IN THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS -- MCLEAN COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	No. 1998-CF-633
BARTON MCNEIL,	)	
Defendant.	)	

REPORT OF THE PROCEEDINGS before the HONORABLE WILLIAM YODER, on the 12th day of May, 2022.

APPEARANCES:

MS. MARY KOLL -- Assistant State's Attorney, on behalf of the plaintiff;

MR. KARL LEONARD -- Exoneration project, on behalf of Barton McNeil;

MS. STEPHANIE KAMEL, MS. LEANNE BEYER, MR. JOHN HANLON -- Illinois Innocence Project.

Reported by:

Donna F. Banks, CSR.

License #084-003612.

THE COURT: On the record in 1998-CF-633, People versus Barton McNeil. Mr. McNeil is present in the custody of the Illinois Department of Corrections. Good afternoon. He's also present through his attorneys.

I'd ask counsel to each introduce yourselves and spell your last names, please.

MR. LEONARD: Thanks, Your Honor. I am Karl Leonard. Karl with a K, Leonard, L-e-o-n-a-r-d, from the Exoneration Project.

MS. KAMEL: Stephanie Kamel, K-a-m-e-l, from Illinois Innocent Project.

MS. BEYER: Leanne Beyer, L-e-a-n-n-e, B-e-y-e-r, Illinois Innocence Project.

MR. HANLON: John Hanlon, H-a-n-l-o-n, Illinois Innocence Project.

THE COURT: Thank you. All are present with the petitioner. Ms. Koll, is present for the People.

This case is scheduled this afternoon for a second stage hearing on the People's motion to dismiss in part.

Are the parties ready to proceed this afternoon?

MS. KOLL: Yes.

MR. LEONARD: Yes, Your Honor.

THE COURT: Ms. Koll?

MS. KOLL: Thank you, Your Honor.

I do want to thank counsel. They've been great to work with thus far throughout these proceedings, and obviously they very thoroughly briefed their issues. I do certainly understand that this is a very serious, the most serious type of hearing imaginable for Mr. McNeil and all of his supporters, and very emotional. I want to be clear that nothing that I argue today or contained in my written motion means any disrespect to the defendant or anyone present.

Your Honor, given the number and complexity of the issues raised in the defendant's subsequent post-conviction petition, I am electing today, for the most part, to stand on my written motion to dismiss, and will not be arguing each point individually unless the Court prefers otherwise. I do want to make a few more general points today.

As to the law governing this stage of the proceedings, as the Court is aware, your inquiry at this stage must focus on whether the defendant's petition contains sufficient allegations of constitutional deprivations, and only constitutional matters which have not been, and could not have been, previously raised on direct appeal, or in previous post-conviction proceedings may be raised.

The majority of the defendant's claims fall under the category of actual innocence claims based on newly discovered evidence. The Illinois Supreme Court has very helpfully provided a very clear rubric for the Court to rely on in determining whether or not to advance the defendant's claims at this stage.

To advance the claims, the supporting evidence must satisfy a four-part test. The evidence must be newly discovered, meaning not only that it wasn't discovered until after trial, but also that it could not have been discovered earlier through the exercise of due diligence. The evidence must be material, meaning that it is relevant and probative of

the defendant's innocence. It must be noncumulative, meaning it actually adds to the information that was presented at trial. Finally, the evidence must be of such a conclusive character that it would probably change the result on retrial.

Just a couple of comments that I want to emphasize regarding the four-part test. First of all, as to the newly discovered factor, one important nuance when we are dealing with a subsequent post-conviction petition, as we are here, is that the filing of that prior post-conviction petition changed the timeframe for newly discovered. In other words, the question is no longer just whether the evidence was available at the time of the original trial, but the question is now whether that evidence was available at the time of the prior post-conviction proceedings. So when the Court is looking at the newly discovered prong, that is the timeframe that the Court is required to look at in determining whether a piece of evidence is newly discovered.

