

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
MCLEAN COUNTY, ILLINOIS**

BARTON MCNEIL

*Petitioner-Defendant*

v.

PEOPLE OF THE STATE OF ILLINOIS,

*Respondent-Plaintiff*

No. 98 CF 0633

**SUCCESSIVE PETITION FOR POST-CONVICTION RELIEF**

Petitioner BARTON MCNEIL, by and through his attorneys, THE ILLINOIS INNOCENCE PROJECT and THE EXONERATION PROJECT at the University of Chicago Law School, respectfully requests relief pursuant to the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1, *et. seq.*, the Illinois Constitution, and the United States Constitution. In support of this request, Mr. McNeil states as follows:

**I. INTRODUCTION**

1. Petitioner Barton McNeil is serving a 100-year sentence as a result of the 1998 death of his three-year old daughter Christina.

2. Newly-discovered evidence establishes what McNeil has maintained since he was first arrested: he did not kill Christina.

3. Indeed, that newly-discovered evidence reveals three fundamental points that, had they been available to the trier of fact at McNeil's trial, would have led to his acquittal. First, advances in the science of forensic pathology demonstrate that, as a scientific matter, it is impossible to conclude that Christina's cause of death was murder. Second, advances in the science of child abuse pediatrics confirm that there is no evidence whatsoever that Christina was sexually abused and, therefore, the evidence presented to the trier of fact regarding McNeil's alleged motive

was entirely false. Third, if Christina's death was, in fact, a murder, the evidence indicates that McNeil's ex-girlfriend, Misook Nowlin—who was convicted of a separate, hauntingly similar murder thirteen years after McNeil's conviction and whose hair and DNA have now been discovered at the scene of Christina's death—is her killer.

4. McNeil was convicted because the finder of fact did not have the benefit of the new evidence.

5. McNeil brings this post-conviction petition in order to remedy the substantial denial of his rights under the Constitutions of the United States and the State of Illinois.

## **II. CHRISTINA MCNEIL'S DEATH**

6. Christina McNeil was born in 1995 to Barton and Tita McNeil. (Ex. 1). Despite the couple's divorce later that year, they continued to raise their daughter together. (*Id.*)

7. McNeil was a devoted father. He cared for his daughter five nights a week while Tita was at work. (July 6, 1999 Tr. at 23).

8. Neighbors would see McNeil playing with Christina outside and said that "everything appeared normal." (Ex. 2). Sometimes, McNeil brought Christina along with him to work and a co-worker noted how much he loved her. (Ex. 3).

### **A. McNeil's Breakup with Misook and Misook's Vicious Reaction**

9. McNeil dated Misook Nowlin. The couple lived together for about three years, but McNeil "moved out because he wanted to break off the relationship." (Ex. 4).

10. On June 15, 1998, McNeil and Misook met for dinner at a restaurant. (Ex. 5 at 1). They argued several times during the meal. (*Id.*) Misook was upset that McNeil "did not want her anymore" and that, based on her surreptitious review of his phone records, she believed he was having a "relationship with another woman." (*Id.*) Misook also expressed her jealousy over three-year-old Christina's close relationship with McNeil. (*Id.* at 2).

11. Misook confirmed that this fight occurred and that she was extremely angry with McNeil. (Mar. 4, 1999 Tr. at 119-121). In fact, Misook could not write out a check at the restaurant without McNeil's help because she was so upset. (*Id.* at 122).

12. Their waitress "recalled the couple because they were arguing at the table." (Ex. 6). She heard the pair arguing about Misook tracking McNeil's phone calls. (*Id.*) The cashier from the restaurant likewise recalled that Misook was "really mad." (Mar. 4, 1999 Tr. at 79).

13. McNeil told officers that, after he left the restaurant, Misook "followed him through town" as he drove to pick up Christina. (Ex. 5 at 1). McNeil was forced to "[pull] off on a side street and [tell Misook] to quit following [him]." (*Id.*)

14. This was not unusual behavior for Misook. Robert Sims, McNeil's neighbor, told police that, a few weeks before Christina's death, "he heard someone pounding and or kicking on [McNeil's] door and looked out and saw [McNeil's] wife or girlfriend pounding on the door." (Ex. 7 at 1). Clarence Frisch, another neighbor, also saw a woman "banging on the door at night." (Ex. 2).

15. At the time of Christina's death, Misook was facing a criminal prosecution of her own. In April 1996, Misook stole three cartons of cigarettes from a local grocery store. (Ex. 8). In August 1996, she pleaded guilty. (Ex. 9). Her sentence included 30 months of probation. (*Id.*) On August 20, 1997, Misook committed domestic battery against McNeil. Specifically, she became angry with McNeil, threw a computer monitor and broke it, pushed McNeil in the chest, and prevented him from leaving their apartment. (Ex. 10). In February 1998, she was convicted of domestic battery to McNeil. (Ex. 11). Misook's domestic battery to McNeil led to the State to file a petition to revoke Misook's probation in the retail theft matter. (Ex. 12). On February 27, 1998, the court found that the State had proven its petition to revoke. (Ex. 13 at 3). Sentencing was

scheduled for June 17, 1998—the day after Christina was found dead. (Ex. 14).

16. One of the reasons Misook was so enraged with McNeil when they fought at the restaurant and when she followed him in her car was because McNeil had refused to go to court with Misook on June 17. Misook explained to a police detective investigating Christina's death that both she and her lawyer had asked McNeil to come to court. (Ex. 15 at 23:27). Misook admitted that McNeil's refusal to go to court made her "so much angry." (*Id.* at 16:58).

17. Misook was so enraged that she promptly took steps to frame McNeil for a crime as revenge. Misook's ex-husband Andy Nowlin testified that that Misook asked him "if [he] could get a hold of some marijuana" because "[s]he wanted to put it in [McNeil's] car" in order to "[g]et him in trouble." (Mar. 4, 1999 Tr. at 106).

18. We now know that Misook's desire to "get him in trouble" went far beyond planting marijuana and, tragically, resulted in Christina's death and—just as she intended—McNeil's murder conviction.

### **B. The Night of Christina's Death**

19. McNeil has consistently given the following timeline of the night of June 15 and the morning of June 16, 1998:

- At approximately 7:00 p.m. on June 15, 1998, McNeil arrived at his ex-wife Tita's home to pick up Christina. (July 6, 1999 Tr. at 26).
- Christina had not eaten dinner, so McNeil drove her to McDonald's and bought her a Happy Meal. (*Id.* at 27-28).
- McNeil and Christina then drove to McNeil's apartment, where Christina began eating her meal. (*Id.* at 28).
- McNeil took a nap, but awoke a few times while Christina was playing. (*Id.* at 29-30). Around 10:30 p.m., McNeil started getting Christina ready for bed. (*Id.* at 31). McNeil tucked Christina into bed around 10:45 p.m. and turned her dimmer light down very low. (*Id.* at 32-33). According to her mother, Christina normally went to bed around this time. (Ex. 17 at 2).

- With his daughter in bed, McNeil logged onto his computer. (July 6, 1999 Tr. at 33).
- Around midnight, McNeil walked by Christina's bedroom and heard her voice. (*Id.* at 35). He opened the bedroom door and found Christina sitting up in bed "smiling from ear to ear" with a book near where she was sitting. (*Id.*) He told her to go back to sleep, pulled the covers up, and tucked her in again. (*Id.* at 35-36). The dimmer light was extremely low and the only light coming in was from the living room. (*Id.*)
- At 2:00 a.m., McNeil decided to go to bed. (*Id.* at 39). On his way to the bathroom, he opened the door to Christina's bedroom, looked in, and saw that she was not awake. (*Id.*) He laid down on the couch in the living room to sleep. (*Id.*)
- Due to the noise of a thunderstorm, McNeil did not fall asleep until around 2:45 a.m. (*Id.* at 41).
- McNeil's alarm clock went off at 7:10 a.m. and again at 7:19 a.m. (*Id.* at 48-49) McNeil then got up and called, "Christina, wake up. Time to get dressed," smoked a cigarette, and took a shower. (*Id.* at 49).
- After his shower, McNeil "called to [Christina] again and she was unresponsive. He finally went in and found her cold to the touch at 7:40 AM and called 911." (*Id.* at 50).

**C. The 911 Call, the Initial Emergency Response, and Misook's Unexplained Presence at the Scene**

20. McNeil immediately called 911 upon discovering Christina unresponsive. The 911 recording is attached as exhibit 18. On the tape, McNeil's grief is palpable: he has difficulty communicating through his tears. (*Id.*)

21. With help from the 911 dispatcher, McNeil began to attempt CPR. (Ex. 5 at 2).

22. Paramedics and police officers arrived at the apartment within minutes. A responding officer reported that McNeil was "very distraught." (Ex. 19 at 1).

23. The first responders found Christina lying on her back and wearing a cotton night shirt and underwear. (Ex. 20 at 1). Her body showed "no sign of external injury." (*Id.*) "Evidence of lividity was consistent with the position of the body and there was a small amount of blood

around the nostrils.” (*Id.*)

24. Before even Tita McNeil, Christina’s mother, arrived at the scene, Misook Nowlin did. (Ex. 19 at 1-2). McNeil asked her to leave. (*Id.*)

**D. McNeil Identifies Evidence that Christina Was Murdered and Asks Police to Investigate Misook**

25. The coroner’s officer removed Christina’s body and all officers left McNeil’s apartment by 9:32 a.m. (*Id.* at 2). Tita and McNeil went to Tita’s apartment, and Officer Arnold told them he would be in contact. (Ex. 21 at 2; ex. 1).

26. McNeil returned to his apartment that evening around 5:00 p.m. to pick up clothes. (July 6, 1999 Tr. at 63). As he walked to his apartment, he noticed the bedroom window screen had been cut near the latches. (*Id.*) McNeil had earlier observed that the bedroom fan was no longer in the window. (*Id.* at 65). Connecting the two, McNeil realized something was very wrong. (*Id.*)

27. McNeil called the police. He pleaded, “I need a detective here .... I have reason to believe now that [Christina] was murdered and I need a detective here immediately.” (Ex. 22 at 00:24). McNeil would call three more times, begging for a detective to come to his apartment. (*Id.*; ex. 23). On the fourth call, McNeil asked for “a whole detective team” because he was now certain that his “daughter was murdered last night.... There’s no question.” (Ex. 23 at 01:59).

28. Sergeant McKinley finally arrived at McNeil’s apartment. As he pulled up, McNeil was “standing on the street corner waving [him] down” and “frantically ... pointing at his house and motioning [him] to hurry.” (Ex. 24 at 1). McNeil showed the detective cuts in the bedroom window screen and a fan that had been knocked out of the window and onto the floor. (*Id.*) The police took photos.

29. The window in question is along this walkway that runs alongside the apartment building:

33. As he showed all of this to the officers, McNeil began to cry and asked the detectives to arrest Misook for killing his daughter. (Ex. 24). His pleas were ignored.

### **III. THE INVESTIGATION QUICKLY FIXATES ON MCNEIL**

#### **A. The Dramatically Flawed Autopsy**

34. The day Christina died, pathologist Violet Hnilica conducted a preliminary examination of Christina's body. (Ex. 25 at 1). Based only on a bloody nose and free running urine, Hnilica immediately suspected homicide. (*Id.*)

35. On June 17, Hnilica performed Christina's autopsy. (*Id.* at 2). She concluded that Christina was smothered. (R. 85). The bases of this conclusion were that Christina (1) had been found in bed; (2) had contusions around her mouth, forehead, chin, left thumb, and mid-back; (3) exhibited petechiae (tiny red spots that indicate ruptured capillaries) in her lungs and thymus (a gland at the base of the neck); and (4) had blood-tinged spots on her clothing and bed linen. (*Id.*) Modern medical science demonstrates that these conclusions were baseless. (*See infra* ¶¶ 131-142, 213-24).

36. Hnilica also pointed to "the upper edge of the hymen appearing lobulated" and the presence of hyperemia in the perineum and vagina. (Ex. 26 at 2). According to Hnilica, this lobulation (a scalloped edge) and hyperemia (redness caused by excess blood in the blood vessels) indicated sexual trauma. (July 2, 1999 Tr. at 123, 124). Yet again, modern science directly contradicts all of Hnilica's conclusions on this score. (*Infra* ¶¶ 144-155, 225-35). Nevertheless, armed with supposed evidence of homicide and a sexual motive, the police zeroed in on McNeil as their suspect.

#### **B. The Police Fixate on McNeil and Disregard the Evidence Pointing to Misook**

37. The day McNeil discovered Christina's body, and after McNeil called 911 repeatedly so that he could show the detectives the cut window screen, displaced blinds, and

knocked over fan, McNeil spoke to detectives at the police station. (Ex. 21 at 2). During the interview, he told detectives that he believed Misook killed his daughter because she was obsessed with him and blamed Christina for McNeil terminating their relationship. (*Id.*)

38. The next day, a detective spoke with McNeil again and he “said basically the same things he said the night before how it was Misook Nowlin who killed his daughter.” (Ex. 27). This interview was recorded on video and audiotape. (*Id.*)

39. Two days after McNeil discovered Christina, detectives interviewed McNeil yet again. (Ex. 28). During this interview, the officers confronted McNeil, telling him that his account was impossible because the carpets in the bedroom were dry despite the rainy night and there was forensic evidence to prove that entry through the window was impossible. (*Id.* at 1). McNeil adamantly maintained his innocence. (*Id.*) The officers repeatedly told McNeil that he was lying, that only he could have killed his daughter, and that Christina’s autopsy indicated sexual abuse. (*Id.* at 2). Still, McNeil maintained his innocence. (*Id.* at 3).

