who plead guilty in the scope of its protection. In *Glenn*, the Appellate Court interpreted the certificate of innocence statute to extend to people sentenced to non-prison terms because there was no rational basis to provide lesser protection to people sentenced to non-prison terms than people sentenced to prison terms. 2018 IL App (1st) 161331, ¶ 22 (Neville, J.). The Court should follow a similar path in this case.

The Equal Protection Clause "guarantees that similarly situated individuals will be treated in a similar fashion, unless the government can demonstrate an appropriate reason to treat them differently." *In re Jonathon CB*., 2011 IL 107750, ¶ 116; *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Equal protection analysis is the same under the Illinois and federal constitutions. *Jacobson v. Dep't of Pub. Aid*, 171 Ill. 2d 314, 322 (1996). When the challenged statutory classification does not implicate race, national origin, gender, illegitimacy, or fundamental rights, courts assess its constitutionality using rational basis review. *In re Adoption of K.L.*P., 316 Ill. App. 3d 110, 121 (2000). To pass constitutional muster, the classification at issue must "be rationally related to a legitimate state goal." *People v. Hunter*, 376 Ill. App. 3d 639, 647 (2007); *Jonathon CB*., 2011 IL 107750, ¶ 116; *Lyng v. Int'l Union*, 485 U.S. 360, 370 (1988).

A distinction between innocent people who plead guilty and those who plead not guilty is plainly antithetical to the purpose of the statute—and it makes no rational sense. Of course, an innocent person who pleads guilty is no less innocent, and thus no less deserving of a certificate of innocence, than an innocent person convicted after trial. Representative Mary Flowers, the principal sponsor of the legislation, explained: "This legislation is about

men and women who have been wrongfully convicted of a crime; they never should have been in jail in the first place . . .[*T*]*heir name is not cleared* . . . . [T]hat's the reason why the certificate of innocence is very important." House Proceedings 7-8 (emphasis added). She declared that wrongfully convicted people "are entitled to be completely set free and *given their good name back* for a crime that they did not commit, and I urge your 'aye' vote. These are innocent men and women, innocent, Ladies and Gentlemen of the House. Innocent." *Id.* at 13. Of course, an exoneree who pled guilty is no less innocent than an exoneree who pled not guilty. Distinguishing between the two does not further the statute's purpose, nor any rational and legitimate purpose.

The First District's decision in Hood's case, while correct, also adds to the inconsistency. The same panel granted a certificate of innocence to Hood just three months before denying Washington's, finding that "the preponderance of the evidence established that [Hood] more likely than not did not commit the offenses." *Hood*, 2021 IL App (1st) 162964, ¶ 43. Washington's innocence is no less obvious than Hood's. The only difference between Washington and Hood is that Washington ultimately pled guilty.

At minimum, differentiating between innocent people who plead guilty and not guilty would raise serious constitutional concerns under the state and federal equal protection clauses. The Court should interpret the statute to avoid this constitutional problem by holding that innocent people who plead guilty are not automatically denied the opportunity to obtain a certificate of innocence. *See Glenn*, 2018 IL App (1st) 161331, ¶ 22.

3. Washington's Guilty Plea Cannot Provide A Basis For Denying Him A Certificate Of Innocence Because Vacatur Of His Conviction Made The Plea A Nullity.

Vacating Washington's conviction wiped out the plea and made it a nullity. "When a circuit court vacates and sets aside a judgment . . . , the prior judgment is eliminated, and

the case thereby returns to its status before the judgment was made." *People v. Shinaul*, 2017 IL 120162, ¶ 14 (citing *People v. Evans*, 174 Ill.2d 320, 332 (1996)). Thus, there is no extant guilty plea in this case. As a result, the guilty plea cannot provide a basis for denying a certificate of innocence because the vacated conviction has the effect of eliminating the plea.

4. Washington Could Not Have Relinquished His Right To A Certificate Of Innocence By Pleading Guilty Before The Certificate Of Innocence Statute Was Enacted.

