

No. 1-12-2558

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE APPELLATE  
COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 02CR13474(01)
	)	
SHERROD TILLIS,	)	The Honorable
	)	Rosemary Higgins-Grant,
Petitioner-Appellant.	)	Judge Presiding.

---

JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Howse and Justice Lavin concurred in the judgment.

*Held:* Summary dismissal of postconviction petition affirmed where defendant failed to state the gist of a meritorious claim of actual innocence.

¶1 **ORDER**

¶2 Defendant Sherrod Tillis appeals from the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122 *et seq.* (West 2010)). Defendant appeals, contending that the trial court erred in summarily dismissing his petition where he presented the gist of a meritorious constitutional claim focusing on newly discovered

No. 1-12-2558

evidence regarding tactics used by detectives in the police station where defendant provided his confession, which bears on the issues of due process and actual innocence. Defendant asserts that this court should remand his postconviction petition for second-stage proceedings with the assistance of counsel. Defendant also challenges the trial court's assessment of fees against him for filing a frivolous petition. For the following reasons, we affirm the summary dismissal of defendant's postconviction petition.

¶ 3 I. BACKGROUND

¶ 4 Following a jury trial, defendant was found guilty under an accountability theory of first degree murder, armed robbery, and aggravated battery with a firearm for the shooting death and robbery of victim Brenda Worship and the shooting of Brenda's husband, Harold Lewis.

Defendant was sentenced to two concurrent terms of 6 years' imprisonment for aggravated battery and armed robbery to be served concurrently with a 40 year sentence for first degree murder. On direct appeal, this court affirmed defendant's convictions. *People v. Tillis*, No. 1-07-0971 (2009) (unpublished order under Supreme Court Rule 23). Because the facts of the offense are fully set out in our order on direct appeal, we restate here only those facts necessary to an understanding of defendant's current appeal.

¶ 5 Evidence presented at trial showed that defendant owed money to a man named Darrel Smith. Defendant told Darrel that his Aunt Brenda, the victim, had cash on her person and that Darrel should approach her and demand the money from her. Soon after, at approximately 8:00 p.m. on April 4, 2002, Brenda and her two young daughters, Anita and Viola, were approaching their house at 735 East 91st Street in Chicago on foot when a man ran past the daughters and

No. 1-12-2558

pushed Brenda against the wall. The daughters saw a gun in the man's hand. Hearing his daughters scream, Harold ran out of the house and asked the man what was going on. The man shot Harold in the leg. He then shot Brenda, killing her. Others in the home, including defendant, came out of the house. The shooter fled. Defendant is Harold's nephew. No cash was found on the victim, and her pants pocket had been ripped.

¶6 Prior to trial, defendant filed a motion to quash arrest and suppress evidence in which he claimed he was arrested without probable cause, as well as a motion to suppress statements in which he claimed his statements were involuntary. At the suppression hearing, defendant testified he was walking home around 10:00 at night on April 19, 2002, when he saw three plain clothes detectives at his door and an unmarked car in front of the house. Defendant testified that, although he went to the station that night, he did not go willingly. He was, however, "willing to tell them anything [he] knew" about the shooting. Defendant testified he was handcuffed by a white detective immediately upon identifying himself when he reached his house. He testified he did not know what they wanted, but that he did want to talk to the police about his aunt's death and did want to cooperate. He denied having told the detectives he did not know Brenda had received her income tax refund check, but testified he said from the beginning he knew she had received the check.

¶7 Defendant testified the police told him the only way they would release him is if he agreed to take a polygraph test. Defendant agreed to do so. Defendant testified the police picked him up at 4:00 or 5:00 p.m. on April 22 and took him to a police station on the west side of Chicago to take a polygraph test. He signed but did not read the Miranda waiver form. After the

No. 1-12-2558

test, a detective drove defendant and his uncle, Harold Lewis, who had also taken a polygraph test, back to Area 2 Police Headquarters. Detective Spagnola told defendant he had failed the test. Defendant testified the detectives put him in a small room and left, closing the door.