40. After this interview, McNeil was arrested. (*Id.*)

41. Meanwhile, the detectives’ scrutiny of Misook was cursory, even though two things were readily apparent even at the time: Misook was furious with McNeil and she had no alibi for the time of Christina’s death. (Ex. 4).

### **1. Misook’s Rage**

42. After finding condoms in McNeil’s apartment, Misook hypothesized that McNeil had cheated on her. (Ex. 15 at 12:40). Due to her anger and depression at this discovery, she was unable to even go to work on June 15—the day of her fight with McNeil at the restaurant preceding Christina’s death—because she was “too depressed about her problems with Barton.” (Ex. 4).

43. Friends of both Misook and McNeil confirmed to detectives that Misook was very angry with McNeil. (Ex. 29; ex. 30; ex. 3). One friend described Misook as “a very jealous,



possessive and violent person who ... is capable of killing Christina.” (Ex. 3). Another knew Misook to have a “temper” and to be “controlling” of McNeil. (Ex. 30). That friend knew of occasions where Misook had “kicked a door in” and “kicked her daughter.” (*Id.*) When McNeil was planning to break up with Misook, this friend thought it was “good because he believed that Misook may have done harm to Chris[tina].” (*Id.*)

44. As set forth below, Misook’s violent anger in this instance is consistent with her long and patterned history of violence.

**2. Misook Had No Alibi for the Time of Christina’s Death and Encouraged Suspicion of McNeil**

45. Misook told police about her alleged activities the night Christina died.

46. According to her, after fighting with McNeil at the restaurant, she went home. (Ex. 2). A couple of friends came over and they went out to play pool around 8:00 p.m. (*Id.*) She returned home around 9:30 p.m. and one of the friends came inside. (*Id.*) They hung out until around 11:00 p.m., when the friend left. (*Id.*)

47. That friend, Susie Kaiser, told the police that Misook talked about wanting to go see McNeil that evening. (Mar. 4, 1999 Tr. at 96). Ms. Kaiser advised her not to go over to McNeil’s home. (*Id.*) The detective summarized as follows:

Misook had told Susie about the fight that she and Bart had that night. She said that Misook told her that she wanted to go to Bart’s and Susie told her not to that she should let him cool off. I asked Susie if she believed that Misook went over anyway. Susie said that she didn’t think she did. Misook was going to go to bed when she left.

(Ex. 31).

48. At 12:21 a.m., Misook had a minute-long phone conversation with her brother in Korea. (Ex. 32).

49. Sometime around 6:00 a.m., Misook’s ex-husband stopped by to drop off some of

their daughter's clothing on his way to work. (Ex. 4).

50. Aside from the minute-long phone call with her brother, Misook has no alibi for the period of 11:00 p.m. on June 15, 1998 to 6:00 a.m. on June 16, 1998.

51. Consistent with her other efforts to frame McNeil, Misook encouraged the police to believe that Christina's death was sexually motivated. She told police that, during their relationship, she and McNeil would sometimes lay together naked following sexual intercourse, and, at times, Christina would crawl into their bed overnight while she and McNeil were still naked. (Ex. 33 at 2).

#### **IV. PROCEDURAL HISTORY**

52. On June 18, 1998, the State filed an Information accusing McNeil of first-degree murder. On July 1, 1998, he was indicted by the Grand Jury.

##### **A. The State Moves to Exclude Evidence of Misook's Culpability**

53. On February 3, 1999, the Court heard argument on the State's motion to exclude evidence and argument that Misook was responsible for Christina's death.

54. The Court ruled that the defense would be permitted to introduce evidence that someone else entered McNeil's apartment through the damaged screen window, but *not* that that person was Misook. (Feb. 3, 1999 Tr. at 39-41).

##### **B. The Defense Offer of Proof Regarding Misook's Culpability**

55. The defense asked the Court to revisit the exclusion of evidence regarding Misook's culpability and called fourteen witnesses in an offer of proof. (Mar. 4, 1999 Tr.).

56. Two detectives confirmed that holes were present in the bedroom window screen. (*Id.* 41, 54). One confirmed that the screen appeared to be slightly off its track. (*Id.* 56). Another described his interview of Misook and the fact that she sat for a polygraph examination, with inconclusive results. (*Id.* 62).

57. A DCFS investigator testified regarding Misook's abuse of her daughter, Michelle Nowlin. She testified that Michelle reported having been hit by Misook five to eight times with a wooden rod from a paper towel holder. She testified that Michelle reported her mother placing her hand over her mouth, making it impossible to breathe, while her mother promised: "I will kill you tonight." (*Id.* 70). The DCFS investigator also included in her report that Misook pinched Michelle's "nose shut so that she couldn't breathe." (Ex. 41 at 77-78). Michelle's stepmother testified that Michelle likewise told her about Misook beating her and Misook's threat: "I'm going to kill you. You're going to die tonight." (Mar. 4, 1999 Tr. 114).

58. McNeil's landlord testified that he walked past McNeil's bedroom window at least once a week and had never noticed anything wrong with the screen. (*Id.* 74). He explained that sometimes tenants cut the screens in order to gain access if they lock themselves out of their apartments. (*Id.* 75).

59. The cashier from the restaurant where McNeil and Misook fought confirmed that Misook and McNeil were there that evening, argued, and that Misook "seemed really mad." (*Id.* 79).

60. A coworker of McNeil's described Misook as "possessive" and "jealous" and testified that McNeil was often unable to spend time with his friends as a result. (*Id.* 82).

61. A mutual friend of McNeil's and Misook's testified that Misook called her following Christina's death and asked: "You don't think I did it, do you?" (*Id.* 85). Over the course of this phone call, Misook "show[ed] a lot of jealousy with Bart, both mad at Bart for breaking up with her and saying that if – if he didn't move out – break up with her, this would not happen." (*Id.*)

62. Three of Misook's friends were called to testify. None provided an alibi for the

overnight hours of June 15-16, 1998. One confirmed that Misook contemplated going to McNeil's apartment that night. (*Id.* 96).

63. Misook's ex-husband testified that Misook asked him to "get a hold of some marijuana" because she "wanted to put it in [McNeil's] car." (*Id.* 106). Her goal was to "get [McNeil] in trouble." (*Id.*) Misook asked him this daily, over the course of a week, including the night before Christina was found dead. (*Id.*)

64. Misook herself was called to testify. She confirmed that she and McNeil argued at dinner the night Christina died and that she was "upset" with McNeil. (*Id.* 119). She was also "upset and scared" because she had been counting on McNeil to testify in her own pending criminal case and he was unwilling to do so. (*Id.* 121).

65. Misook confirmed that she asked her ex-husband to find marijuana for her to plant on McNeil, but claimed it was "just [a] joke." (*Id.* 124).

66. Misook confirmed that she was alone in the overnight hours of June 15-16, 1998, but denied going to McNeil's apartment that night. (*Id.* 127). However, she confirmed that she did go there first thing in the morning because she "just kind of miss[ed] him" and also because he had a computer disc she wanted back. (*Id.* 129).

67. The Court again ruled that evidence regarding Misook's culpability would be excluded. (*Id.* 132-33). The Court explained that "the purported motive here is not very strong in terms of commission of a murder to set someone else up, but even that aside I don't think there's sufficient other evidence indicating any close enough connection that would allow this to come in in terms of proving the former girlfriend was the perpetrator as opposed to the defendant." (*Id.*)

68. A bench trial commenced on July 1, 1999.

**C. The State's Case**

69. The State laid out its theory of the case during opening statements:

[A]fter Christina McNeil finished eating sometime later she was in her bedroom, the defendant entered the bedroom, sexually abused her, and after that smothered her while she was face down on her bed.

(July 1, 1999 Tr. at 5).

70. The State reiterated that theory in closing arguments:

[T]his defendant killed Christina McNeil on ... June 15th. He did that by smothering her. ... The evidence about the sexual abuse goes to the motive.

(July 6, 1999 Tr. at 155-56).

71. None of that happened. Newly-discovered evidence proves it.

**1. The evidence at the scene**

72. 911 operator Bill Goldsberry testified that he received McNeil's 911 call on June 16, 1998, at 7:40 a.m. and started giving McNeil directions on performing CPR. (July 1, 1999 Tr. at 33, 34). During Goldsberry's testimony, the 911 tape was played. (*Id.* at 36).

73. Paramedics John Schrafnagel and James Schrock both testified that they arrived at the McNeil apartment at 7:44 a.m. (*Id.* 19-21). Schrafnagel described McNeil as "very frantic." (*Id.* 22). Upon seeing Christina, they noted that lividity and rigor mortis had set in. (*Id.* 22-23, 29). They attached cardiac sensors which were "flat line." (*Id.* 23). They concluded that Christina was dead, and had been dead for at least a couple of hours based on the presence of rigor mortis. (*Id.*)

74. The first police officer on the scene was Karen Baker. She described McNeil as "very distraught." (July 1, 1999 Tr. at 17). Upon learning that Christina was dead, she radioed in for a detective and crime scene technician to come to McNeil's apartment. (Ex. 19). She also sent an officer to pick up Tita, Christina's mother, and bring her to the apartment. (*Id.*)

75. Detective Marvin Arnold testified that he arrived at McNeil's apartment at 8:03 a.m. (July 1, 1999 Tr. at 40). He described his observations of the scene and Christina's body. (*Id.* 41-43). Det. Arnold testified that he spoke to McNeil at the scene and that McNeil provided the

timeline of events described above. (*Id.* 45-47; *supra* ¶ 19). Det. Arnold documented in his report that Misook came to the apartment that morning to see McNeil and after “briefly” speaking to Misook, McNeil had them send her away. (Ex. 27).

76. Crime scene technician Det. Thomas Sanders testified that he arrived at the McNeil apartment around 8:00 a.m. (July 1, 1999 Tr. at 65). He testified regarding the collection of evidence and the photographs he took at the apartment.

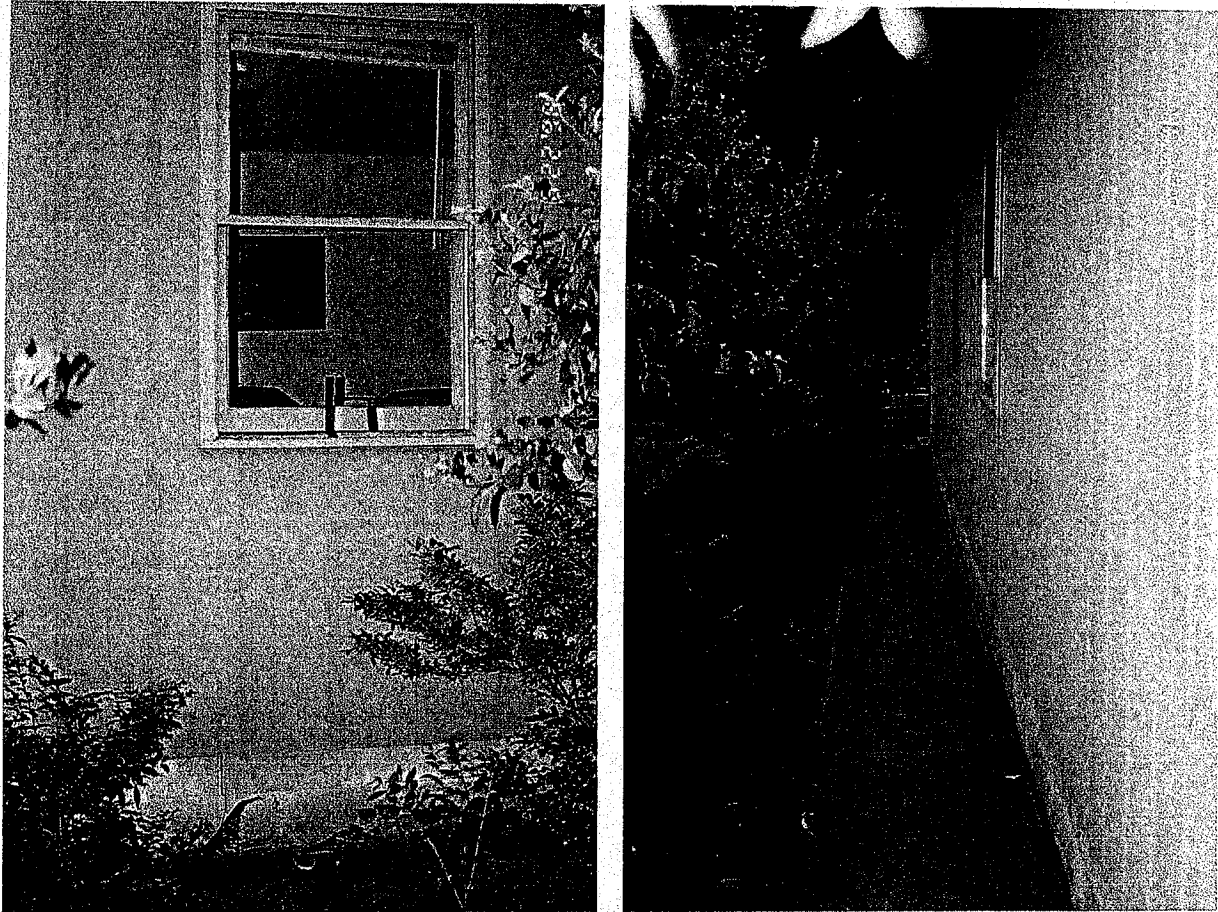
77. Christina’s mother Tita McNeil testified that, after she arrived at McNeil’s apartment, she noticed that the bedsheet was wet and that it had “a stain of blood” that was a “little bit pinkish, not a very red one.” (July 2, 1999 Tr. at 198).