I want to make just a couple of

comments on the fourth prong, which is the conclusive character factor. Courts have held that this is the most important element of that four-part actual innocence test. This element is not an easy hurdle for the defendant to clear, even at the second stage.

For defendant's evidence to meet the standard, the evidence must be so conclusive that it is more likely than not that no reasonable juror would find the defendant guilty. Most importantly, the Illinois Supreme Court has emphasized that evidence that would merely conflict with trial evidence does not meet this prong unless it would probably change the result on retrial.

Another important legal nuance that I want to emphasize is that unlike first stage proceedings, where the Court is required to either dismiss or advance a petition in its entirety, at the second stage the Court may grant a partial dismissal, which is what we are requesting here today.

Along those lines, as the Court can see from our motion to dismiss, we are

conceding that two of the defendant's claims should be advanced to third stage, those are the claims that are marked F and G in their petition, which are the two claims involving allegations from third parties that Don Wang told these third parties that Ms. Misook Nowlin confessed to him that she killed Christina McNeil.

The State's position is that taking those allegations in the light most favorable to Mr. McNeil, he is entitled to a hearing on those claims because, if true, such a confession would undoubtedly be material on the issue of defendant's innocence, and the State's position is that those two claims meet the other three prongs as well. So we do not think there's any way around advancing the defendant's petition on those two claims, and we think that is the right thing for the Court to do in this case.

Other than claims F and G, the State is requesting that the Court dismiss all other claims as all of the other claims are unable to meet that four-part test. As I mentioned, I do

not think it's a good use of the Court's time, unless the Court feels otherwise, for me to go point-by-point through my motion to dismiss. However, I do want to take a couple of moments to discuss a couple of broad points.

One of the most important points that I would ask the Court to focus the Court's analysis on and give heavy weight to is the trial judge's clear findings that there was no intruder. That was one of the most critical findings at trial as it foreclosed the possibility of any other assailant other than Mr. McNeil. The trial judge was in the absolute best position, better than me, better than defense counsel, and better than Your Honor sitting here, as you do here today over 20 years later, to understand and evaluate the evidence in this case.

Unlike a post-conviction petition following a jury trial, here the Court has the advantage of the trial judge's detailed findings, what the trial judge hung his hat on when he found the defendant guilty of this crime. As I have repeatedly outlined in my

motion on each claim, the trial judge here was unequivocal in his findings that there was no evidence of an intruder, thus the evidence of the hair, of the DNA, the fact that Misook was possibly going into a closet in a hallway across town, would merely conflict with the trial evidence. It would conflict with that clear evidence the trial judge received that there was no intruder into the residence where Christina McNeil was killed.

As the Supreme Court held in Sanders, evidence that simply adds conflicting evidence to the trial evidence is not enough to meet that conclusive character standard, and therefore, all of the remaining claims must be dismissed. Thank you.

THE COURT: Thank you.

Counsel?

MR. LEONARD: Thank you, Your Honor. Thank you, Ms. Koll.

Your Honor, as the State told the Court, we are at the second stage here, obviously. This is not the third stage evidentiary hearing. Both sides agree that

there should be an evidentiary hearing, but we're just not there yet. We're at the second stage. As the Court knows, that means we're not here to do any factfinding, we're not here to make any credibility determinations. We're here to answer the question of whether the well-pleaded allegations, if they were later proven at an evidentiary hearing, would entitle Mr. McNeil to relief, whether there is a showing of a constitutional violation. We're not here to decide whether or not Mr. McNeil is innocent, whether or not he is guilty, just whether the allegations, if they were proven at the evidentiary hearing that both sides agree should take place, would entitle him to relief. Because Mr. McNeil's petition meets that standard, we are going to ask the Court deny their patrial motion to dismiss.

You've heard from the State, you've read the pleadings. Like Ms. Koll said, I don't want to use up a lot of the Court's time rehashing things you've already heard or already read, but I do want to emphasize a few things and put a few things in context.