Defendant tried to open the door, but it was locked. Defendant stated that the detectives returned after 5 to 15 minutes and yelled at him, saying he failed the test. Defendant testified he was then handcuffed to a ring on the wall while the detectives questioned him.

¶8 Chicago police detective Paul Spagnola testified that, when he interviewed defendant on the night of the shooting, defendant denied having had any involvement in the shooting. Chicago Police detective John Dougherty testified defendant went with him to Area 2 police headquarters on the evening of April 19, 2002, where he was interviewed. During transport and the interview, defendant was not handcuffed, and the door to the interview room was open. Detectives Dougherty, Filipiak, Spagnola, and Stover interviewed defendant at various points throughout a 90 minute period. In this interview, defendant denied having any knowledge that the victim had or was about to receive a check, and denied any involvement in the shooting. Specifically, Detective Dougherty testified that defendant "adamantly denied having any knowledge that Brenda Worship had or was about to receive a check or was going to receive a check or she had cashed a check that day. He denied it several times to me." Defendant agreed that he would take a polygraph test a few days later. Detective Dougherty denied having told defendant he could go home only if he agreed to take a polygraph test.

¶9 Detective Dougherty further testified about the course of the investigation over the following days. He described learning from the victim's children that defendant was in the home

No. 1-12-2558

at the time of the murder and came running outside immediately afterward carrying a broom. The police knew the victim's pocket was torn open "where the offender had torn monies that were taken from her person." He testified that, from this evidence, the police knew this was a robbery. A neighbor told the police he had seen a person waiting in the gangway prior to the victim arriving at the residence. From this information, the police did not believe this was a random shooting. Detective Dougherty testified about the victim and her children's movements prior to the shooting, including: they had gone to the "tax place" and received their income tax return check, then to a telephone store, a beauty shop, and a candy store. The police then believed "this wasn't just a random thing, someone had prior knowledge to the event prior to Brenda being killed," and that "it might have been orchestrated from within the household where Brenda had lived or someone that knew her that may have had prior knowledge of her receiving the monies from the tax people."

¶10 Detective Dougherty testified he interviewed many other family members of the victims, and that it was "common knowledge" amongst them all that Brenda had received a check. Defendant was the only one of the family members who denied knowing about the check.

¶11 Both defendant and Harold took polygraph exams on April 22. Neither defendant nor Harold were handcuffed during transit nor at the exam. Detective Paul Spagnola testified that, after the exam, he informed Harold he had passed the exam and informed defendant he had failed it. That night during an interview, defendant admitted for the first time that he knew his aunt had gone to cash her check. He then gave the officers names of gang members in the neighborhood who might have committed the crime. Later, around 4:30 a.m., he told Detective

No. 1-12-2558

Spagnola that possibly somebody in the family might have been involved in the shooting, but explained he did not tell them this information earlier because he did not want to "put any heat on himself."

¶12 Detective Spagnola further testified that the next afternoon, around 1:30 p.m., defendant told him he had heard his Uncle, Ronald Tillis, on the telephone "signing up for his aunt to be robbed with a person he knows." The police located Tillis, who is a paraplegic confined to a wheelchair, that afternoon. Tillis denied the allegations. Detectives Spagnola and Filipiak returned to the station and told defendant Tillis denied the allegations. In response, defendant put his hands on his head and said his uncle did not do the shooting, that his uncle was not involved. Detective Spagnola testified that defendant then admitted he "set up his aunt to be robbed but he didn't mean to have her killed."

¶13 Eventually, defendant provided a written and videotaped statement, which concluded with defendant saying, "she wasn't supposed to get hurt, you know. I [just feel] like it's kind of like all my fault, you know."

¶14 The trial court denied defendant's motion to suppress. The jury heard defendant's inculpatory statements at trial.

¶15 Of the eight witnesses who testified at trial, only Victor Phillips identified Darrell Smith as the shooter. The State offered defendant's oral and videotaped statements in which defendant admitted to owing money to Darrel. Defendant told Darrel that his aunt, Brenda Worship, would have \$600-700 on her and Darrel could threaten and scare her to get the money to settle the debt

No. 1-12-2558

defendant owed Darrel. He described owing Darrel some money and, to satisfy his debt, he told Darrel to approach his aunt, who would have money with her. He said:

"[DEFENDANT] A: I was like, just go up to her, you know, don't, don't - - there's, there's no need to hurt her, you know, you, you don't have to hit her. You know be aggressive. Say something that, you know, in, in a nice tone manner and she not gonna, she not gonna put up a fight. She not gonna resist. She gonna give it to you."