78. Det. Sanders testified that, around 6:00 p.m. that night, he was sent back to McNeil’s apartment to examine the window and screen in the bedroom. (July 1, 1999 Tr. at 77). He testified regarding additional photographs he took during this visit and about the removal and collection of the window assembly itself. (*Id.* 77-78). He noted a potential latent fingerprint, but was unable to identify any ridge details. (*Id.* 110-11). He testified to the presence of cobwebs and dust on the windowsill. (*Id.* 77, 109). He testified that one of the photos he took confirms that the screen was not properly in its track. (*Id.* 124). He also confirmed that the screen “just fell out” when the police attempted to remove it. (*Id.* 140).

79. Police sergeant Randall McKinley testified that he too went to the McNeil apartment that evening after McNeil called the police back. (July 2, 1999 Tr. at 164, 165). He testified that, upon his arrival at McNeil’s apartment, McNeil was waiting at the curb and flagged him down. (*Id.* 168). McNeil was “very upset,” so much so that Sgt. McKinley was “concerned about him.” (*Id.* 171).

80. McKinley testified that the window was “quite high up” and that he “shined [his

flashlight] up and down the sides of the window frame where the screen was attached and saw spider webs” and an attached dead bug. (*Id.* 166-174). The “quite high” window is shown here:



## 2. Testimony regarding McNeil’s interrogation

81. Det. Arnold testified that he also received word that evening that “McNeil called the police department saying how we should arrest his ex-girlfriend for murder and that we needed to get somebody out there.” (July 1, 1999 Tr. at 48). He went to the station to speak to McNeil. In that interview, McNeil explained his belief that Misook murdered his daughter by suffocation. (Ex. 21 at 2). After speaking to McNeil for about an hour, Det. Arnold sent him home. (*Id.*)

82. Sgt. McKinley also testified about the interview at the police station. He recounted how McNeil provided the same timeline of events set forth above. (*Id.* 179-194; *supra* ¶ 19).

### 3. Pathology testimony

83. The next day, Det. Arnold attended Christina's autopsy. (*Id.* 50). The pathologist pointed out certain alleged injuries. (*Id.* 51). Det. Arnold testified that, following the autopsy, he met with McNeil again. (*Id.*) This interview was videotaped. (*Id.* 52). Det. Arnold interviewed McNeil again later in the day, that interview, however, was not recorded. (*Id.* 54). According to Det. Arnold, during this unrecorded interview McNeil provided the same timeline of events set forth above. (*Id.* 55-57; *supra* ¶ 19). He testified that they informed McNeil that "some things were not right about the body" and McNeil responded by becoming "angry" and saying, "don't tell me she was molested." (*Id.* 60).

84. Det. Sanders also testified about attending Christina's autopsy the following day. (*Id.* 79). As discussed below, this fragmentary, rolling autopsy procedure is highly unusual by today's standards. Det. Sanders noted how Christina's injuries "had developed since [his] initial observation" at the scene. (*Id.* 80).

85. As noted above, Dr. Hnilica performed the autopsy. (July 2, 1999 Tr. at 113, 120). Although Hnilica was never qualified as an expert during her testimony, she testified regarding her opinions as to three major pieces of evidence: Christina's cause of death, her time of death, and her purported sexual victimization. (*See generally id.* 113-39).

86. Hnilica testified that Christina's cause of death was smothering. (*Id.* 136). She based this conclusion on the combination of bruises to Christina's nose and mouth, blood in her nose and mouth, and bruises on her back, which she said indicated that there had been pressure applied to those areas. (*Id.* 122, 161). Hnilica also testified that Christina suffered a contusion to the back of her head, petechiae (pinpoint red spots that indicate ruptured capillaries) on the eyes, lungs, and thymus, cyanosis (lividity of the upper body), and swelling of the brain—symptoms Hnilica claimed were consistent with asphyxiation. (*Id.* 123, 129, 130, 131, 155).



87. Externally, Hnilica testified that she observed blood running from Christina's nose and bruises around her mouth, forehead, chin, ear, and the base of her thumb. (*Id.* 120). Hnilica testified that it is not typical for blood to come out of the nose as a result of CPR. (*Id.* 132, 133). She testified that these injuries were consistent with "the victim's own attempt to scratch or pull away[.]" (*Id.* 139). Hnilica opined that the "pattern" of the bruises was suggestive of "pressure in those areas" of Christina's body. (*Id.* 122). Although she "couldn't match [the pattern] to anything specifically like a shoe," she indicated that the pattern of bruises could be from "a knee, and that would be our postulate." (*Id.* 138).

88. The bottom line for Hnilica: "The bruises correlated with an asphyxial death, [which] would indicate smothering." (*Id.* 136).

89. Hnilica further testified that Christina's genital area was "very red; the vagina and anus were dilated, extremely red. The margin of the hymen was irregular. I call it lobulated. But that is a scallop; the upper edge had a rounder scallop pattern. That's a very peculiar pattern of injury." (*Id.* 123). From this, Hnilica opined that something "in the realm of molestation" had happened to Christina. (*Id.* 127). "The redness would make me think it was very recent, within hours. The chronic inflammation would suggest that something is going on there more in terms of days, weeks." (*Id.* 126). Noting that blood was identified on the vaginal swab, Hnilica testified that there could be no explanation for that blood "besides some kind of injury." (*Id.* 128). Indeed, according to Hnilica, "irritation in the vagina is an exceedingly rare finding in a little girl." (*Id.* 143). Christina's mother Tita would testify that Christina never "touch[ed] or play[ed] with herself in the vaginal area." (*Id.* 200).

90. To support her findings, Hnilica claimed that the stains on the bedsheets were caused by bleeding from Christina's mouth and vagina. (*Id.* 146-47). She drew this conclusion by

laying the sheet over Christina's body and concluding that the stains roughly lined up. (*Id.* 147).

91. Hnilica placed great importance on Christina's stomach contents as a means of determining her time of death. (*Id.* 133). According to Hnilica, her "rule of thumb or convention is to say the stomach is empty within two hours" of eating. (*Id.* 134). In Christina's case, the "entire gastric matter was essentially potato." (*Id.* 133). Accordingly, Hnilica told the trier of fact: "My opinion would be that she died within two hours of eating that food, the potatoes." (*Id.* 134).

92. As discussed below, none of Hnilica's relevant conclusions withstand scrutiny today.

#### **4. Hair microscopy testimony**

93. Susan Kidd, a forensic microscopist, who was never qualified as an expert in the field, testified that the hair found on Christina's hands and forearm could not have come from McNeil. (July 2, 1999 Tr. 1-30). Three of the hairs found in Christina's left hand and on her left forearm had been forcibly removed. (*Id.* 16). These hairs could have been Christina's, but Kidd was unable to make that conclusion. (*Id.* 15, 20). Kidd testified that the hair recovered from Christina's right hand was from a mixed race individual and was consistent with a child's hair. (*Id.* 15).

#### **5. Serology testimony**

94. Jenny Hahn of the Illinois State Police crime lab testified that she is a forensic scientist specializing in serology. (*Id.* 31). At no point in her testimony was she qualified as an expert witness. (*Id.* 31-69).

95. Hahn testified that she performed testing for the presence of blood, semen, and urine on various samples taken from the bedsheets; the pillow; Christina's underwear; her t-shirt; and the vaginal, anal, and oral swabs from Christina's body. (*Id.* 37-52).

96. No semen was identified on any items. (*Id.* 52).

97. Hahn testified that she utilized a presumptive test for blood known as the Kastle-Meyer (or KM) test. (*Id.* 66). According to Hahn, for certain items, she also utilized the Ouchterlony Specimen Identification test to determine if the presumed blood was from an animal or a human. (*Id.* 67).

98. Hahn testified that blood and urine were present on the fitted bedsheet. (*Id.* 52). She testified that blood was present on the pillowcase. (*Id.* 58).

99. Hahn identified urine on Christina's t-shirt and underwear. (*Id.* 57).

100. Hahn testified that the vaginal and oral swabs indicated the presence of blood. (*Id.* 62-63).

#### **6. DNA testimony**

101. Debra Minton, a DNA scientist with the State Police crime lab, who was never qualified as an expert in the field, testified regarding certain DNA tests that were performed. (*Id.* 70-109). She testified that the bloodstains on the bedsheet "matched" Christina's DNA profile and not McNeil's. (*Id.* 92). She also testified that a hair recovered from Christina's left hand "matched" Christina's DNA profile and not McNeil's. (*Id.* 93).

#### **7. The State's other evidence**

102. A computer systems administrator testified that McNeil logged onto the internet at 10:39 p.m. on June 15, 1998, and logged off at 7:40 a.m. on June 16. (July 1, 1999 Tr. at 156-57). McNeil checked his e-mail at 7:20 a.m. and again at 7:37 a.m. on June 16. (*Id.* 158). Other than that, the witness could not specify when during the 10:39 p.m. – 7:40 a.m. period McNeil was actively using the internet. (*Id.* 162).

103. A weather observer testified that it rained at times the night Christina died. (*Id.* 141-49).

104. A neighbor testified that her bedroom abutted McNeil's bedroom and that their

bedroom windows were about ten feet apart. (*Id.* 167). She testified that she remembered it being stormy the night of June 15, but did not remember hearing any other noises and did not hear anyone enter or exit through McNeil's window while she was awake. (*Id.* 169). She did not recall when she went to bed that night. (*Id.* 168).

105. Tita, Christina's mother, was the State's final witness. She testified about her divorce from McNeil and their custody arrangement. (July 2, 1999 Tr. at 190-93). She confirmed that McNeil picked Christina up around 7:00 p.m. on June 15, 1998. (*Id.* 194).

#### **D. The Defense Case**

106. Barred from presenting evidence that Misook was responsible for Christina's death and without the benefit of the newly-discovered evidence he now has, McNeil presented three witnesses in his defense.

##### **1. McNeil testifies**

107. McNeil testified in his own defense. (July 6, 1999 Tr. at 20). He testified to the same timeline of events that he had repeatedly told investigators. (*Id.* 26-51; *supra* ¶ 19).

108. He testified that he called 911 immediately upon discovering his daughter unresponsive that morning. (*Id.* 51). While speaking with the 911 dispatcher, he "leaned over and blew into [Christina's] mouth and attempted what [he] thought was mistakenly CPR." (*Id.* 58). "Blood ran from her nose." (*Id.*) Minutes later, paramedics and officers arrived. (*Id.*)

109. After the police left his apartment that morning, McNeil went to his ex-wife Tita's home. (*Id.* 62). He planned to stay there for a couple of days. (*Id.* 63). That evening, between 5:00 and 6:00 p.m., McNeil returned to his apartment to pick up clothes. (*Id.*) As he walked past the bedroom window of his apartment, McNeil noticed two holes in the window screen. (*Id.* 63, 64). He further noticed that the screen was unlatched, had been bent, and was off of its track. (*Id.* 64). Inside, he again noticed that the fan was no longer in the window, but was instead laying on the

floor. (*Id.* 65, 66). Upon making these observations, things suddenly clicked for McNeil. The “events prior to [his] picking up Christina” and the events over the preceding months (about which McNeil was barred from testifying pursuant to the Court’s ruling on the State’s motion to exclude evidence of Misook’s culpability), combined with what he now observed at his apartment, led him to call the police immediately. (*Id.* 66-68).

110. McNeil categorically denied killing his daughter or having any kind of sexual contact with her at any time. (*Id.* 75, 76).

**2. Two additional witnesses provide information about the bedroom screen**

111. Wayne Downey, the property manager for McNeil’s apartment complex, testified that he rented the apartment to McNeil in the spring of 1998. (*Id.* 9). Before McNeil moved in, Downey testified that he went through the apartment to clean it and did not notice anything wrong with the bedroom window screen. (*Id.* 12). He further testified that tenants often cut holes in the screens in order to gain access if they have forgotten their keys. (*Id.* 13).

112. Detective Arnold testified again for the defense. (*Id.* 16). He testified that he noticed one of the holes when he responded to the McNeil apartment that morning. (*Id.* 18).

**E. Verdict and Sentencing**

113. On July 7, 1999, McNeil was convicted of first-degree murder. (July 7, 1999 Tr. at 166).

114. In rendering its verdict, the Court noted that this matter was “a classic case of circumstantial evidence.” (*Id.* 163). The Court said that McNeil’s defense—which included seeing his daughter alive at midnight—was inconsistent with the evidence of Christina’s time of death. (*Id.* 164). Rather, the Court held that the time-of-death evidence showed that Christina died while McNeil was alone in the apartment with her. (*Id.*) The Court concluded that “the State’s evidence

did show sexual misconduct as a possible motive.” (*Id.* 166).

115. The Court ruled that it was “clear beyond a reasonable doubt ... that the defendant smothered Christina.” (*Id.*) The Court found that Christina “was suffocated in the defendant’s bed by the application of great force. Force sufficient to cause the bruising to the back of the head and face that Doctor Hnilica described.” (*Id.*)

116. On August 12, 1999, McNeil’s post-trial motions were denied and he was sentenced to a prison term of natural life, as required by statute. (Aug. 12, 1999 Tr. at 18-20, 26, 66).

#### **F. Direct Appeal and Resentencing**

117. McNeil raised two issues on direct appeal. First, that the trial court erred in excluding evidence that Misook had the motive and opportunity to kill Christina. And second, that his life sentence should be vacated because the statute under which he was sentenced was unconstitutional. (Ex. 34, *People v. McNeil*, No. 4-99-0679 (4th Dist. Oct. 24, 2001)).