Washington pled guilty in 1995. A.421. The certificate-of-innocence statute was enacted over a decade later, in 2007. Washington could not have voluntarily waived his right to seek a certificate of innocence by pleading guilty because the law at the time did not recognize any right to seek a certificate of innocence. As this Court has explained, "[t]he requirement of a knowing and intelligent choice calls for nothing less than a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *People v. Lesley*, 2018 IL 122100, ¶ 51. Interpreting *Leslie*, the Appellate Court recently concluded that a plea cannot be "construed as a 'voluntary, knowing, and intelligent' waiver of a statutory right that had not yet come into existence." *People v. Johnson*, 2022 IL App (1st) 201371, ¶ 93. In *Johnson*, the Appellate Court considered whether the appellant's 1992 guilty plea waived his right to seek postconviction relief under the Torture Inquiry Relief Commission (TIRC) Act, which was enacted in 2009. *Id.* ¶ 88. The Appellate Court held that the guilty plea could not constitute a waiver of that right, because "a waiver is an intentional relinquishment or abandonment of a known right or privilege," and the appellant "could not possibly have had a 'full awareness' that he was abandoning any right under the TIRC Act when he pleaded guilty in 1992, for the simple reason that the TIRC Act was not yet enacted at that time." *Id.* ¶ 89. So too here.

Just as in *Johnson*, "it cannot be said that [Washington's] decision to plead guilty was an informed strategic decision to give up his right to relief" under the certificate-of-innocence statute "in order to receive a lesser sentence." *Id.* ¶ 93.

5. This State Has A Shameful History Of Convicting Innocent People, And The Appellate Court's Decision Will Make The Situation Even Worse.

Illinois leads the nation in convicting the innocent. In 2019 and 2020, Illinois accounted for more wrongful convictions than any other state.[7] Washington's case arose in Chicago, a city dubbed "the wrongful conviction capital of America."[8] The last thing the Illinois justice system should do is invent new obstacles to block innocent people from clearing their names. The Appellate Court's decision, however, does just that by preventing innocent people from obtaining certificates of innocence just because they pled guilty. The decision categorically disqualifies nearly *one-fifth* of wrongfully convicted people from receiving certificates of innocence. *See Reed*, 2020 IL 124940, ¶ 33 (citing Peter A. Joy & Kevin C. McMunigal, *Post-Conviction Relief After a Guilty Plea?*, 35 CRIM. JUST. 53, 55 (Summer 2020)).

Wrongful convictions disproportionately harm Black and Latinx people. According to the National Registry of Exonerations, 64% of people who proved their innocence after being convicted were Black or Latinx.[9] Black people are seven times more likely to be

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[7] National Registry of Exonerations, ANNUAL REPORT, at 5 (2021), https://www.law.umich.edu/special/exoneration/Documents/2021AnnualReport.pdf.

[8] *See, e.g.*, Editorial, *Reforms Would Reduce Number Of Wrongful Convictions*, CHI. SUN-TIMES (Jan. 25, 2021), https://chicago.suntimes.com/2021/1/25/22249145/wrongful-convictions-police-criminal-justice-reforms-editorial.

[9] Nat'l Registry of Exonerations, Exonerations by Race/Ethnicity and Crime, (last visited June 7, 2022) (noting that Black and Latinx people accounted for 2,030 established wrongful convictions), available at https://www.law.umich.edu/special/exoneration/Pages/ExonerationsRaceByCrime.aspx.

wrongfully convicted of murder than white people.[10] As Justice Walker asserted, the majority opinion will "continue[] the difficulty associated with the too many wrongful accusations against black and brown people. Wrongful convictions and accusations like these can devastate families, foreclose career opportunities, and undermine the integrity of our justice system." A.544 ¶ 50 (Walker, P.J., dissenting).