First, Your Honor, Mr. McNeil's petition presents an actual innocence claim. It presents one actual innocence claim. Not a bunch of individual little claims each supported by one piece of evidence as the State attempts to re-define it here. We've presented one actual innocence claim. One claim that the State agrees should move forward to an evidentiary hearing.

The State is absolutely correct that at this stage the Court can dismiss part of the petition, but the State is not asking the Court to dismiss the Brady claim, but let the actual innocence claim go forward. It's asking the Court to dismiss certain pieces of evidence at this stage, not claims.

The State's position on this, Your Honor, I think is premature. I think it's also just plain contrary to the facts in this case and contrary to the law. We are having a hearing on the issue, the State agrees, on the issue of whether or not Misook Nowlin confessed to this crime. What the State does not want the Court to consider at that hearing is any

evidence that would corroborate that confession.

The State says the Court should not look at the DNA evidence that would place Misook Nowlin at the scene of the crime corroborating her confession. The State should not look at the hair evidence from the scene of the crime corroborating her confession. The State should not consider testimony that Ms. Nowlin was acting suspiciously at the time of the murder and not asleep in bed as she previously testified to. The Court should not consider evidence that by today's standards the only evidence that was ever ascribed to Mr. McNeil for this crime, the sexual abuse motive, but there's no evidence of that anymore which would corroborate Misook's confession. The Court shouldn't look at that. The Court shouldn't look at the fact that Misook was subsequently convicted of a very similar murder with a very similar motive. The Court shouldn't look at how that corroborates the confession.

The State's position, Your Honor,

boils down to, yes, we should have a hearing about Misook's confession, but at that hearing the Court should not be allowed to consider any evidence of whether or not the confession is corroborated. That, Your Honor, I think would defeat the truth-seeking purpose of these proceedings. I think it's also contrary to just plain black-letter law, it's Chambers versus Mississippi.

The Court, when considering an out-of-court confession, looks to whether or not that confession has indicia of reliability. One of the explicit Chambers factors is corroboration. Here, we are seeking to present to the Court evidence that would corroborate the confession that the Court agrees we should have a hearing about, but for some reason the Court wants to prevent -- the State wants to prevent the Court from considering that evidence at the hearing.

As the State noted, probably the most important factor in the actual innocence analysis is whether it puts the outcome in a different light. Whether the newly discovered

evidence has a probability of changing the result because it puts the outcome in a different light. That includes the ultimate outcome at trial. It also includes in this case the outcome of this pre-trial hearing about whether or not Mr. McNeil could present evidence of Misook Nowlin's culpability in this case. That's the Chambers analysis. How we have a hearing on the Chambers question with respect to Misook's confession without allowing the Court to consider evidence in support of the Chambers factors is frankly beyond me, Your Honor.

But even more fundamental to that, Your Honor, in this case the State has agreed that at this point Ms. Nowlin's confession might be enough to alter the outcome of trial. It might change the result, it might put it in a different light. The State says we need to have an evidentiary hearing to figure that out, and I agree, but after that hearing the Court is going to be called upon to assess the significance of Ms. Nowlin's out-of-court confession. What weight would a factfinder

give it at trial or at a pretrial hearing; what would happen at that Chambers hearing; are there indicia of reliability; is the confession corroborated. There's no way for this Court to hold a hearing to answer those questions without looking at all of the evidence. The old evidence from the original trial, the new evidence, all of the evidence. That's what we're asking the Court to do. We obviously have the burden to prove-up our claim, and that's what we want to do at the hearing with the evidence. That's what I'd just like to go back to briefly.

The State is not asking the Court to dismiss the actual innocence claim. The State is asking the Court to bar Mr. McNeil from presenting evidence in support of the actual innocence claim. This is not the normal type of motion to dismiss that we would see. Actually, Your Honor, I'm very tempted to stop right here because I really don't think we need to get down into the weeds about whether each piece of evidence is cumulative or not. I think the time to do that is at the evidentiary

hearing, but I do want to just briefly address some of the specific arguments the State has made about the evidence.