118. As to the first issue, the appellate court found no abuse of discretion in excluding evidence regarding Misook’s culpability. The appellate court noted that “[e]vidence someone other than the accused may have committed a crime is relevant and admissible when a close connection is demonstrated between the third person and the commission of the offense.” (*Id.* at 3). Here, the appellate court found no abuse of discretion because the then-existing evidence “showed no clear connection between [Misook] and Christina’s death.” (*Id.*)

119. However, as to the second issue, the appellate court found that McNeil’s sentence was imposed pursuant to a statute found unconstitutional by the Illinois Supreme Court and remanded for resentencing. (*Id.* at 4-5).

120. McNeil’s petition for leave to appeal the affirmance of his conviction was denied. *People v. McNeil*, No. 93062 (Apr. 25, 2002).

121. On July 18, 2002, McNeil was resentenced to 100 years in prison. (Jul. 8, 2002 Tr.

at 45). On October 1, 2002, the Court denied McNeil's *pro se* motion to reconsider sentence and various other evidentiary motions. (Oct. 1, 2002 Tr.). The 100-year sentence was upheld on appeal and McNeil's petition for leave to appeal to the Supreme Court was denied. *People v. McNeil*, No. 4-02-0849 (4th Dist., Nov. 14, 2004).

**G. Prior Post-Conviction Proceedings**

122. McNeil filed a *pro se* motion for post-conviction DNA testing that was denied on January 15, 2003. (Order, Jan. 15, 2003).

123. On August 3, 2005, McNeil submitted a *pro se* post-conviction petition claiming ineffective assistance of counsel and that his jury waiver was not knowing and voluntary. The Court dismissed that petition at the second stage. (Order, Sept. 28, 2005). The Court found that the jury waiver issue was waived for failure to raise it on direct appeal. (*Id.*) As to the allegations of ineffective assistance of counsel, the Court found that any claim based on the failure to call certain witnesses failed because the petition did not attach affidavits from the witnesses as to what their testimony would have been, that counsel was not required to have the autopsy re-done by an independent pathologist, that the appointment of the Public Defender was valid, that the failure to introduce computer evidence was a strategic decision, that any failure to introduce a video taken by a deputy coroner at the crime scene was not ineffective where the existence of the video was speculative, and that the failure to interview witnesses or pursue forensic testing to support a theory that Misook's 8-year old daughter was responsible for the murder was not ineffective because the theory was "speculative and without merit." (*Id.*) Likewise, McNeil's argument regarding the "lack of an official death certificate [was] irrelevant and without merit." (*Id.*)

124. The dismissal was upheld on appeal and McNeil's petition for leave to appeal was denied. *People v. McNeil*, 378 Ill.App.3d 1139 (Table), No. 4-05-0892 (4th. Dist., Mar. 7, 2008); 229 Ill. 2d 646 (Table), No. 106385 (2008).

125. On November 1, 2013, with the benefit of counsel, McNeil filed a motion for post-conviction DNA testing seeking DNA analysis of various items recovered from Christina's clothing and the bedroom where she died. On April 4, 2014, the Court entered an agreed order calling for DNA testing on "untested blood and urine stains on the bedsheet" and "the blood stains on the pillowcase." (Order, Apr. 4, 2014). On August 1, 2014, the Court entered another order calling for DNA testing on "the stains on Christina's underwear," "the stains on Christina's t-shirt," a latent fingerprint "found on the inside of the bedroom window in Christina's room," the window screen, "the bedsheet itself," and "the pillowcase itself." (Order, Aug. 1, 2014). The relevant results of that post-conviction DNA testing are set forth below.

#### V. NEWLY-DISCOVERED EVIDENCE ESTABLISHES MCNEIL'S INNOCENCE

126. McNeil now brings newly-discovered evidence demonstrating his innocence.

##### A. The Only Evidence Ever Implicating McNeil Has Now Been Thoroughly Discredited

127. On June 16, 1998—the date McNeil discovered Christina unresponsive—the only person saying the death was a murder was McNeil himself. After frantically calling 911 to have detectives sent back to his apartment, McNeil went to the police station and told them that he believed Christina had been murdered by Misook. (Ex. 22; ex. 23; ex. 24 at 1). The police heard him out and sent him home. (Ex. 21 at 2).

128. Indeed, as Det. Sanders testified, at that time, the police "honestly thought it was a natural death initially." (July 1, 1999 Tr. at 116). The autopsy findings changed that.

129. The testimony of the pathologist who performed Christina's autopsy was the linchpin of the State's case against McNeil. The pathologist provided the *only* evidence that Christina's death was a murder and the *only* evidence of the supposed motive (*i.e.*, that McNeil molested Christina).



130. New evidence demonstrates that the pathologist's conclusions on all counts were categorically wrong.

**1. Modern science reveals that there is no evidence that Christina was suffocated**

131. As described above, Hnilica testified that the bruising on Christina's body indicated that she was pressed into the bed and suffocated. (July 2, 1999 Tr. at 161). We now know that Hnilica could not have been more wrong.

132. Dr. Andrew Baker is a renowned forensic pathologist and the Chief Medical Examiner for Hennepin, Dakota, and Scott counties in Minnesota, which includes the city of Minneapolis. (Ex. 35 at ex. A). Dr. Baker has extensive experience in pathology and teaches, presents, and writes widely, including specifically on child abuse and child deaths. (*Id.*) Dr. Baker reviewed the autopsy reports, transcripts, and other relevant reports in this matter. (Ex. 35 at ex. B, Report of Dr. Andrew Baker). He utilized modern science to independently analyze Christina's autopsy and Hnilica's findings.

133. Applying modern science, Dr. Baker concluded that "nothing about the autopsy findings in Christina McNeil's case supports an objective, independent, diagnosis that she was smothered or that the manner of death was a homicide." (*Id.* at 17). Modern science shows that, at every step of the way, Hnilica's conclusions were, by today's science, baseless and unsubstantiated.

134. *Petechiae*. Hnilica erroneously relied on the presence of petechiae to conclude Christina died of asphyxiation. (*Id.* at 8). Relying on science that emerged after McNeil's trial, Dr. Baker reports that "[t]here are very few (and likely no) preorbital or conjunctival petechiae demonstrated in the autopsy photos." (*Id.*) Moreover, even if petechiae were present, modern science demonstrates that "no relationship exists between the development of petechiae and the

presence or absence of asphyxia.” (*Id.*) In other words, by modern standards, the presence or absence of these petechiae “offer no evidence that Christina was smothered.” (*Id.*)

135. **Bruises.** Hnilica relied on a purported pattern of bruises on Christina’s back as evidence of smothering. (July 2, 1999 Tr. at 122-38). According to Hnilica, this supposed pattern of injuries indicated that “significant force” had been applied to Christina’s back, likely by an assailant’s knee. (*Id.* 138). It would be impossible to overstate how wrong Hnilica was in this regard.

136. As Dr. Baker notes, the deputy coroner who reported to McNeil’s apartment that morning reported observing no signs of trauma to Christina’s body. (Ex. 35, Baker Rpt. at 9). Moreover, Dr. Baker examined the initial photographs of Christina’s body and concluded that they “show no injuries to [her] back.” (*Id.* at 10). Hnilica conceded at trial that the bruises “were made more apparent later[.]” (*Id.* at 11). What she did not reveal was that her autopsy procedure deviated substantially from any accepted scientific procedure.

137. Shockingly, Dr. Baker’s analysis of Christina’s autopsy revealed that significant portions of Hnilica’s examination were performed *after* Christina’s body had been prepared by a funeral director. (*Id.* at 11). There is no way to know from the evidence how much time passed between the original autopsy, the preparation of the body by the funeral director, and the subsequent re-examination of the body. (*Id.*)

138. Dr. Baker concludes:

Given that Christina had no discernible injuries on her back when initially examined, and the subsequent biopsy of such “injuries” occurred after the body was manipulated by a funeral director and beginning to decompose, the logical conclusion is that these “injuries” were nothing more than postmortem artifacts.

(*Id.* at 13).

139. **Facial injuries.** Hnilica improperly relied on so-called “injuries” to Christina’s face

to conclude that Christina was smothered. (*Id.* at 13, 14). In reality, “[t]he few purported injuries to Christina’s face were non-specific, and microscopically were not confirmed as actual injuries.” (*Id.* at 14). Therefore, any “[r]eliance on these injuries to support a diagnosis of smothering was completely unfounded.” (*Id.*) All the more so because, “[l]ike the biopsies of the back, these facial findings appear to have been biopsied after Christina’s body had been prepared by a funeral director.” (*Id.* at 15).

140. ***Cause of death.*** Based on all of this, modern science unequivocally contradicts Hnilica’s conclusions regarding Christina’s cause of death. Indeed, Dr. Baker explained that, applying modern science and modern standards, a pathologist today “would have certified the cause of death as *sudden unexplained death in childhood* (SUDC) and the manner of death as **undetermined.**” (*Id.* at 16) (emphasis in original). We know now, based on that same modern science, that absolutely no evidence supports “an objective, independent diagnosis that [Christina] was smothered or that the manner of death was homicide.” (*Id.* at 17).

## **2. Modern science refutes the State’s evidence regarding Christina’s time of death**

141. ***Time of death.*** As described above, McNeil repeatedly told the police and then testified at trial that Christina went to bed around 10:30 p.m., was awake around midnight, and asleep when he checked on her before he went to bed around 2:00 a.m. The State sought to discredit McNeil’s truthful version of events with testimony from Hnilica regarding Christina’s stomach contents.

142. Ultimately, the Court would credit Hnilica’s testimony and conclude that McNeil’s timeline was inconsistent with the evidence and that Christina must have died at a time when McNeil was awake and alone in the apartment with her. (July 7, 1999 Tr. at 164). However, modern science shows that Hnilica’s conclusion on this score was fundamentally flawed and unreliable.

143. Hnilica testified that, based on Christina's stomach contents, she died within two hours of the time she had last eaten. (July 2, 1999 Tr. at 133-34). However, as Dr. Baker explains, we now know that stomach contents are not a reliable measure of time of death or the time of a last meal. (Ex. 35, Baker Rpt. at 15). Indeed, "[m]eals of higher caloric and osmotic content are known to empty from the stomach more slowly," affecting any attempt to measure time of death. (*Id.*) Therefore, utilizing stomach contents as a guide is far too imprecise and "thus liable to mislead the investigator and the court." (*Id.*)

### **3. Modern science reveals that there is no evidence that Christina had been sexually abused**

144. Based on Hnilica's testimony, the State argued—and the Court ultimately credited—that Christina sustained injuries associated with sexual molestation and that sexual abuse was the motive for her murder. (July 7, 1999 Tr. at 166).

145. Hnilica claimed that Christina had suffered vaginal trauma within hours of her death. (July 2, 1999 Tr. at 128, 163). She further testified that there was medical evidence that Christina had been molested previously and over a period of time. (*Id.* 142-43). In reaching its verdict, the Court specifically pointed to sexual abuse as the probable motive for Christina's murder. (July 7, 1999 Tr. at 166).

146. Modern science now demonstrates that Hnilica's testimony on this score was scientifically inaccurate and utterly baseless.

147. Dr. Nancy Harper is a nationally-renowned pediatrician and expert specializing in child abuse, including sexual molestation. (Ex. 36 at ex. A, Curriculum Vitae of Dr. Harper). Dr. Harper is the Director of the *Otto Bremer Trust Center for Safe and Healthy Children* in the Division of Pediatric Emergency Medicine and Child Abuse at the University of Minnesota Masonic Children's Hospital and is an Associate Professor of Pediatrics at the University of

Minnesota. (*Id.*)

148. Dr. Harper reviewed the autopsy reports, transcripts, and other relevant reports to render an expert scientific opinion on whether Christina was, in fact, molested. (Ex. 36 at ex. B, Harper Rpt. at 1).

149. Relying on modern scientific principles, Dr. Harper concluded that “there are no findings considered indicative of acute anogenital trauma or the residua of prior anogenital trauma.” (*Id.* at 6). Rather, “the examination as documented in the forensic pathology report and in the photos is a normal anogenital examination in a prepubertal female.” (*Id.*)

150. Although Hnilica placed great weight on her conclusion that Christina’s hymen was lobulated, modern science confirms that “[t]he hymenal appearance is considered a normal variant.” (*Id.* at 5).

151. Likewise, Hnilica stressed that the dilation of Christina’s hymen was proof of molestation. (*Id.* at 6). Dr. Harper explains that “at the time of the postmortem examination” performed on Christina’s body, “there was debate in the literature on the significance of the transverse or horizontal measurement of the hymen.” (*Id.*) That debate has now been settled and demonstrates that Hnilica was wrong. “The current scientific literature does not support an association between the transverse diameter of the hymenal opening and child sexual abuse.” (*Id.* at 5-6).

152. Hnilica testified that “irritation in the vagina is an exceedingly rare finding in a little girl.” (July 2, 1999 Tr. at 143). That was simply wrong. Dr. Harper explains that the type of hyperemia and redness Hnilica observed is “a common finding in girls with or without a history of sexual abuse.” (Ex. 36, Harper Rpt. at 6).

153. Moreover, modern science demonstrates that the type of anal dilatation Hnilica

noted “should be considered an expected finding that is not the result of trauma or sexual contact.”  
(*Id.*)

154. Dr. Baker likewise reviewed Hnilica’s findings of recent or ongoing molestation and anogenital trauma and concluded that those findings were not supported by the autopsy findings. (Ex. 35, Baker Rpt. at 16).