E. Detectives Coerced Washington's False Confession.

Washington presented uncontroverted evidence that three notorious confederates of John Burge extracted his false confession through physical abuse. As Justice Walker correctly explained in his dissent, "Washington proved by a preponderance of the evidence from multiple witnesses . . . that police used physical coercion and threats to obtain [his] wrongful conviction." A.541 ¶ 43 (Walker, P.J., dissenting). "[W]hen police questioned Washington, he answered them honestly. He knew nothing about the murder of Morgan. Police beat him and threatened him, just as they beat and threatened their other victims. . ." A.543 ¶ 49. Washington signed a confession that the police wrote "because police threatened him, beat him, and promised he could go home if he signed the statement." *Id.*

The courts below made a clear legal error, not only by disregarding this evidence but by doing so on the basis of transcripts that were not properly in the record and that no party sought to admit as evidence. In addition, both the Circuit Court and the Appellate Court erred by refusing—without explanation—to draw an adverse inference from the detectives' assertion of the Fifth Amendment in response to all questions about physically abusing Washington and Hood.

[10] Nat'l Registry of Exonerations, Race and Wrongful Convictions, available at https://www.law.umich.edu/special/exoneration/Pages/Race-and-Wrongful-Convictions.aspx.

Washington's false confession does not preclude a certificate of innocence because it was given under duress. And the coercive interrogation undermines even further any argument that Washington's guilty plea precludes a certificate of innocence. Washington's false and coerced confession left him with little choice but to take the plea.

1. Washington Presented Undisputed Evidence That Detectives Coerced Him To Confess.

The record is replete with evidence that Washington confessed involuntarily. This evidence is entirely undisputed. At the certificate-of-innocence hearing, the State did not call any witnesses, offer any evidence, ask any questions, or contest that Washington gave a false confession due to coercion. A.377, A.402, A.421, A.443.

First, Washington's testimony itself was unequivocal: As detailed above, his confession was extracted through beating and prolonged detention. *See supra* pp. 4-5. The State did not even attempt to rebut Washington's testimony.

Second, there is corroborating testimony from several witnesses in Washington's case—including from Tyrone Hood—that they, too, were physically coerced by the same detectives into giving false statements. *See supra* p. 5 Here again, the State did not challenge this evidence in any way.

Third, there is vast evidence that the detectives involved in this case—Boudreau, Halloran, and O'Brien—made a habit of coercing false confessions. Former Chicago Police Superintendent Richard Brezezek concluded that a "pattern of investigative malpractice on the part of these detectives [Boudreau, Halloran, and O'Brien] is significantly and obviously present in this investigation." A.94, 95, 97. According to Superintendent Brezezek: "Kenneth Boudreau, John Halloran and/or James O'Brien . . . have been

previously identified as engaging in patterns of similar coercive conduct." A.95. The State did not respond to this evidence.

Fourth, Washington's submissions included specific, detailed allegations of abusive conduct by Detectives Boudreau, Halloran, and O'Brien in over twenty cases. *See supra* p.6. The State did not question any of this evidence, either—nor could it have, given that the detectives' history of physical abuse is documented in several judicial opinions. In *People v. Plummer*, 2021 IL App (1st) 200299, for instance, the Appellate Court documented evidence that six teenagers were "handcuffed to the wall, smacked, beat with fists, punched in the neck, beat with flashlights, shocked with electricity, had their hair pulled, [and] had their fingers pulled back" by Boudreau; that Boudreau subjected another teenager "to beatings which included being kicked in the wrist that was handcuffed to the wall"; and that Boudreau beat another teenager "for hours" and then beat him with a blackjack and put a pistol in his mouth and pulled the trigger. *Id.* at ¶¶ 89-90, 93. Likewise, in *People v. Tyler*, 2015 IL App (1st) 123470, the Appellate Court recognized that detectives including Boudreau, Halloran, and O'Brien had engaged in "a troubling pattern of systemic abuse," including beating suspects, threatening to send one suspect's wife to jail if he did not confess, and denying a teenager food or access to a parent or attorney for 24 hours. *Id.* ¶¶ 183-85, 189. In sum, Washington demonstrated with overwhelming evidence that the detectives extracted his false confession with physical coercion.

2. The Circuit Court And Appellate Court Erred By Relying On Evidence Outside The Record.

Aside from ignoring evidence supporting Washington, both the Circuit Court and the Appellate Court took it upon themselves to consider materials outside the record in an attempt to discredit him. In so doing, the lower courts both violated the law and assumed

the role of advocate for the prosecution, despite the fact that the State itself took no position in the case, did not call any witnesses or present any evidence, and did not participate in the appeal.