We have one I guess broad category of evidence here which is the scientific evidence. There is DNA evidence that places Ms. Nowlin in the bed where Christina died. There's hair evidence that does the same thing. There's pathology evidence from Dr. Baker. There's forensic evidence regarding child abuse from Dr. Harper. This Court noted when it docketed the petition in its order that -- I'll read it. At least one of the grounds for relief alleges exculpatory scientific evidence outside the record and is not directly refuted by the record.

The State has not given the Court any reason to revisit that conclusion. Obviously we need to have a hearing about whether or not we have met our burden, we need to prove it up. But the fact is, as the Court ruled, we have presented exculpatory scientific evidence from outside the record, and that evidence should be considered at the hearing. The State doesn't

give the Court any reason to ignore that evidence. I will highlight one piece of evidence here.

In the report from Dr. Baker related to the time of death, which was a critical finding at the time of trial, and remains a critical finding when you look at the State's arguments today. The State has arguments that, well, we shouldn't looked at Ms. Burns' affidavit because Misook should have been drenched because it was raining at that time. Mr. McNeil was asleep on the other side of the wall. That all boils down to time of death, and the newly discovered evidence in the form of this stomach contents analysis from Dr. Baker is that that conclusion is insupportable today. The State does not respond to that at all in its written motion. It does not respond to that at all today in court.

So there's no dispute that at this hearing about Misook's confession, we're also going to be considering evidence from Dr. Baker about this newly discovered time of death

scientific evidence.

Your Honor, the rest of Dr. Baker's report, the rest of his conclusions, just like Dr. Harper's, should also be considered at this hearing. The State has this argument that it's not new because it has footnotes that cite to science that predates trial and footnotes that cite to studies that postdate trial. We addressed this in our brief, but I'm not going to revisit it much now. The bottom line is there is just no litmus test that says scientific conclusions are not used if they contain footnotes that cite to science from before trial. That's just the nature of scientific advances. This science is still true, this is what's changed, these conclusions were wrong, these conclusions were right. This is how scientific studies evolve. The conclusions themselves are still new.

This, again, is the very evidence the Court pointed to in docketing the petition, and the gives us no reason -- the State, excuse me, gives us no reason for the Court not to consider the evidence at the hearing.

With respect to Dr. Baker, the only prong the State disputes is whether it's new. No dispute that it's conclusive, no dispute it's material, no dispute that it's noncumulative. The only dispute is it's not new because it has footnotes that cite to science that predates trial. Your Honor, we should access this issue at the evidentiary hearing. Let's hear from Dr. Baker and make a decision about whether it's new or not then, not just based on the State's argument here.

They make the exact same argument with respect to Dr. Harper, but they add to it that the evidence is not conclusive because this evidence -- that Dr. Harper concludes there's no evidence of sexual abuse. The State says, doesn't matter, this was never important whether there was sexual abuse or not. I think, again, we're way down too far into the weeds of this issue.

We are going to have a hearing about whether or not Misook confessed. The motive that was given for Mr. McNeil to commit this crime was that the sexual abuse of his daughter

there was evidence, it was on an ongoing basis, he put her underwear back on to cover it up. Now there's science that says that was wrong.

We are going to have a hearing about whether Misook's confession would change the result of this hearing. We should consider at that hearing whether she had a motive to do it, which we have evidence in our petition that she did, contrary to Mr. McNeil who now, according to the science, had no motive to do it. This corroborates Misook Nowlin's confession in another way. It's the type of evidence that the Court should consider at the hearing.

At this hearing, Your Honor -- I am going to skip ahead. A lot of the State's arguments about DNA, about hair, they say there are other explanations for how maybe this DNA got on the scene. They say the evidence of sexual abuse doesn't matter that much, it was never that important at trial, even though we mentioned it in opening arguments, closing arguments, had our expert testify about it at length, and mentioned it at every opportunity at trial, it wasn't that important. These are

weight of the argument. These are weight of the evidence arguments, Your Honor. Let's have a hearing, present the evidence, and the Court can then decide how much weight to give this evidence. It's factfinding also. It's evidence that should be considered at this hearing, and the Court can then decide is it sufficiently conclusive now that I've heard the evidence or not. These are weight of the evidence arguments that are better presented at a hearing, Your Honor, not in a motion to dismiss, a motion to dismiss certain pieces of evidence from an actual innocence claim.