Defendant said he did not know Darrel had a gun.

¶16 In this videotaped statement, defendant agrees that he was treated "all right" by the detective and by the Assistant State's Attorney.

¶16 Defendant did not testify at trial. Clacey Sandifer testified for the defense. She lived at 735 East 91st Street. She went outside after hearing screams, then heard shots fired. She saw a fat person struggling to run away. She did not think it was Darrel. Clacey's boyfriend, Willie Bishop, also testified for the defense. He testified that Darrel was too small to have been the person he saw running away after the shots were fired.

¶17 Defendant was found guilty of first degree murder, armed robbery, and aggravated battery with a firearm. Defendant was sentenced to two concurrent terms of six years' imprisonment for aggravated battery with a firearm and armed robbery, to be served concurrently with a 40 year sentence for first degree murder. In a bench trial, the court found Darrell Smith not guilty. *People v. Tillis*, No. 1-07-0971 (2009) (unpublished order pursuant to Supreme Court Rule 23).

No. 1-12-2558

¶18 Defendant appealed, arguing: (1) the court erred in finding probable cause to arrest defendant; (2) the court failed to properly answer questions asked by the jury during deliberations; (3) defendant was denied a fair trial by the failure of the trial court to ask the venire about defendant's right not to testify; and (4) the State failed to prove defendant guilty beyond a reasonable doubt. *People v. Tillis*, No. 1-07-0971 (2009) (unpublished order pursuant to Supreme Court Rule 23). This court affirmed defendant's conviction and sentence. *People v. Tillis*, No. 1-07-0971 (2009) (unpublished order pursuant to Supreme Court Rule 23). In that order, we noted that, while defendant appeared to be cooperating with the police throughout their investigation, "under the guise of cooperating, defendant was also repeatedly misdirecting the police to protect himself." *People v. Tillis*, No. 1-07-0971 (2009) (unpublished order pursuant to Supreme Court Rule 23).

¶19 In April 2012, defendant filed a *pro se* postconviction petition in which he raised a claim of actual innocence based on newly discovered evidence. Defendant argued that the newly discovered evidence, consisting of the 2006 Report of the Special State's Attorney (the 2006 Report) supported his claim that he was beaten by detectives and forced to give a confession ("Defendant has newly discovered evidence/information that substantiates his pre-trial claim that he was physically beaten and forced to make a false coerced confession to crimes he did not commit."). In his petition, defendant argues that, "although Jon Burge [the commanding officer during the years of torture referred to in the 2006 report] is no longer in command, the systematic pattern of brutality, torture, psychological and mental coercive tactics has not/did not cease overnight."

¶20 Defendant's petition includes his own affidavit, in which he avers, in part:

"2. I was arrested by Area 2 Detectives on April 23, 2002, at about 10:00 pm after being 'told' I failed a polygraph examination and placed in a locked room inside the police station. Shortly after, detectives Michael Cummings, Star #21102; and Robert Myers #20428, entered the locked room, handcuffed me tightly to a ring on the wall. The detectives then started beating me and repeatedly kicked, slapped, and punched me about my entire body. Detective Spagnola entered the room after Cummings and Myers left the room and said the beatings will continue unless I cooperated, and promised to release and not charge me with anything. The physical beatings did continue until I eventually was forced to make a false coerced statement/confession, which led to me being charged in April 25, 2002, at about 11:15 pm and later convicted of crimes I did not commit. I filed a report with the office of professional standards (OPS) in June 2002.

\*\*\*

6. As a result of being held at Area 2 police station against my will, I became a victim of police brutality and was forced to make a false coerced statement. The detectives purposely kept me at the station so that any bruising and swelling could go away, I was arrested on April 23, 2002, and did not leave the Area 2 police station until April 27, 2002."