"In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we . . . rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *People v. Givens*, 237 Ill.2d 311, 323–24 (2010) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243-44 (2008)). When a court strays from these "well-established principles" by raising an issue *sua sponte*, it commits reversible error because courts must "refrain from [raising unbriefed issues] when it would have the effect of transforming the court's role from that of jurist to advocate." *Givens*, 237 Ill. 2d at 324.

After the close of evidence in Washington and Hood's certificate-of-innocence hearing, the Circuit Court demanded that they provide extra-record materials from the original trial, including the transcript of Hood's trial and the transcript of Washington's suppression hearing. A.448; A.257. Over the objection of Washington and Hood, the Circuit Court *sua sponte* announced its intention to take judicial notice of these materials after the close of evidence, even though no party had submitted these materials into evidence. A.448.

Relying on these materials constituted legal error and warrants reversal. *People v. Smith*, 2021 IL App (1st) 190421, ¶ 83 ("[A] trial court is prohibited from taking judicial notice of facts *sua sponte* after the close of evidence."). The dissent below properly recognized this error. "Washington deserves an answer as to why the circuit court may find him not credible based on evidence no party presented, where the circuit court does not

even permit Washington to respond to the evidence the circuit court found." A.540-41 ¶ 42 (Walker, P.J., dissenting).[11]

3. The Appellate Court Erred By Entirely Disregarding The Detectives' Invocation Of The Fifth Amendment When Questioned About Beating Washington.

In addition to the testimony and evidence discussed above, Washington introduced evidence that Detectives Halloran and O'Brien *themselves* do not deny the abuse alleged in this case. When questioned about beating Washington and others in this case, they have refused to answer, asserting the Fifth Amendment. *See supra* pp. 6-7. The Circuit Court and the Appellate Court erred in failing to draw an adverse inference against the detectives. As Judge Walker rightly argued in dissent, the Circuit Court "should have drawn a negative inference from [the] invocation of the fifth amendment, and that inference strongly corroborates the testimony of Washington and other witnesses to police coercion." A.540 ¶ 40 (Walker, P. J., dissenting). At a bare minimum, the lower courts erred by wholly

[11] The obvious legal error of relying on extra-record materials alone warrants reversal, but the lower courts further compounded the error by using those materials as the principal basis for discounting Washington's credibility. No party in this case challenged Washington's credibility—the Circuit Court did so all on its own. Based solely on those erroneously-considered materials, the Circuit Court asserted: "Washington's credibility cannot go without mention based upon the differing versions that he gave under oath at various hearings." A.257.
The Circuit Court held, inexplicably—and based on unadmitted transcripts that it ordered *sua sponte* but did not enter into the record—that Mr. Washington's 2016 testimony was not credible because he testified in 2016 that officers made up his confession for him whereas his testimony in 1995 and 1996 had been to the contrary. *Id*. In fact, his 1995 testimony was completely consistent; he testified that an assistant state's attorney wrote out a statement that he signed because he had been told he could go home if he did so. And while he did testify on cross-examination in 1996 that he made up the confession himself, he did so in the context of testifying that the detectives had slapped him and told him he could go home if he gave a statement. Certainly, that single inconsistency, in an improperly considered transcript, could not suffice to deem Mr. Washington not credible.

disregarding, and failing even to mention, the detectives' refusal to answer questions at the heart of this case.

"[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. 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). 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.

"[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. Here, the Circuit Court and the Appellate Court did not merely fail to give a good reason for refusing to draw an adverse inference—they gave no reason whatsoever. At minimum, it was error to wholly disregard the detectives' invocation of the Fifth Amendment when they were questioned about matters at the core of this case.

F. Even Assuming For The Sake Of Argument That Detectives Did Not Coerce Washington's False Confession In The Legal Sense, The False Confession Still Does Not Preclude A Certificate Of Innocence.