155. Thus, modern science flatly contradicts Hnilica’s conclusion that Christina had been sexually abused.

**B. Newly-Discovered DNA Evidence Implicates Misook**

156. As detailed above, this Court granted post-conviction DNA testing in this matter. The results of that testing unquestionably tie Misook to the scene of Christina’s death.

157. **Hair.** Multiple hairs were recovered from Christina’s hands, arms, and bed. Three of those hairs were sent for post-conviction DNA analysis. (Ex. 37). Two of the hairs were unsuitable for testing. (*Id.* at 1). The newly-discovered DNA testing revealed that the other hair, which was discovered inside the pillowcase, was not Christina’s, but that the hair was consistent with Misook’s DNA. (*Id.* at 2).

158. **Bedsheet.** Post-conviction testing performed on the bedsheet on which Christina died identified a mixture of at least three individual’s DNA profiles at each of the multiple locations tested. (Ex. 38 at 2). Christina, McNeil, and Misook could not be excluded as contributors to those mixtures. (*Id.*)

159. For many of the tests performed, conclusions could not be drawn initially due to the presence of mixtures of DNA profiles and partial DNA profiles. As a result, the DNA testing data were further analyzed in order to deconvolute the mixtures. The data were sent to Dr. Karl Reich for expert DNA analysis. Dr. Reich is a DNA analyst and molecular biologist with a doctorate in molecular biology. (Exhibit 39 at ex. A). He is the Chief Scientific Officer of

Independent Forensics of Illinois, an accredited laboratory that both performs DNA testing and reviews prior testing and analyzes raw data from other laboratories. (*Id.* at 1-2). Dr. Reich has performed DNA analysis on hundreds of samples, supervised hundreds more, and reviewed hundreds of forensic DNA cases as an expert witness. (*Id.* at 3). Dr. Reich has been qualified as a DNA expert in Illinois on multiple occasions, including by this Court. (*Id.* at 9).

160. Dr. Reich's modern analysis of the DNA testing data demonstrates that Misook's DNA is present in six different areas of the fitted sheet. (*Id.* at ex. B, Reich Rpt. at 3-6).

161. Some of the DNA testing data were also sent to Cybergene to undergo analysis by TrueAllele probabilistic genotyping software that utilizes an advanced approach to calculate likelihood ratios for DNA mixtures.<sup>1</sup> This advanced analysis further confirmed the presence of Misook's DNA on the sheet, determining that it is 7.81 quadrillion times more likely that the DNA came from Misook than any other person. (Ex. 40 at 2).

162. *Pillowcase.* Newly-discovered DNA test results confirmed the presence of a mixture of DNA profiles on Christina's pillowcase. (*Id.* at 3). Christina, McNeil, and Misook could not be excluded as contributors. (*Id.*)

163. Further analysis utilizing TrueAllele confirmed that Misook's DNA was present on the pillowcase, determining that it is 7.39 million times more likely that the DNA on the pillowcase is Misook's rather than any other person's. (*Id.*)

164. The bottom line: newly-discovered post-conviction DNA testing proves Misook's presence at the scene of Christina's death.

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<sup>1</sup> Information on TrueAllele can be found at <https://www.cybgen.com/>. TrueAllele has been accepted as valid science in California (*Kelly-Frye* standard), Indiana (*Daubert*), Louisiana (*Daubert*), Massachusetts (*Daubert*), Nebraska (*Daubert*), New York (*Frye*), Ohio (*Daubert*), Pennsylvania (*Frye*), South Carolina (*Jones*), Virginia (*Spencer*), and Washington (*Frye*).

**C. Newly-Discovered Evidence Reveals Misook's Idiosyncratic and Patterned History of Killing the Close Female Relatives of Men Who End Relationships with Her**

165. At the time of McNeil's trial, evidence already existed that Misook was a violent person. In the years since, that evidence has grown substantially, including Misook's murder of her mother-in-law under circumstances with a shocking number of parallels to Christina's death.

**1. Misook's history of violence**

166. Misook was found guilty of domestic battery against McNeil just months before Christina's death. (Ex. 11). As noted previously, the sentencing hearing for a parole violation associated with this domestic battery was set for the day following Christina's death. (*Supra* ¶ 15).

167. What is more, shortly after Christina's death, Misook's daughter Michelle went to school with bruises on her thighs, hip, and buttocks. (Mar. 4, 1999 Tr. at 68, 69; ex. 41 at 28, 29). Michelle confided in her school principal that "her mother had put her hand over her mouth, and she couldn't breathe." (Ex. 41 at 54). Indeed, Michelle told the principal that Misook "told her that she needed to behave or the same thing that happened to her sister would happen to her." (*Id.* at 54-55). The "sister" was Christina. (*Id.* at 55). During this assault, Misook told her daughter, "I will kill you tonight." (Mar. 4, 1999 Tr. at 70). The school principal reported the incident to the Department of Children and Family Services. (*Id.* at 57).

168. The bruises were also observed by Dawn Nowlin, Michelle's stepmother. (*Id.* 23).

169. Michelle subsequently told a DCFS investigator that Misook hit her with a wooden paper towel rod. (Mar. 4, 1999 Tr. at 69).

170. Misook admitted to DCFS investigators that she had beaten her daughter, explaining that she did so because Michelle had misbehaved at dinner in front of Misook's new boyfriend, Don Wang. (Ex. 42 at 2). Michelle's dinner-time misbehavior caused Misook to become, in her own words, "very angry and embarrassed," so she grabbed the rod and hit Michelle.



(*Id.*)

171. On May 11, 1999, upon the recommendation of DCFS, a court concluded that Misook was an unfit parent. (Exhibit 43 at 4).

172. At Misook's domestic battery trial, evidence was presented that Misook had suffocated her daughter on more than one occasion. (Ex. 44 at 3) (court noting a "separate incident ... where she felt she, her mother, was trying to keep her from breathing").

173. On June 18, 1999, Misook was found guilty of domestic battery against 9-year-old Michelle. (Ex. 45 at 5).

## **2. Misook's 2011 murder of Linda Tyda**

174. On September 4, 2011, Misook's mother-in-law, Linda Tyda, was brutally murdered. Misook pleaded guilty to concealing the homicidal death by burying Tyda's body in a shallow grave in a forest preserve. (Ex. 46 at 19-28). However, she proceeded to trial on the murder charge itself. The evidence at trial showed that Misook lured Tyda to the scene of her death by paying someone to falsely offer Tyda \$500 to give them a ride to the airport. (Ex. 49 at 197). Misook claimed that she killed Tyda in self-defense. (Ex. 50 at 47, 73-79). On December 18, 2012, Misook was convicted of first-degree murder. (*Id.* at 198).

## **3. The Tyda murder is stunningly similar to Christina's death**

175. The details of Tyda's and Christina's murders bear extraordinary similarities.

176. *Misook's anger and jealousy at the ending of romantic relationships.* Both murders occurred when Misook's romantic relationships fell apart, specifically after she came to believe that her partner had cheated on her.

177. Misook's now adult daughter Michelle testified for the State at Misook's trial for the Tyda murder. She revealed that Misook told her that Misook "was upset" because her husband "was having an affair" with one of Linda's employees. (Ex. 49 at 30-31). Indeed, the affair made

Misook “very upset,” “really upset,” and “very angry.” (*Id.* 32, 34). Misook told a jail guard following her arrest for the Tyda murder that she “did it out of anger, you know, when you’re really mad at someone.” (*Id.* at 19).

178. While in jail awaiting trial for the Tyda murder, Misook sent a letter to her daughter Michelle. Misook told Michelle, “I regret what I did.” (*Id.* at 176). She explained that her husband’s “affair drove me crazy” and said, “[m]y heart just couldn’t stand loneliness[.]” (*Id.* at 177, 176).

179. Her husband Don Wang (Tyda’s son) testified that Misook “always had anger control problems, even back to 10 years ago, 20 years ago, even got into legal problems.” (Ex. 48 at 152). In fact, for the duration of their relationship, he was never able to “sit down and talk to her nicely, peacefully, discuss anything to get some kind of solution.” (*Id.*) Rather, Misook was always “yelling, screaming, slamming things, slam my phone, yelling in front of kid.” (*Id.*)

180. Tyda herself had warned her son about Misook:

My mother knew all these things, my relation[ship]. Almost daily reminded me that if you guys get into any kind of fight or quarrels or something like that, Don, you break away, you break away, you get out of the house, you get out of the restaurant, you get out; don’t get into any uncontrollable situations, because she knew she was out of control. But she kept reminding me, Don, you get out of there.

(*Id.* at 154).

181. Christina’s case involved the same circumstances. Misook told police that McNeil had recently ended their four-year relationship. (Ex. 4 at 1). She was so upset that she had been unable to go to work. (*Id.*) Similar to what Don Wang said in the Tyda case, McNeil told the police that Misook was “maniacal, obsessive, hysterical” and “capable of great violence.” (Ex. 5 at 1).

182. *Surreptitious phone record access.* In each case, Misook used trickery and deception to check her partners’ phone records for evidence of their affairs. (Ex. 48 at 169-70; ex.

49 at 183-184; ex. 5 at 1).

183. *Nighttime confrontations at the victims' homes.* In the weeks preceding both murders, Misook went to both victims' homes and banged on the door at night, causing a scene. (Ex. 7 at 1; ex. 2; ex. 47 at 46).

184. *Misook blamed the victim for the collapse of her romantic relationships.* In both cases, Misook blamed the female relative—at least in part—for the failure of her romantic relationship. With Christina, Misook resented that McNeil was spending a lot of time with Christina and paying Tita child support. (Ex. 5 at 2). As for Tyda, Misook believed that Wang was having an affair with Tyda's secretary and that Tyda supported her son's relationship with the other woman. (Ex. 48 at 49).

185. *Misook's efforts to ruin her the lives of her ex-lovers.* Upon coming to believe her partners were having affairs, in each case, Misook embarked on an effort to cause trouble in her partners' lives before ultimately resorting to murder. With respect to Christina's case, Misook attempted to plant drugs in McNeil's car and went to Christina's mother with the defamatory accusation that McNeil slept in the nude with Christina. (Ex. 33 at 2).

186. In the Tyda matter, Misook went to her husband Don Wang's place of work, alleged that he had been stealing from the business, and "got him fired." (Ex. 48 at 33). She made sure he was fired because she "didn't want to see Don working there and talking to that woman on the phone every day anymore." (*Id.* 190). As Misook explained in a recorded jailhouse phone call with her sister, her intention was to ruin her husband's life: "I'll get every single thing from him, I'll completely ruin him, completely." (*Id.* 237).

187. *Misook endeavored to take her ex-lover's child away.* In both cases, Misook made efforts to take away her ex-lover's child. In the McNeil case, she did this by killing the child. In

the Tyda case, Misook had threatened her husband that she would take their son to California if they divorced. (*Id.* 190).

188. *The similar identity of the victims.* In each case, the victim was the closest female relative of the man with whom Misook had a collapsing romantic relationship: Christina was the daughter of Misook's estranged boyfriend; Tyda was the mother of Misook's estranged husband.

189. *Asphyxiation.* In both cases, the State presented evidence that the victim was strangled to death.

190. The State's theory at the trial over Christina's death was that she had been killed by asphyxiation.

191. With respect to the Tyda murder, Misook described how she committed the crime in her jailhouse letter to Michelle:

I started to lose control of myself too and pushed Linda away. After that we came into a situation where we were strangling each other. I was really out of my mind.

\* \* \*

Oh my God. What have I done?

\* \* \*

When I came to myself again the whole world had changed into a different one. I had become a murderer and the dead body of Linda before my eyes was turning me into a devil.

(Ex. 48 at 201-03).

192. *Blame-shifting.* Lastly, during questioning in both murders, Misook shifted the blame away from herself. When detectives interviewed Misook about Christina, she told them to look into the fact that Christina "had a lot of problems in health," was "always sick," and "had to take medicine [for] asthma problem[s]." (Ex. 16 at 17:05 – 17:33). When Linda died, Misook told detectives that Linda was involved with dangerous people through her work and specifically

suggested that a “group out of New York” may have committed the crime. (Ex. 47 at 20).

193. The following chart depicts Misook’s idiosyncratic and patterned history of homicide:

	Misook’s victim	
	Christina McNeil	Linda Tyda
Misook in failing romantic relationship with victim’s relative	✓	✓
Misook’s relationship with partner characterized by Misook’s anger, jealousy, and lack of control	✓	✓
Victim the closest female relative of failed romantic partner	✓	✓
Misook blamed victim for failure of romantic relationship	✓	✓
Misook believes partner engaged in affair	✓	✓
Misook used deception to search partner’s phone records	✓	✓
Misook took steps to destroy partner’s life	✓	✓
Misook attempted to or did take partner’s child	✓	✓
Misook attempts confrontations at victim’s home late at night	✓	✓
Investigation determines victim was strangled to death	✓	✓
Misook attempts to shift blame when confronted by police	✓	✓

**D. Newly-Discovered Affidavits Establish that Misook Confessed to Killing Christina; Behaved Suspiciously the Night of Christina's Death**

194. Three newly-discovered affidavits reveal Misook's confession to Christina's murder and her suspicious behavior in the early morning hours of June 16, 1998.

**1. Michelle Nowlin avers that Don Wang told her Misook confessed to the murder of Christina McNeil**

195. On September 12, 2013, Michelle Nowlin provided three affidavits detailing her relationship with McNeil, a conversation with Don Wang, and the abuse she endured from Misook.