¶21 In July 2012, the postconviction court, in a written order, found defendant's claims frivolous and patently without merit, and dismissed the petition. Defendant appeals from that dismissal.

¶22 II. ANALYSIS

On appeal, defendant contends the postconviction court erred in summarily dismissing his postconviction petition where he properly asserted the gist of an actual innocence claim. Specifically, he argues that his confession, which was admitted against him at trial, was the product of police brutality. Without his confession, defendant asserts, the result of his trial would "probably" have been different. He asserts that the 2006 Report is newly discovered in that it came to light after his trial and could not have been found sooner through due diligence, that the 2006 Report is not cumulative and is material to his case.

¶23 The Post-Conviction Hearing Act provides a remedy for defendants whose constitutional rights were substantially violated in their original trial or sentencing hearing when such a claim was not, and could not have been, previously adjudicated. *People v. Enis*, 194 Ill. 2d 361, 375 (2000). An action for postconviction relief is a collateral attack upon a prior conviction and sentence, rather than a surrogate for a direct appeal. *People v. Tenner*, 206 Ill. 2d 381, 392 (2002).

¶24 The summary dismissal of a postconviction petition is appropriate at the first stage of postconviction review where the circuit court finds that it is frivolous and patently without merit (725 ILCS 5/122-2.1(a)(2) (West 2010)), *i.e.*, the petition has no arguable basis in either law or fact. *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). To have no arguable basis, the petition must

No. 1-12-2558

be based on an “indisputably meritless legal theory or a fanciful factual allegation.” *Hodges*, 234 Ill. 2d at 16. In order for a defendant to circumvent dismissal at the first stage, he must allege the “gist” of a constitutional claim, which is a low threshold. *Hodges*, 234 Ill. 2d at 9-10. This standard requires only that a defendant plead sufficient facts to assert an arguable constitutional claim. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). The summary dismissal of a postconviction petition is a legal question which we review *de novo*. *Hodges*, 234 Ill. 2d at 9; *People v. Edwards*, 197 Ill. 2d 239, 247 (2001). “Although the trial court’s reasons for dismissing [the] petition may provide assistance to this court, we review the judgment, and not the reasons given for the judgment.” *People v. Jones*, 399 Ill. App. 3d 341, 359 (2010).

¶25 “The wrongful conviction of an innocent person violates due process under the Illinois Constitution and, thus, a freestanding claim of actual innocence is cognizable under the PostConviction Hearing Act.” *People v. Barnslater*, 373 Ill. App. 3d 512, 519 (2007). A claim of innocence must be based on newly discovered evidence that establishes the defendant’s innocence rather than merely supplementing an assertion of a constitutional violation with respect to trial. *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009), citing *People v. Morgan*, 212 Ill. 2d 148, 154 (2004), citing *People v. Washington*, 171 Ill. 2d 475, 479 (1996). The supporting evidence must be newly discovered, material, noncumulative, and of such conclusive character as would probably change the result on retrial. *Morgan*, 212 Ill. 2d at 154. Newly discovered evidence is evidence that was unavailable at trial and could not have been discovered sooner through due diligence. *People v. Harris*, 206 Ill. 2d 293, 301 (2002). A claim of actual innocence is not a challenge to whether the defendant was proved guilty beyond a reasonable

No. 1-12-2558

doubt, but rather, an assertion of total vindication or exoneration. *Barnslater*, 373 Ill. App. 3d at 520.

¶26 Here, defendant asserts in his petition that he had newly discovered evidence which bears on the issues of due process and actual innocence. This newly discovered evidence consists of the 2006 Report of Special Prosecutor Edward Egan relating to the conduct of Commander Burge at Area Two police headquarters (the 2006 Report). Defendant claims he learned of the existence of this report in August 2011. The 2006 Report details a pattern of police abuse and misconduct in procuring the statements and confessions of the accused in Area 2 and Area 3 Chicago Police Headquarters. The abuse that occurred at Area 2 in the 1970's and 1980's under the tenure of Lieutenant Jon Burge to coerce confessions is well-known and well-documented, and our supreme court has held that the "use of a defendant's *physically* coerced confession as substantive evidence of his guilt is never harmless error." *People v. Wrice*, 2012 IL 111860, ¶ 71.