Even if one entirely disregards Washington's evidence that he confessed involuntarily, he still cannot be faulted for giving a false confession in the face of a prolonged police interrogation. Again, the General Assembly intended to eliminate barriers that had

prevented innocent people from obtaining certificates of innocence. *See supra* pp. 16-20. The certificate-of-innocence statute precludes certificates of innocence for innocent people only when they are at fault for causing their own convictions. *See supra* pp. 20-23. There is simply no plausible scenario in which Washington is at fault for giving a false confession because he did not "culpably misle[a]d police or other officials." A.543 ¶ 48 (Walker, P.J., dissenting).

First, as the Seventh Circuit explained, "the clearest example" of someone culpably giving a false confession would be "one who 'takes the fall' for someone else." *Betts*, 10 F.3d at 1285. In this case, there is no possibility that Washington intended to take the fall for Morgan, Sr. It is undisputed that that the two did not even know each other. A.406.

Second, based entirely on an officer's testimony—and giving no weight to Washington's account—it is obvious that Washington did not confess immediately and faced a prolonged series of interrogations designed to make him confess. The "length of questioning is strongly associated with the rate of false confession." *See* Gisli J. Gudjonsson, *The Science-Based Pathways to Understanding False Confessions and Wrongful Convictions*, 12 Front. Psychol. 63393, at *3 (2021). As an officer testified, when Washington agreed to speak to detectives, it was to provide an alibi for Hood, not to confess. A.340. That officer also testified that Washington was held for over 24 hours during the period in which he is supposed to have confessed. A.314, 318, 320, 324, 346-47. He was brought to the first precinct around 2:30 p.m., held there for hours, moved to another precinct around 5 p.m., interrogated, held in that precinct overnight, interrogated twice the next day, and at 5 p.m. that next day was still in custody when he was taken to

examine the victim's vehicle. A.314, 318, 320, 324, 346-47. He did not provide a statement until hours later.

"Custodial interrogation is, of course, inherently coercive and 'trades on the weakness of individuals.'" *People v. Braggs*, 209 Ill. 2d 492, 513 (2003) (quoting *Dickerson v. United States*, 530 U.S. 428, 435 (2000)). Prolonged accusatory interrogations by the police, even when they remain within constitutional bounds, are designed to elicit confessions, not to be pleasant or easy on murder suspects. Washington cannot be faulted for eventually claiming guilt after a series of lengthy, accusatory interrogations designed to make him do just that.

Moreover, Washington was a nineteen-year-old facing an interrogation by a cadre of notorious Burge henchmen. Even ignoring the reality that these detectives physically coerced his confession, at best they would have used psychologically coercive interrogation tactics involving excessively long interrogations, lies about evidence, promises of leniency and threats of harm and other methods of pressuring suspects heavily relied on by Chicago police detectives during the 1990's. "Interrogation is designed to be stressful and unpleasant," and the predominant interrogation techniques are meant to encourage a suspect to "perceive that he has no choice but to comply with the detectives' wishes." Richard A. Leo, *False Confessions: Causes, Consequences, and Implication*, 37 J. Am. Acad. Psychiatry Law 332, 335 (2008). Predictably, "threatening harsh punishment if the suspect does not confess and/or promising leniency if he does" has "played a major role in precipitating a false confession in several cases." Welsh S. White, *What Is an Involuntary Confession Now?*, 50 Rutgers L. Rev. 2001, 2050 (1998). There is no question that interrogation techniques are good at producing confessions because human nature

inclines the hapless suspect toward confessing out of "compliance with authority, conformity, and obedience." Igor Areh, *Police interrogations through the prism of science*, 25 Horizons of Psychology 18, 21 (March 2016) (citations omitted). However, empirical research has demonstrated that these standard interrogation techniques are so coercive that they increase the inclination to confess in the innocent as much as they do in the guilty.[12]

The reality of this case is that Washington confessed because detectives beat him. But even if one ignores that reality, he is still entitled to a certificate of innocence because he confessed and pled guilty through no fault of his own.

CONCLUSION

This Court should reverse the Appellate Court and grant Washington the certificate of innocence that he deserves.

Respectfully submitted,

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[12] Douglas Starr, *This psychologist explains why people confess to crimes they didn't commit*, Science (June 13, 2019), available at https://www.science.org/content/article/psychologist-explains-why-people-confess-crimes-they-didn-t-commit.