196. In one, Michelle describes her positive relationship with McNeil, who was dating her mother, Misook. (Ex. 51). According to Michelle, McNeil "never treated [her] badly," "never did anything inappropriate to [her]," and she "never saw Barton do anything inappropriate to Christina McNeil." (*Id.* at 1-2, ¶¶ 8-10). In another, she describes the violent incident in which her mother struck her with a paper towel holder. (*Id.* at 4-6).

197. Michelle further avers that she attended Linda Tyda's funeral and spoke with her step-father, Don Wang. (*Id.* at 8). Michelle recounts that, after the funeral, Wang told her that Misook "once told him that she had killed Christina McNeil in 1998." (*Id.* at 8, ¶ 6).

**2. Dawn Nowlin also avers that Wang told her Misook confessed to Christina's murder**

198. Dawn Nowlin, Michelle's step-mother, likewise attended Tyda's funeral. (Ex. 52 at 1). She has now come forward to reveal that Wang told her at the funeral that "Misook admitted to killing Christina McNeil" during a fight he had with Misook. (*Id.* ¶ 6).

**3. Susanne Burns details Misook's strange behavior the night of Christina's murder**

199. In a newly-discovered affidavit, Susanne Burns provides new details of Misook's actions in the early morning hours of July 16, 1998. (Ex. 53). Burns lived in an apartment across the hall from Misook at the time. (*Id.* ¶ 8). She worked nights. (*Id.* ¶ 17). She had just returned

home from work in the early morning hours when she heard a noise in the hall. (*Id.* ¶¶ 18-22). She looked out of the peephole to see “Misook going into her apartment” with “the front door propped open” and “the door to the closet under a set of stairs also open.” (*Id.* at ¶¶ 22-24). Burns recounts that “Misook was in the closet, and [she] heard her go back and forth between her apartment and the closet at least three times.” (*Id.* at ¶ 25).

200. Burns explains that she found Misook’s behavior “unusual” because it was the middle of the night. (*Id.* at ¶ 28).

201. Later that afternoon, Misook told Burns that Christina had died. (*Id.* at ¶ 30). Burns immediately “recalled seeing Misook earlier that morning and that drew [her] suspicion.” (*Id.* at ¶ 35). Burns explains that she “thought almost immediately that Misook had something to do with it or was somehow involved.” (*Id.*)

202. However, her suspicions were countered by news reports which said that McNeil was responsible and a comment Misook made to her about McNeil possibly molesting Michelle. (*Id.* at ¶ 41). As a result, she never came forward to explain what she saw that night. (*Id.*)

203. The police never questioned Burns prior to McNeil’s trial. (*Id.* at ¶ 40).

## **VI. CLAIMS FOR POST-CONVICTION RELIEF**

204. McNeil is entitled to relief under the Post-Conviction Hearing Act pursuant to the following claims.

**CLAIM I: MCNEIL IS INNOCENT. NEWLY-DISCOVERED EVIDENCE ESTABLISHES THAT HIS CONVICTION AND CONTINUED DETENTION VIOLATE HIS RIGHT TO DUE PROCESS OF LAW UNDER THE UNITED STATES AND ILLINOIS CONSTITUTIONS.**

205. McNeil re-alleges each paragraph of this Petition and expressly incorporates them as if fully set forth herein.

206. It is well-settled that Illinois has no interest in wrongfully incarcerating innocent

persons. Indeed, to do so would be “fundamentally unfair” procedurally and would be “so conscience shocking as to trigger the operation of substantive due process.” *People v. Washington*, 171 Ill.2d 475, 487-488 (1996); *see also* United States Const. Amends. V, XIV.

207. A petitioner may bring a claim of actual innocence seeking reversal of his conviction. “To establish a claim of actual innocence, the supporting evidence must be (1) newly discovered, (2) material and not cumulative, and (3) of such conclusive character that it would probably change the result on retrial.” *People v. Robinson*, 2020 IL 123849, ¶ 47 (citing *People v. Edwards*, 2012 IL 111711, ¶ 32; *People v. Coleman*, 2013 IL 113307, ¶ 96; *Washington*, 171 Ill. 2d at 489).

208. “Newly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence.” *Id.* (citing *Coleman*, 2013 IL 113307, ¶ 96).

209. “Material” evidence is anything “relevant and probative of the petitioner’s innocence.” *Id.*

210. “Noncumulative” means that the evidence “adds to the information that the fact finder heard at trial.” *Id.* (citing *Coleman*, 2013 IL 113307, ¶ 96; *People v. Molstad*, 101 Ill. 2d 128, 135 (1984)).

211. To be “conclusive,” the evidence “need not be entirely dispositive[.]” *Id.* at ¶ 48 (citing *Coleman*, 2013 IL 113307, ¶ 97). “Rather, the conclusive-character element requires only that the petitioner present evidence that places the trial evidence in a different light and undermines the court’s confidence in the judgment of guilt.” *Id.* at ¶ 56. “Probability, rather than certainty, is the key in considering whether the fact finder would reach a different result after considering the prior evidence along with the new evidence.” *Id.*



212. McNeil's petition satisfies each of these requirements. At least *eight* pieces of newly-discovered evidence establish his entitlement to a new trial.

**A. Newly-Discovered Evidence Reveals that the State's Evidence That a Crime Occurred at All Was Junk Science**

213. It is axiomatic that the State must prove that a crime actually occurred in order for a defendant to be convicted. Indeed, "[p]roof of an offense requires proof of two concepts: first, that a crime occurred, or the *corpus delicti*, and second, that it was committed by the person charged." *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004) (citing *People v. Cloutier*, 156 Ill.2d 483, 503 (1993)).

214. "In a prosecution for murder, the *corpus delicti* consists of the fact of death and the fact that death was produced by a criminal agency." *Id.* at 202-03 (citing *People v. Garrett*, 62 Ill.2d 151, 172 (1975)). In this case, "the fact of death" is not in question. But the only evidence that ever suggested "that the death was produced by a criminal agency" has been cast in a different light by scientific advances such that any confidence in the verdict is necessarily undermined.

215. As described above, the only evidence that Christina died by homicide was the testimony of Dr. Hnilica, who opined that Christina was killed by smothering. (*Supra* ¶ 86, 88). Indeed, prior to Hnilica's conclusion, the police "honestly thought it was a natural death initially." (July 1, 1999 Tr. at 116).

216. As set forth in detail above, modern scientific analysis of the evidence in this case renders Hnilica's conclusions utterly insupportable. (*See generally supra* ¶¶ 133-42). Dr. Baker's report explains that, applying modern standards, "nothing about the autopsy findings in Christina McNeil's case supports an objective, independent, diagnosis that she was smothered or that the manner of death was a homicide." (Ex. 35, Baker Rpt. at 17).

217. Hnilica's reliance on petechiae as evidence of murder is contradicted by modern

science. (*Supra* ¶ 136).

218. Modern science also indicates that the entire methodology of Hnilica's autopsy was flawed; her reliance on a "pattern" of bruises was incorrect; the conclusions she drew from Christina's supposed facial injuries were baseless; and her reliance on stomach contents to pinpoint Christina's time of death was wholly unreliable. (*Supra* ¶ 137).

219. Using this modern science, a pathologist today "would have certified the cause of death as sudden unexplained death in childhood (SUDC) and the manner of death as undetermined." (Ex. 35, Baker Rpt. at 16).

220. *New*. Based as it is on advances in the scientific field that post-date McNeil's trial, this evidence "is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence." *Robinson*, 2020 IL 123849, ¶ 47.

221. *Material*. The evidence is material because whether or not a crime occurred is certainly "relevant and probative of the petitioner's innocence." *Id.*

222. *Noncumulative*. Likewise, the evidence is noncumulative in that it "adds to the information that the fact finder heard at trial." *Id.* At trial, the fact finder never heard that Hnilica's conclusions would later be contradicted by advances in science.

223. *Conclusive*. Last, the evidence is sufficiently conclusive. Had the fact finder heard that Hnilica's conclusions regarding Christina's cause of death were scientifically invalid, there is at least a probability that it would have reached a different result. *Id.* at ¶ 48.

224. The evidence contained in Dr. Baker's report (ex. 35) revealing the many ways in which the conclusions of the State's pathology witness at trial were fundamentally flawed is sufficient to entitle McNeil to a new trial.

**B. Newly-Discovered Evidence Reveals that the State's Evidence Regarding Motive Was Predicated on Junk Science**

225. At trial, the State repeatedly told the fact finder that McNeil killed Christina in order to cover up the fact that he had repeatedly molested her, including on the night of her death.

226. While in some cases it may be unnecessary for State to prove a motive in order to secure a murder conviction, in this case, the allegation that McNeil had sexually abused his own daughter was a fundamental component of the State's case. Motive evidence is often "highly inflammatory." *People v. Lee*, 2019 IL App (1st) 162563, ¶ 66 (1st Dist. 2019). That was certainly the case here.

227. As described above, the only evidence of McNeil's supposed motive for this crime was Hnilica's testimony that Christina had been sexually abused the night she died and on prior occasions. (*Supra* ¶¶ 89-90). But, as set forth in detail above, modern scientific analysis shows that Hnilica was flat wrong. (*Supra* ¶¶ 146-57).

228. As Dr. Harper explains, and contrary to what Hnilica concluded based on the prevailing science at the time of McNeil's trial, modern science demonstrates that Christina's was a "normal anogenital examination in a prepubertal female." (Ex. 36, Harper Rpt. at 6). Although at the time of McNeil's trial, "there was debate in the literature on the significance of the transverse or horizontal measurement of the hymen," that debate has been settled and "[t]he current scientific literature does not support an association between the transverse diameter of the hymenal opening and child sexual abuse." (*Id.* at 5-6).

229. The bottom line is that modern science completely repudiates Hnilica's testimony regarding any alleged motive.

230. Moreover, had the finder of fact known that Hnilica was flat wrong about whether Christina had been sexually abused, the credibility of her other conclusions would have been

severely undermined. “[W]here newly discovered evidence affects the credibility of the testimony of a material witness it would be a strong reason for granting a new trial” *People v. Woodall*, 131 Ill. App. 2d 662, 668, 264 N.E.2d 303, 307 (3d. Dist. 1970) (citing *People v. Cotell*, 298 Ill. 207, 217 (1921)); *see also People v. Tyler*, 2015 IL App (1st) 123470, ¶¶ 186, 189 (remanding postconviction petition for third-stage hearing where evidence of systematic pattern of abuse by detectives could undermine their credibility).

231. *New*. Based as it is on advances in the scientific field that post-date McNeil’s trial, this evidence “is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence.” *Robinson*, 2020 IL 123849, ¶ 47.

232. *Material*. The evidence is material because it is “relevant and probative of the petitioner’s innocence.” *Id.*

233. *Noncumulative*. It is noncumulative in that it “adds to the information that the fact finder heard at trial.” *Id.* At trial, the fact finder never heard that developments in science would later prove that Hnilica’s conclusions were baseless and utterly false.

234. *Conclusive*. The evidence is also conclusive. Had the fact finder heard that Hnilica’s conclusions regarding whether Christina had been sexually abused were devoid of merit, there is at least a probability that it would have reached a different result. *Id.* at ¶ 48. Indeed, the Court cited to McNeil’s alleged “sexual misconduct as a possible motive” in rendering its verdict. (July 7, 1999 Tr. at 166). Without any evidence of a motive, there is at least a probability that the Court would have reached a different result.

235. The evidence contained in Dr. Harper’s report (ex. 36) revealing the many ways in which the conclusions of the State’s pathology witness at trial were fundamentally flawed is sufficient to entitle McNeil to a new trial.

**C. Newly-Discovered Evidence Demonstrates that Misook's Hair Was in Christina's Bed**

236. As described above, post-conviction DNA testing has now confirmed Misook's presence in the bed on which Christina died.

237. At trial, the State's forensic microscopy witness testified about various hairs recovered from the scene of Christina's death. (July 2, 1999 Tr. at 9). She testified that they almost definitely came from Christina. (*Id.* 14-16, 20, 26). Post-conviction DNA test results establish that one of the hairs found in the bed was conclusively not Christina's. (Ex. 37 at 2). However, in the parlance of DNA analysis, the profile is "consistent with" Misook and Misook "cannot be excluded as a contributor[.]" (*Id.*) This evidence warrants post-conviction relief. It is newly-discovered, material, noncumulative, and likely to change the result on retrial.

238. *New.* The DNA evidence proving the presence of Misook's hair in Christina's bed was the result of testing performed in 2015 and 2016. (*Id.* at 1; ex. 38). Cellmark Forensics performed "DNA testing using the polymerase chain reaction (PCR) and the AmpFISTR Identifiler Plus™ Amplification Kit" and also "the Quantifiler Duo Kit" on the hair. (Ex. 38 at 2). This testing method was not available to labs until 2009, a decade after McNeil was convicted. (Ex. 54 at 1, 13 n.15). The method "was developed to address the desire for greater sensitivity, better tolerance to PCR inhibitors, and improved performance on mixture samples," enabling "forensic analysts to recover more interpretable results from increasingly challenging casework samples with greater confidence." (*Id.* at 1). Because of its recent development, McNeil could not have, through the exercise of any amount of diligence, discovered this evidence at an earlier time.

239. *Material.* The evidence is material because it is relevant and probative of McNeil's innocence. Evidence indicating that a third-party committed the crime is by definition material. *E.g., People v. Lofton*, 2011 IL App (1st) 100118, ¶ 38.

240. *Noncumulative.* This evidence is non-cumulative because the finder of fact at trial heard no evidence regarding Misook's culpability as a result of the grant of the State's motion to exclude evidence and argument on that score. Scientific evidence proving that Misook's hair was discovered in Christina's deathbed would have added to what the factfinder heard.