¶27 Defendant has met the burden of showing that this evidence is newly discovered. The document on which defendant relies as newly discovered evidence, the 2006 Report, was not available at the time of defendant's original trial and could not have been discovered sooner through due diligence. See *Harris*, 206 Ill. 2d at 301. Specifically, the 2006 report only became available in July 2006, and defendant alleges he only learned of the report in 2011. Defendant was found guilty in December 2004. Accordingly, we find that the evidence presented by defendant satisfies the first *Ortiz* requirement. See *Ortiz*, 235 Ill. 2d at 333.

No. 1-12-2558

¶28 Defendant also meets the burden of showing that the 2006 Report is not merely cumulative of evidence presented at trial. See *Ortiz*, 235 Ill. 2d at 333. Although defendant filed a motion to suppress statements prior to trial in which he alleged he was beaten, threatened, and coerced into giving a false statement, the jury did not hear these claims. Rather, because the trial court denied defendant's motion prior to trial, the jury heard defendant's inculpatory statement but not his arguments that the statement was the product of improper police coercion.

Additionally, because the 2006 Report was not yet available, the 2006 Report presents evidence which, under the second *Ortiz* actual innocence prong, is not merely cumulative. See *Ortiz*, 235 Ill. 2d at 333; see also *People v. Wrice*, 406 Ill. App. 3d 43, 52-3 (2010), *affirmed as modified*, 2012 IL 111860.

¶29 We therefore turn next to the question of the document's materiality and the degree to which it is of " 'such conclusive character that [it] would probably change the result on retrial.' " *People v. Anderson*, 402 Ill. App. 3d 1017, 1033 (2010), citing *Morgan*, 212 Ill. 2d at 154. Our supreme court has held that a defendant may be entitled to an postconviction evidentiary hearing based upon claims of police coercion where: (1) the defendant consistently claimed that he was tortured; (2) the defendant's claims were "strikingly similar" to other claims of torture; (3) the officers that the defendant alleged were involved in his case were the same officers that had been identified in other allegations of torture; and (4) the defendant's allegations were consistent with the police department's office of professional standards (OPS) findings that torture was "systemic and methodical at Area 2 under the command of [Lieutenant Jon] Burge." *People v. Patterson*, 192 Ill. 2d 93, 144 (2000). We consider each *Patterson* prong in turn.

¶30 a. The first factor: defendant consistently claims he was tortured

¶31 Working through the four *Patterson* factors, we first find that defendant has consistently alleged that he was tortured. As discussed above, prior to trial defendant filed a motion to suppress statements, in which he alleged that, while being held at Area 2, he was "physically beaten" by Detective Cummings, Detective Myers, and an unidentified white male detective (described as male white, mid-30's, approximately 6 feet tall, medium build, moustache, long blonde hair). He further alleged:

"4. Detective Cummings slapped [defendant] in the face, punched him in his upper body and kicked him while [defendant] was on the ground.

5. Detective Myers punched [defendant] in his upper body, kicked him while [defendant] was on the ground and handcuffed him too tightly causing pain in his wrists.

6. The third, unidentified detective punched [defendant] in the upper body and kicked him while he was on the ground.

7. During the course of the interrogation, all three detectives accused [defendant] with being involved in the murder of Brenda Worship. As he continued to deny involvement the detectives told him that he was lying and the above beatings took place.

8. It was clear to the police that [defendant] was not the person who shot and killed Brenda Worship. Given that, during the course of the interrogation, both Detectives Cummings and Myers threatened to charge

him with the murder of Brenda Worship anyway if he did not cooperate with them. They also promised him that if he cooperated and told them who did it and what happened, that [defendant] would be released, not charged and used as a witness for the State in the prosecution of the case.

9. As a result of the physical abuse, the length of confinement, the threat of prosecution, his belief that the beatings would continue until and unless he admitted some sort of involvement, and the reasonable sounding promise that if he named a shooter he would be a witness rather than a defendant, [he] made statements to the police and to a State's Attorney. He believes that the State will seek to admit these statements as evidence against him at a trial in the above-entitled case.