On the scientific evidence, Your Honor, there was that pretrial hearing that I mentioned where Mr. McNeil's counsel wanted to present evidence at trial of Misook Nowlin's culpability. The State opposed that and the State won. The reason the State gave for why that evidence should not come in -- I'll read from the transcript, we cite it in our brief. They said there was no evidence of a close connect of Misook being in the residence during or before the time of the murder, and because

there wasn't this close connect, this evidence of Misook's culpability should not come in. So at that time evidence that put her at the scene would have been important to the State.

Today the State says, okay, you've got evidence of a close connect. You've got her DNA in the bed, you've got her hair in the bed, that evidence doesn't matter. The State can't have it both ways on this. This evidence is material. It's obviously conclusive as well, and the State touched on this in their argument. They said, well, the trial judge was in the best position to make a decision, and he determined that there was no intruder at the time.

This is a circular argument. You have evidence of an intruder today, but we previously decided there was no intruder so the evidence of an intruder doesn't matter. This is a circular argument, Your Honor. The entire purpose of these postconviction proceedings is to decide whether the Court back then, with the benefit of this evidence, would probably have reached a different conclusion. The State is

saying, well, they already decided this without the benefit of the new evidence so we don't need to revisit it. That's just not how postconviction proceedings work, Your Honor.

In every postconviction proceeding you're going to have new evidence that contradicts an earlier finding. That's the nature of postconviction proceedings. We should be able to present this evidence at the hearing, and then the Court can decide whether or not it puts the outcome in a different light.

The last piece of evidence I will talk about, Your Honor, is this murder of Linda Tyda. This is the murder that Misook Nowlin was subsequently convicted of, she's in prison for it now. The State in its motion says, well, these two murders are dissimilar. They are not closely related enough. We can quibble about how similar the two cases are, but, again, now is not the time for that. The time for that is at the hearing. The State has agreed that we are going to have a hearing about whether or not Misook, that her

confession to killing Christina is likely to change the result, whether that meets our burden.

We have evidence that Misook committed another murder, a very similar murder. The well-pleaded allegations are that she did it for the same reason she killed Christina, revenge against an ex. This is Chambers evidence. This is evidence that the Court needs to consider in deciding whether or not Misook's out-of-court confession is admissible, whether or not it is corroborated. This is the very type of evidence that should be presented at this hearing.

The State has this argument that it's not material. I will say this with respect to many different -- each of the pieces of evidence that the State quibbles with it says aren't material. Materiality just means that the evidence is relevant and probative. It does not mean that there's anything wrong with its credibility. If you look at the response to the affidavit from Ms. Burns, they say it's not material because she doesn't say whether or

not Misook was drenched at the time. That has nothing to do with whether or not the evidence is relevant, nothing to do with whether or not it's probative. It has everything to do with credibility. We shouldn't believe Ms. Burns because Misook should have been wet, setting aside the stomach contents issue. That's her credibility. That's an issue to decide at the hearing, not now.

I want to briefly respond to this argument the State raises that this evidence should have been presented in earlier postconviction petition. I'm not sure which evidence they're pointing to there. Are they saying that the DNA evidence should have been available sooner, that the science has advanced enough by the time of the first postconviction petition. I'm not exactly sure which pieces of evidence they're arguing about there, so it's really difficult to respond.

It's also really difficult for the Court to make that determination without factfinding. You have to decide when was the DNA testing done, when could it have been done,

when could this hair have been tied to Misook previously. You can't do that without factfinding. This again requires a factfinding determination to decide whether or not the evidence is new.