241. *Conclusive.* Finally, the evidence is likely to change the result on retrial. As the Supreme Court recently explained in *Robinson*, "the conclusive-character element requires only that the petitioner present evidence that places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt." 2020 IL 123849, ¶ 48. "Probability, rather than certainty, is the key[.]" *Id.* The DNA evidence confirming the presence of Misook's hair in Christina's bed would *at least* probably lead to a different result.

242. As set forth above, the Court granted the State's pretrial motion to exclude evidence and argument regarding Misook's culpability. The Court explained its ruling: "I don't think there's sufficient other evidence indicating any close enough connection that would allow this to come in in terms of proving the former girlfriend was the perpetrator as opposed to the defendant." (Mar. 4, 1999 Tr. at 132-33). Had the Court had available to it conclusive DNA evidence that Misook's hair was in the actual bed in which Christina died, it would have found there to be a "close enough connection" and would have denied the State's motion to exclude the evidence. At the very least, there is a probability that the Court would have denied the motion.

243. Moreover, the outcome of the trial would have been different had the Court been presented with DNA evidence of the presence of Misook's hair in Christina's bed. In finding McNeil guilty, the Court explained that that this was "a classic case of circumstantial evidence." (July 7, 1999 Tr. at 163). The Court concluded that the evidence showed that "Christina died while the defendant was the only other person present in the home. There is no evidence that someone

else entered the home at any time and certainly not during the time Christina died.” (*Id.* 164). Although at the time there may have been “no evidence that someone else entered the home,” the presence of Misook’s hair in Christina’s bed now shows that McNeil was *not* “the only other person present in the home” with Christina. That evidence is likely to change the result on retrial.

244. Lest there be any confusion, the fact that the appellate court affirmed the exclusion of evidence of Misook’s culpability from McNeil’s trial does not have any preclusive effect on the claim McNeil now raises. On direct appeal, the appellate court summarized the then-existing evidence regarding Misook and found no abuse of discretion in excluding it. (Ex. 34 at 3-5). The appellate court concluded that, “[t]aken as a whole, this evidence showed no clear connection between [Misook] and Christina’s death.” (*Id.* at 5). McNeil now presents new evidence establishing a direct connection between Misook and Christina’s death. *Res judicata*, therefore, does not bar the claim. *People v. Patterson*, 192 Ill. 2d 93, 139 (2000); *People v. Hogley*, 182 Ill. 2d 404, 449 (1998); *People v. Madej*, 177 Ill.2d 116, 132 (1997); *People v. Evans*, 186 Ill.2d 83, 91 (1999); *People v. Tyler*, 2015 IL App (1st) 123470, ¶¶ 160-162; *People v. Almodovar*, 2013 IL App (1st) 101476, ¶ 66.

245. The DNA evidence confirming the presence of Misook’s hair in Christina’s deathbed is sufficient to entitle McNeil to a new trial.

**D. Newly-Discovered Evidence Demonstrates Misook’s DNA Was Present in Multiple Locations on Christina’s Bedding**

246. Post-conviction DNA testing has identified Misook’s DNA in multiple locations on Christina’s bedsheet and pillowcase. (*Supra* ¶ 159-65; ex. 38; ex. 37; ex. 40; ex. 39, Reich Rpt.). This evidence calls for post-conviction relief. It is newly-discovered, material, noncumulative, and likely to change the result on retrial.

247. *New*. The post-conviction DNA testing that confirmed the presence of Misook’s

DNA on the bedding involved several state-of-the-art methods. In 2015, Cellmark Forensics performed “DNA testing using the polymerase chain reaction (PCR) and the AmpFLSTR Identifiler Plus™ Amplification Kit” on various samples taken from Christina’s bedsheets. (Ex. 38; ex. 55). As noted above, this methodology did not exist until 2009 and McNeil could not have discovered or utilized this advanced testing method prior to trial as it did not yet exist. (*Supra* ¶ 240).

248. Further analysis of the data was performed using advanced probabilistic genotyping software. (*Supra* ¶ 163; ex. 40). The state-of-the-art form of this methodology did not become available until 2009. (Ex. 56). Because of its recent development, McNeil could not have, through the exercise of any amount of diligence, discovered this evidence at an earlier time.

249. **Material.** The evidence is material because it is relevant and probative of McNeil’s innocence. Evidence indicating that a third-party committed the crime is material. *E.g.*, *Lofton*, 2011 IL App (1st) 100118, ¶ 38.

250. **Noncumulative.** This evidence is non-cumulative because the finder of fact at trial heard no evidence regarding Misook’s culpability. Scientific evidence proving that Misook’s DNA was discovered in multiple locations on Christina’s bedding would have added to what the Court heard.

251. **Conclusive.** Finally, the presence of Misook’s DNA in multiple places in Christina’s bed would *at least* probably lead to a different result. For the reasons set forth above with respect to the evidence of Misook’s hair, had the Court been presented with evidence of Misook’s DNA on the bedding, it would have found there to be a “close enough connection” between Misook and Christina’s death and would have denied the State’s motion to exclude evidence of Misook’s culpability.



252. The ultimate verdict would also have been different. The Court would likely not have found “no evidence that someone else entered the home,” when such a finding is contradicted by Misook’s DNA all over Christina’s bed. The evidence is likely to change the result on retrial.

253. For the reasons set forth above, *res judicata* does not preclude a claim based on this evidence.

254. The DNA evidence confirming Misook’s presence in Christina’s deathbed is sufficient to entitle McNeil to a new trial.

**E. Susanne Burns’ Newly-Discovered Affidavit Regarding Misook’s Suspicious Behavior the Night Christina Died**

255. Susanne Burns, a neighbor of Misook’s, avers that she saw Misook in the early morning hours of June 16, 1998. (Ex. 53). She observed Misook engaged in “unusual” behavior that night, specifically going back and forth from her apartment to a storage closet in the hallway of their apartment building. (*Id.* ¶¶ 18-28). This evidence warrants post-conviction relief. It is newly-discovered, material, noncumulative, and likely to change the result on retrial.

256. *New.* Burns did not testify at McNeil’s trial, nor is she mentioned in any discovery materials or police reports. Indeed, the police never spoke to Burns about Misook or McNeil’s case until many years after McNeil was convicted. (*Id.* at ¶ 40). In her affidavit, Burns explains why she did not come forward sooner. Although initially suspicious of Misook based on her observation of Misook’s activities the night of Christina’s death, any question she had of Misook’s involvement disappeared when Misook told her McNeil may have molested Misook’s daughter Michelle and when news coverage of Christina’s death painted McNeil as guilty. (*Id.* at ¶¶ 35, 41). McNeil had no way to know about Burns’ existence as a witness, let alone what she had seen. Thus, McNeil could not have, through the exercise of reasonable diligence, discovered this evidence sooner.

257. **Material.** The evidence is material because it is relevant and probative of McNeil’s

innocence. Evidence indicating that a third-party committed the crime is material. *E.g., Lofton*, 2011 IL App (1st) 100118, ¶ 38.

258. *Noncumulative*. This evidence is non-cumulative because the finder of fact at trial heard no evidence regarding Misook's suspicious activities on the night in question.

259. *Conclusive*. Finally, eyewitness testimony regarding Misook's suspicious behavior the night of Christina's death has a probability of leading to a different result. Had the Court known that Misook was going in and out of her storage closet in the middle of the night, that this behavior was unusual for her, and that she lied about it to the police and to the Court when she claimed to have been sleeping at that hour (Ex. 4; Mar. 4, 1999 Tr. at 124-28), it would have had reason to deny the State's motion to exclude evidence of Misook's culpability.

260. The ultimate verdict would also have been different. In the face of Misook's incriminating behavior as described in the Burns affidavit, the Court would have had more than a reasonable doubt about McNeil's guilt.

261. For the reasons set forth above, *res judicata* does not preclude a claim based on this evidence.

262. The information contained in Burns' affidavit is sufficient to entitle McNeil to a new trial.

**F. Dawn Nowlin's Newly-Discovered Affidavit Averring that Misook Confessed to Don Wang**

263. Dawn Nowlin has come forward to aver that, in 2011, at the funeral for Tyda Wang, Don Wang "told [her] that at some point he got into an argument [with] Misook" and that "in a fit of anger, Misook admitted to killing Christina McNeil." (Ex. 52 at ¶¶ 4-6). As it is newly-discovered, material, noncumulative, and likely to change the result on retrial, this evidence satisfies the standard for post-conviction relief.

264. *New*. McNeil was convicted in 1999. Misook's confession to Don Wang was not revealed to Dawn Nowlin until 2011. (*Id.* ¶ 4; ex. 51 at 8, ¶ 4). As noted above, both Don Wang and Dawn Nowlin testified during the defense offer of proof regarding the State's motion to exclude evidence of Misook's culpability. Neither testified that Misook had confessed to killing Christina. (*See generally* Mar. 4, 1999 Tr. at 97-102, 110-14). No amount of diligence would have allowed McNeil to learn of Misook's confession, which would occur later during her marriage to Don Wang. (*See* ex. 50 at 16 (Wang and Misook married in 2003)).

265. *Material*. Misook's confession that she—not McNeil—killed Christina is material, in that there can be no question that it is "relevant and probative of the petitioner's innocence." *Robinson*, 2020 IL 123849, ¶ 47; *Lofton*, 2011 IL App (1st) 100118, ¶ 38 (evidence indicating that a third-party committed the crime is by definition material).

266. *Noncumulative*. This evidence is non-cumulative because the finder of fact at trial heard no evidence that Misook would later confess to the crime.

267. *Conclusive*. Finally, there is a probability that the outcome at trial would have been different had the fact-finder heard evidence of Misook's confession to killing Christina. Aware of Misook's confession, the Court would likely not have granted the State's motion to exclude evidence of her culpability and would have ultimately returned a verdict of not-guilty.

268. Dawn Nowlin's affidavit does not implicate any hearsay restrictions. "Illinois Rule of Evidence 1101(b)(3) (eff. Sept. 17, 2019) specifically provides that the rules of evidence do not apply to postconviction hearings." *Robinson*, 2020 IL 123849, ¶ 78. Indeed, the affidavit is precisely the type of evidence that the Supreme Court has held is likely to change the result on retrial. *Id.* ¶ 80 ("In accordance with the dictates of Rule 1101(b)(3), Tucker's confession, as set forth in Hunt-Bey's affidavit, must be considered in evaluating petitioner's actual innocence claim,

and we hold that such evidence is of such a conclusive character as to probably change the outcome at a retrial.”).

269. For the reasons set forth above, *res judicata* does not preclude a claim based on this evidence.

270. The information contained in Dawn Nowlin’s affidavit is sufficient to entitle McNeil to a new trial.

**G. Michelle Nowlin’s Newly-Discovered Affidavit Averring that Misook Confessed to Don Wang**

271. Misook’s daughter, Michelle Nowlin, has come forward to aver that, in 2011, following the funeral for Tyda Wang, Don Wang: “indicated to me that my mother, Misook Wang, once told him that she had killed Christina McNeil in 1998.” (Ex. 51 at 8, ¶ 6). As it is newly-discovered, material, noncumulative, and likely to change the result on retrial, this evidence satisfies the standard for post-conviction relief.

272. The conversation Michelle had with Don Wang appears to be separate from the conversation Dawn Nowlin recounts in her affidavit. Dawn’s conversation happened “[a]t Lynda Tyda’s ‘Celebration of Life’” ceremony (ex. 52 at ¶ 4), whereas Michelle’s conversation with him took place “at an apartment following the funeral” (Ex. 51 at 8, ¶ 6).

273. *New*. Michelle Nowlin’s affidavit is newly-discovered for the same reason that Dawn Nowlin’s is. McNeil was convicted in 1999. Misook’s confession to Don Wang was not revealed to Michelle Nowlin until 2011. (Ex. 52 at ¶ 4; ex. 51 at 8, ¶ 4). No amount of diligence would have allowed McNeil to learn of Misook’s confession, which would occur later.

274. *Material*. Michelle Nowlin’s affidavit is material for the same reason as Dawn’s. *Lofton*, 2011 IL App (1st) 100118, ¶ 38 (evidence indicating that a third-party committed the crime is by definition material).

275. *Noncumulative.* This evidence is non-cumulative because the finder of fact at trial heard no evidence that Misook would later confess to the crime.

276. *Conclusive.* Finally, there is a probability that the outcome at trial would have been different had the fact-finder heard evidence of Misook's confession to killing Christina. Aware of Misook's confession, the Court would likely not have granted the State's motion to exclude evidence of her culpability and would have ultimately returned a verdict of not-guilty.

277. For the reasons set forth above, neither res judicata nor hearsay rules preclude a claim based on this evidence.

278. The information contained in Michelle Nowlin's affidavit is sufficient to entitle McNeil to a new trial.

**H. Misook's 2011 Murder of Tyda Wang Is New Evidence of her Culpability for Christina's Death**

279. As detailed above, Misook murdered Linda Tyda in September 2011. She later pleaded guilty to concealing the homicidal death by burying Tyda's body in a shallow grave. (Ex. 46 at 19-28). On December 18, 2012, Misook was convicted of first-degree murder. (Ex. 50 at 198). Misook's 2011 killing of Tyda is newly-discovered, material, noncumulative evidence that is likely to change the result on retrial.

280. *New.* Evidence is newly-discovered when it has been discovered since the trial and is of such a character that it could not have been discovered prior to the trial by the exercise of due diligence." *People v. Ortiz*, 385 Ill. App. 3d 1, 10 (1st Dist. 2008) (citing *People v. Molstad*, 101 Ill. 2d 128, 134 (1984)). McNeil's trial took place in 1998. The Tyda murder occurred in 2011 and could not have been discovered prior to McNeil's trial with any amount of diligence.