10. Accordingly, any and all statements made by [defendant] to law enforcement personnel between April 22 and April 24, 2002 were not voluntarily made. All statements were obtained in violation of [defendant's] right not to be compelled to be a witness against himself, as guaranteed by the United States Constitution, 5<sup>th</sup> and 14<sup>th</sup> Amendments, and by the Illinois Constitution."

¶32 Defendant testified on his own behalf at the suppression hearing. He testified he agreed to take a polygraph exam and, after being informed he failed the polygraph exam, was locked in a room. Fifteen to twenty minutes after being locked in the room, Detectives Cummings, Myers, and an unidentified man came into the room. Defendant testified the third person was white, in

No. 1-12-2558

his thirties, "kind of fat," with long blonde hair. These men yelled at him, accused him of lying, called him names, and told him he should "start talking" because he would "be there a long time." Defendant testified that Defendant Cummings slapped him three times on both sides of his face. After defendant complained that the handcuffs were too tight, the detectives released him from the handcuffs and then "attacked" him. Defendant testified he was on the ground while the three men kicked and punched him about his body. He testified this caused injury to his right knee, as well as bruises "all over [his] body," including his chest, arms, and legs. This "attack" lasted about ten minutes. Defendant continued telling the detectives he did not know anything about the murder.

¶33 Defendant testified that Detective Spagnola came in shortly after that. Defendant told Detective Spagnola what the other men had been "whipping" him. Detective Spagnola told defendant he had to cooperate. Defendant testified that he eventually gave a statement because Detectives Cummings, Spagnola, and Detective Spagnola's partner told him they would let him go home, that they would not charge him with a crime, and that they would only use him as a witness at trial. On the video, defendant states that the victim was not supposed to die, and defendant felt like her death was all his fault. Defendant testified he was told to say that, and that the statement was rehearsed.

¶34 Defendant testified he filed a complaint with OPS in June 2002, but OPS found the complaint unfounded.

No. 1-12-2558

¶35 As to the first *Patterson* factor, we find that defendant has consistently alleged he was tortured. However, as described below, defendant is unable to meet the other three *Patterson* factors.

¶36 b. The second factor: whether defendant's claims are "strikingly similar" to other claims of torture

¶37 Second, defendant is unable to meet the second *Patterson* factor where the type of evidence presented in *Patterson* is far different from the type submitted by defendant in the case at bar, and certainly not "strikingly similar" to other claims of torture. In this case, defendant claims he was slapped, punched, and kicked. He claims he was promised that, if he gave a statement, he could go home and would not be charged in the crime. In the 2006 Report, however, the torture detailed includes electric shocks, the use of a typewriter cover to simulate suffocation, guns used as threats, and beatings with rubber hoses and billy-clubs. The 2006 Report details systematic and methodical torture. Defendant in the case at bar, however, alleges a more generalized, less specific pattern of behavior.

¶38 Additionally, defendant's claims lack physical corroboration. Although defendant claimed to have bruises all over his body, including his chest, arms and legs, as well as an injured right knee, the medical technician who examined defendant prior to his being admitted to Cook County Jail found little evidence of the alleged blunt force trauma. Specifically, Bernard McNutt testified at the suppression hearing that he is a certified emergency medical technician who works as a correctional medical technician at Cermac Health Services at Cook County Jail. He was working on April 27, 2002, when defendant was admitted to the jail. He testified that

No. 1-12-2558

inmates are given a physical evaluation upon entering the jail. When McNutt evaluated defendant at intake, defendant was undressed from the waist up. If an inmate has bruises, cuts, injuries, or recent trauma, these would be marked on the intake form. He would then send the inmate to see a physician's assistant for further evaluation. McNutt testified that he did not make such a mark on the form. McNutt testified that he saw defendant naked from the waist up, and "physically saw [defendant's] upper body." He was asked:

"[ASSISTANT STATE'S ATTORNEY] Q: And you're telling us that had you noticed any bruises, cuts, or injuries to [defendant's] body you would have marked 'yes' [on the intake form]?"