Your Honor, at the end of the day Mr. McNeil has made a showing of a constitutional violation here. The State agrees that there should be an evidentiary hearing regarding Mr. McNeil's postconviction petition. The only question for the Court is whether or not it will consider at that hearing the evidence that corroborates the confession, whether or not we're going to consider the scientific evidence that corroborates Misook's presence at the scene, which is what she says in her confession.

For those reasons, Your Honor, we ask the Court to deny the State's partial motion to dismiss, and to allow Mr. McNeil to present all of the evidence at the evidentiary hearing. Thank you, Your Honor.

THE COURT: Thank you. So I understand, your petition, your claim number one, alleges

that there was no homicide, that it was just an unexplained death, but if there was a homicide that it was Misook Nowlin that did it; is that a fair statement?

MR. LEONARD: Yes, Your Honor. With the caveat that we're not here to prove Misook guilty, we're here to prove that there's a probability of a different result had the finder of fact known those facts.

THE COURT: Thank you.

Ms. Koll, do you have any response to the petitioner's argument?

MS. KOLL: Just a couple of brief points, Your Honor. First of all, as far as the points counsel made regarding the hair and the DNA. The State continues to be really baffled by this position that counsel is taking. The Court is certainly permitted, and I would say required to apply common sense when looking at the materiality prong and the conclusive character prong.

Looking at this from a common sense prospective, all of us who have had pets, or loved ones with long hair knows how hair

functions and behaves in the real world. Hairs can remain in a residence for years following a break up, or a death of a pet, or the loss of a loved one. This is such a well-known phenomenon that popular songs have been written about this entire topic, the idea of a hair lingering after a break up.

To suggest that a single hair, or even more so, to suggest that DNA alone of Misook Nowlin in the defendant's residence has any probative value is disingenuous, even at the second stage, when we have the defendant's own admission that these parties were having sexual contact following a year's long intimate relationship up to days prior to this murder. So not only is that evidence not, certainly not conclusive, but the State's position is that it doesn't even meet the materiality standard.

The State does not dispute that the hair and DNA is newly discovered because that testing occurred years after even the defendant's first postconviction hearing, but that evidence is not material, it's not really probative of anything other than confirming

that the two had an intimate relationship. It certainly would not have changed anything at the trial because the fact that they had an intimate relationship for years was not in dispute.

Regarding the stomach contents point, it is the defendant's burden to prove, or to plead that their evidence that supports their petition is newly discovered. The way counsel has structured their petition is the affidavits refer the Court to the experts' reports. In neither of their medical experts' reports do those experts say that their opinions are based on new science. In fact, as I outline in my motion, both of the experts emphasize that their opinions are based on old science, and that's what makes them so reliable because they're all well-established positions as far as they're concerned.

In response to this stomach contents argument. First of all, the State's reading of counsel's petition was not that any of their individual claims were based on gastric contents. In fact, the only mention I see, and

I certainly could have missed something, but the only mention I see in their claims regarding gastric contents is a phrase in paragraph 218 that their overall claim regarding Dr. Baker's report is it focuses on his opinion that no crime was committed. They've entitled that claim, newly discovered evidence reveals that the State's evidence that a crime occurred at all was junk science.

However, if I may respond to the gastric contents claim, that claim again fails to meet the newly discovered prong of the four-part test. If the Court looks at page 15 of Dr. Baker's report, which is Defendant's Exhibit 35, which is where Dr. Baker discusses briefly gastric contents, the Court will see that he cites to two sources for his opinion as far as gastric contents, and those sources are from 1989 and 1985. Not only does he cite the footnotes, and I have to rely on the footnotes to try to understand their claim that this is newly discovered because neither of the scientists say that this information is new or based on new science. So not only does

Dr. Baker not say that that gastric contents opinion is based on new science, but the sources he's citing to predate the murder by a decade.

In other words, Dr. Baker is making clear in his report that his opinion regarding gastric contents regarding time of death is based on published sources that are very old in relation to Mr. McNeil's trial. Therefore, Mr. McNeil could have presented that evidence at trial, he could have raised a complaint on direct appeal that that evidence wasn't presented at trial, or he could have raised a claim in his first postconviction petition that that evidence wasn't presented at trial.