281. *Material.* Evidence of Misook's culpability for the Tyda murder suggests that she—not McNeil—is responsible for Christina's death. Evidence indicating that a third-party

committed the crime is by definition material. *Lofton*, 2011 IL App (1st) 100118, ¶ 38. This includes evidence of another offender's pattern, or *modus operandi*, of committing similar offenses. *People v. Cruz*, 162 Ill. 2d 314, 350 (1994) ("other crimes evidence" can contain "significant probative value to the defense"); *see also People v. Beaman*, 229 Ill. 2d 56, 76 (2008) ("The evidence that Doe was charged with domestic battery and had physically abused his girlfriend on many prior occasions also could have been used by petitioner at a pretrial hearing to establish Doe as a viable suspect") (materiality in *Brady* context).

282. The evidence of Misook's culpability for the Tyda murder establishes her as a viable suspect in this case, is relevant to her likelihood to commit the violent act, and shows her tendency to commit such violent acts. The evidence is material for those reasons.

283. Separately, the evidence is also material because it eviscerates Misook's credibility as a witness. Misook was called to testify during the defense offer of proof on the State's motion to exclude evidence of her culpability. She claimed to be home alone the night Christina died. (Mar. 4, 1999 Tr. at 124-28). In excluding evidence of her culpability and ultimately finding McNeil guilty, the Court necessarily concluded that it believed Misook's account of her own innocence. If the Court had known of Misook's responsibility for the 2011 Tyda murder, it would not have credited her assertion of innocence regarding the extremely similar 1998 murder of Christina. Evidence which impugns a witness' credibility is material. *Almodovar*, 2013 IL App (1st) 101476, ¶ 68 ("New evidence that attacks his credibility on that crucial question would be highly material"). Accordingly, the evidence of Misook's culpability for the Tyda murder is material for this reason as well.

284. *Noncumulative*. This evidence is non-cumulative because the finder of fact at trial heard no evidence of Misook's culpability, and certainly no evidence that Misook would kill Tyda

thirteen years later.

285. *Conclusive.* The evidence of Misook’s culpability for the strikingly similar Tyda murder would likely change the result on retrial. Had the Court known that Misook committed a remarkably similar murder, with remarkably similar motives, it would likely have denied the State’s motion to exclude evidence regarding her culpability and ultimately concluded that she—not McNeil—was responsible for Christina’s death. *Beaman*, 229 Ill. 2d at 81 (“We conclude that there is a reasonable probability that the result of the trial would have been different if petitioner had presented the evidence establishing Doe as an alternative suspect.”).

286. For the reasons set forth above, res judicata does not preclude a claim based on this evidence.

#### **I. The Totality of the Evidence**

287. Analysis of an actual innocence claim requires consideration of “all the evidence, both new and old, together.” *Coleman*, 2013 IL 113307 at ¶ 97 (emphasis added). In other words, the totality of the evidence is what matters. The Court therefore must consider each piece of newly-discovered evidence in combination with the other new evidence, and in combination with the evidence already in the record.

288. Standing alone, each of the foregoing pieces of newly-discovered evidence is sufficient to entitle McNeil to a new trial. In combination with each other, and in combination, with the evidence already in the record, his entitlement to a new trial is beyond dispute.

#### **CLAIM II: MCNEIL WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE 6TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 8 OF THE ILLINOIS CONSTITUTION**

289. McNeil re-alleges every paragraph of this Petition and expressly incorporates them as if fully set forth herein.

290. The Sixth and Fourteenth Amendments to the U.S. Constitution guarantee a person accused of a crime the right to counsel, as does Article I, Section 8 of the Illinois Constitution of 1970. U.S. Const. amend. VI & XIV; Ill. Const. 1970, art. I, sec. 8.

291. This right to counsel is fundamental and is aimed at protecting the right to a fair trial, and it includes the right to effective representation. *Strickland v. Washington*, 466 U.S. 688 (1984); *People v. Perez*, 148 Ill.2d 168, 592 N.E.2d 984 (1992).

292. Ineffective assistance of counsel exists where counsel's performance fell below an objective standard of reasonableness and there is a reasonable probability that the result of the proceedings would have been different absent counsel's errors. *Strickland*, 466 U.S. at 687; *People v. Weir*, 111 Ill.2d 334, 337, 490 N.E.2d 1, 2 (1986). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

293. McNeil raises—as an alternative claim—an allegation that he received constitutionally ineffective assistance of counsel. This claim is asserted to the extent that (1) this Court concludes that McNeil's trial counsel had the ability to learn of the evidence contained in this Petition supporting McNeil's actual innocence claim; and/or (2) other evidence to which McNeil does not yet have access supports this claim of ineffective assistance of counsel. McNeil will seek leave of the Court to supplement this claim in the event he obtains other information in support of it.

## VII. CONCLUSION

294. For the reasons stated above, Petitioner Barton McNeil respectfully requests that this Court (a) docket this Petition; (b) grant discovery as necessary to prove the foregoing claim; (c) hold an evidentiary hearing where proof may be offered concerning the allegations in this petition; and (d) vacate McNeil's conviction and grant him a new trial.



DATED: February 22, 2021

Respectfully submitted,

BARTON MCNEIL

By: /s/ Karl Leonard  
Counsel for Petitioner

By: /s/ John Hanlon  
Counsel for Petitioner

By: /s/ Lauren Myerscough-Mueller  
Counsel for Petitioner

By: /s/ Stephanie Kamel  
Counsel for Petitioner

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*Counsel for Petitioner*

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
MCLEAN COUNTY, ILLINOIS

BARTON MCNEIL

*Petitioner-Defendant*

v.

PEOPLE OF THE STATE OF ILLINOIS,

*Respondent-Plaintiff*

)  
)  
)  
) No. 98 CF 0633  
)  
)  
)  
)

VERIFICATION

I, Karl Leonard, an attorney with knowledge of the facts contained in the accompanying Successive Petition for Post-Conviction relief, declare under penalty of perjury that foregoing petition is true and correct to the best of my knowledge and belief.

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, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Karl Leonard  
Karl Leonard, Attorney for Petitioner

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
MCLEAN COUNTY, ILLINOIS**

BARTON MCNEIL

*Petitioner-Defendant*

v.

PEOPLE OF THE STATE OF ILLINOIS,

*Respondent-Plaintiff*

No. 98 CF 0633

**RULE 651(c) CERTIFICATION**

I, Karl Leonard, have consulted with Petitioner Barton McNeil in person, by mail, and by telephone to ascertain his contentions regarding the deprivation of his constitutional rights, have examined the record of the proceedings at trial, and have set forth in the foregoing Petition for Post-Conviction Relief an adequate representation of Mr. McNeil's contentions as best they can be ascertained given the available information at this time.

DATED: February 22, 2021

/s/ Karl Leonard  
Attorney for Petitioner Barton McNeil

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
MCLEAN COUNTY, ILLINOIS**

BARTON MCNEIL	)	
	)	
<i>Petitioner-Defendant</i>	)	
	)	No. 98 CF 0633
v.	)	
	)	
PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
<i>Respondent-Plaintiff</i>	)	

**EXHIBIT LIST**

Exhibit 1	Narrative Supplemental Report, Bloomington Police Dept., June 20, 1998
Exhibit 2	Narrative Supplemental Report, Bloomington Police Dept., June 20, 1998
Exhibit 3	Narrative Supplemental Report, Bloomington Police Dept., July 16, 1998
Exhibit 4	Narrative Supplemental Report, Bloomington Police Dept., June 17, 1998
Exhibit 5	Narrative Supplemental Report, Bloomington Police Dept., June 17, 1998
Exhibit 6	Narrative Supplemental Report, Bloomington Police Dept., June 20, 1998
Exhibit 7	Narrative Supplemental Report, Bloomington Police Dept., June 17, 1998
Exhibit 8	Bill of Indictment, <i>People v. Nowlin</i> , No. 96 CF 374 (May 2, 1996)
Exhibit 9	Plea Agreement, <i>People v. Nowlin</i> , No. 96 CF 374 (Aug. 21, 1996)
Exhibit 10	Initial Case Report, Bloomington Police Dept., Aug. 21, 1997
Exhibit 11	Court Disposition, <i>People v. Nowlin</i> , 97 CM 2016 (Mar. 9, 1998) (redacted to remove Social Security, Driver's License, and ID Numbers)
Exhibit 12	Petition for Revocation of Probation, <i>People v. Nowlin</i> , 96 CF 374 (Oct. 2, 1997)
Exhibit 13	Felony Record Sheet, <i>People v. Nowlin</i> , 96 CF 374
Exhibit 14	Notice, <i>People v. Nowlin</i> , 96 CF 374 (May 28, 1996)
Exhibit 15	Video of Police Interview of Misook Wang, Part 1, June 17, 1998
Exhibit 16	Video of Police Interview of Misook Wang, Part 2, June 17, 1998
Exhibit 17	Narrative Supplemental Report, Bloomington Police Dept., June 19, 1998
Exhibit 18	Recording of 911 Call, June 16, 1998
Exhibit 19	Narrative Supplemental Report, Bloomington Police Dept., June 16, 1998
Exhibit 20	Narrative Supplemental Report, Bloomington Police Dept., June 16, 1998

Exhibit 21	Narrative Supplemental Report, Bloomington Police Dept., June 16, 1998
Exhibit 22	Recorded calls to Bloomington Police Dept., Part 1, June 16, 1998
Exhibit 23	Recorded calls to Bloomington Police Dept., Part 2, June 16, 1998
Exhibit 24	Narrative Supplemental Report, Bloomington Police Dept., June 17, 1998
Exhibit 25	Narrative Supplemental Report, Bloomington Police Dept., June 18, 1998
Exhibit 26	Autopsy Report, June 23, 1998
Exhibit 27	Narrative Supplemental Report, Bloomington Police Dept., June 17, 1998
Exhibit 28	Narrative Supplemental Report, Bloomington Police Dept., June 18, 1998
Exhibit 29	Narrative Supplemental Report, Bloomington Police Dept., July 10, 1998
Exhibit 30	Narrative Supplemental Report, Bloomington Police Dept., July 14, 1998
Exhibit 31	Narrative Supplemental Report, Bloomington Police Dept., Sept. 5, 1998
Exhibit 32	Narrative Supplemental Report, Bloomington Police Dept., Mar. 4, 1999
Exhibit 33	Narrative Supplemental Report, Bloomington Police Dept., June 25, 1998
Exhibit 34	Order, <i>People v. McNeil</i> , No. 4-99-0679 (4th Dist. Oct. 24, 2001)
Exhibit 35	Affidavit of Dr. Andrew Baker, Jan. 16, 2020
Exhibit 36	Affidavit of Dr. Nancy Harper, Jan. 23, 2020
Exhibit 37	Supplemental Forensic Case Report, Bode Cellmark Forensics, July 22, 2016
Exhibit 38	Report of Laboratory Examination, Cellmark Forensics, Oct. 30, 2015
Exhibit 39	Affidavit of Dr. Karl Reich, Jan. 15, 2020
Exhibit 40	Cybergenetics Report, Nov. 1, 2018
Exhibit 41	Transcript, <i>People v. Nowlin</i> , No. 98 CF 962 (Feb. 23, 1999)
Exhibit 42	Police Reports, Bloomington Police Department, Sept. 16, 1998
Exhibit 43	Presentence Investigation Report, <i>People v. Nowlin</i> , No. 98 CF 962 (July 20, 1999) (redacted to remove Social Security Number)
Exhibit 44	Transcript, <i>People v. Nowlin</i> , No. 98 CF 962 (Feb. 24, 1999)
Exhibit 45	Felony Record Sheet, <i>People v. Nowlin</i> , 98 CF 962
Exhibit 46	Transcript, <i>People v. Nowlin</i> , No. 11 CF 800 (Dec. 10, 2012)
Exhibit 47	Transcript, <i>People v. Nowlin</i> , No. 11 CF 800 (Dec. 11, 2012)
Exhibit 48	Transcript, <i>People v. Nowlin</i> , No. 11 CF 800 (Dec. 12, 2012)
Exhibit 49	Transcript, <i>People v. Nowlin</i> , No. 11 CF 800 (Dec. 13, 2012)
Exhibit 50	Transcript, <i>People v. Nowlin</i> , No. 11 CF 800 (Dec. 17-18, 2012)
Exhibit 51	Affidavits of Michelle Nowlin, Sept. 12, 2013

Exhibit 52	Affidavit of Dawn Nowlin, Sept. 11, 2013
Exhibit 53	Affidavit of Susanne Burns, Sept. 6, 2013
Exhibit 54	Dennis Y. Wang, Ph.D. et. al., Developmental Validation of the AmpFLSTR Identifier Plus PCR Amplification Kit: An Established Multiplex Assay with Improved Performance, 57 J. FORENSIC SCI 453 (March 2012)
Exhibit 55	Forensic Case Report, Bode Cellmark Forensics, April 1, 2016
Exhibit 56	M.W. Perlin, "TrueAllele® interpretation of DNA mixture evidence," Keynote talk, 9th International Conference on Forensic Inference and Statistics, Leiden University, The Netherlands, 20-Aug-2014 (available at <a href="https://www.cybgen.com/information/presentations/2014/ICFIS/Perlin-TrueAllele-interpretation-of-DNA-mixture-evidence/page.shtml">https://www.cybgen.com/information/presentations/2014/ICFIS/Perlin-TrueAllele-interpretation-of-DNA-mixture-evidence/page.shtml</a> )