In People v. Patterson, which is an Illinois Supreme Court case that I cite in my motion, in dismissing that defendant's postconviction petition at the second stage, the Illinois Supreme Court held that the defendant's attached expert report that that defendant attached to his postconviction petition in the exercise of due diligence could have been completed before defendant's trial.

Significantly, the Court said the experts' conclusions do not rest on any evidence that was not available before defendant's trial, and the Court went on to affirm the denial of that claim at the second stage. That is exactly the situation that we are in here. It's the defendant's burden to prove that the evidence here being an expert opinion was newly discovered, and they simply had not and did not prove that in their petition.

The final thing I want to comment on is counsel's argument about considering all of the evidence together. I certainly understand where counsel is coming from and why they are taking that position. I did not find any authority, and I don't believe counsel cites to any authority that makes it clear to the Court that if the Court is advancing an actual innocence claim they must advance every single aspect of it. The State's position is that the Court can and should rely on the other authority that I mentioned in my opening argument that allows the Court at the second stage to dismiss certain claims and advance

others.

The State does not believe it makes sense that the defendant would get to hitch all kinds of evidence that does not meet those four prongs to a piece of evidence that does. What that would do if that was allowed would allow counsel to turn, the defendant, to turn the third stage hearing into a retrial. That is not what is supposed to be happening here.

The postconviction act is very narrow, and the purpose of these proceedings is very narrow, that is to allow the Court to address any constitutional violations, not to allow a retrial to happen at the third stage.

If the Court finds that counsel has proven their petition at the third stage on the claims F and G regarding the confession, counsel will then have the opportunity at the retrial on this case to present all of this other evidence that is not newly discovered, not material, not conclusive. That is the time for all of the evidence to come in.

The State's position is at this moment the only thing that should be advanced are the

two claims that would demonstrate actual innocence potentially, that is, if Misook Nowlin did confess to someone. Those are the only two claims raised in their petition that are newly discovered, material, non-cumulative, and may be of a conclusive character. A confession by her, if believable, is the only thing that could possibly convince the trier of fact that she committed this offense despite the overwhelming evidence at trial that there was no intruder in this residence. Therefore, those are the only claims that defendant is entitled to a third stage hearing on. Thank you.

THE COURT: Thank you.

Counsel, anything else?

MR. LEONARD: If believable. She just said the only thing that would entitle a new trial is if Misook Nowlin's claim was believable. How do you decide if it is believe without looking at whether it's corroborated. That's our whole point, Your Honor. We're going to access whether this is believable based on the fact it's corroborated by DNA,

it's corroborated by hair, it's corroborated by the subsequent murder. If believable, that's our entire point, Your Honor. Thank you.

THE COURT: Thank you.

Obviously the parties were very thorough in their petitions, their motions, their responsive pleadings to the motions. I'm going to take some time to further review those. I am going to take this matter under advisement, and I will issue a written ruling on this matter.

I'd like to say that I'm going to get it out in 60 days. I'm going to try to stick to that. I will inform the parties, especially on this side of the courtroom, that my personal schedule is going to become very hectic here in the next two months, so I'm going to focus on this and try to get it out quickly. I apologize in advance if I don't make my 60-day deadline.

With that, is there anything else that the parties wish to address today?

MS. KOLL: No.

MR. LEONARD: No, Your Honor.

THE COURT: All right. Thank you all.

(Whereupon the above-said proceedings were adjourned.)

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IN THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS -- MCLEAN COUNTY

REPORTER'S CERTIFICATE

I DONNA F. BANKS, CSR, an Official Court Reporter in and for the Eleventh Judicial Circuit of the State of Illinois, do hereby certify that I reported in machine shorthand the foregoing proceedings had; that I thereafter caused the same to be transcribed into typewriting, which I now certify to be a true and accurate transcript of the proceedings had on said date in said cause.

Dated the 16th day of May, 2022.

Donna F. Banks

Donna F. Banks, CSR