[WITNESS MCNUTT] A: Yes.

Q: And had he complained of any bruises, cuts to his body would you also have marked 'yes' there?

A: If there's anything- - we only mark down obvious things that we see, that we put in our remarks section, things that we actually see on a patient. If he tell [sic] us something that's bothering him, anything like that, we still refer him to the doctor just on what he said was bothering him.

Q: And in terms of any injury to upper chest or to the facial area, did [defendant] complain of anything?

A: Not to my knowledge, no."

¶39 Defendant told McNutt that he had right knee pain. McNutt noted that on the form and wrote "PA" for 'physician's assistant' on the top of the paper. He did not recall if defendant told him how his knee had been injured. Defendant did not complain of injury to his face or upper chest. McNutt watched defendant walk and did not notice any problems with his ability to walk.

¶40 The parties also stipulated that, if called to testify, Dr. Yan Yu would testify that he was employed as a physician at Cermak Health Services on April 27, 2002. He performed a clinical assessment and exam of defendant and noted that defendant reported he received blunt trauma the previous day to his knee. Dr. Yu does not usually write down what the patient reports as the cause of injury. There was no fluid on the knee. There was tenderness on the outside of the knee. Defendant had full range of motion and no dislocation. Dr. Yu assessed blunt trauma to the right knee and prescribed Motrin.

¶41 Defendant is unable to meet the second *Patterson* factor where his claims are quite unlike those outlined in the 2006 Report but are, rather, of a generalized nature. Additionally, although we recognize that defendant's claimed abuse occurred on April 23 and his intake to the jail and subsequent physical assessment took place April 27, his injuries, unlike the injuries in *Wrice*, which were corroborated by medical evidence, are unsupported by the record before us.

¶42 c. The third factor: whether the officers allegedly involved in the torture are identified in other allegations of torture

¶43 Defendant is also unable to overcome the next *Patterson* factor, that is, whether the officers allegedly involved in the torture are identified in other allegations of torture. In his pretrial motion, defendant identified Detectives Cummings, Myers, and a third, unidentified

No. 1-12-2558

detective as his abusers. None of these detectives are mentioned in the 2006 report. Defendant focuses his attention on Detective Cummings, arguing that, while Detective Cummings himself is not mentioned in the 2006 Report, an officer with whom he closely worked, Detective McDermott, is named "extensively" in the 2006 Report. Defendant claims: "While Cummings is not guilty of abuse by association, [defendant] nonetheless maintains that the culture of coercion at Area Two did not end when Burge left in 1991." The argument that a detective who interviewed defendant in 2002 previously worked with a detective who was implicated in police abuse at Area 2 must also be guilty of police abuse is too attenuated for this court. The officers here do not appear in the 2006 Report, and defendant has failed to show that any officers allegedly involved in abusing him have been identified in other allegations of torture.

¶44 d. The fourth factor: whether defendant's allegations are consistent with OPS findings that torture, as alleged by defendant, was systematic and methodical at Area Two under Lieutenant Jon Burge.

¶45 Finally, defendant's allegations fail to connect the 2006 Report with his personal allegations of abuse. Nor does defendant here show a commonality or pattern among the allegations of abuse and his own; that is, while he states generally that he was hit, slapped, and kicked, as noted above, the abuse detailed in the 2006 Report was systematic and extreme in nature, such as simulation of suffocation.

¶46 Additionally, defendant's allegations are temporally removed from the abuse described in the 2006 Report, such that defendant's claims lose more credibility. The focus of the 2006 Report was the administration of Area Two by Jon Burge, whose active service with the Chicago

No. 1-12-2558

Police Department terminated in 1992. This court explained in *Wrice*, 406 Ill. App. 3d at 49, *affirmed as modified*, 2012 IL 111860: "in April 2002, the presiding judge of the criminal division of the circuit court of Cook County appointed a Special State's Attorney to investigate the allegations of police torture and abuse committed by Jon Burge, a commander within the Chicago police department during the 1980s and early 1990s, and the officers under his command at Area 2 and Area 3." The 2006 Report concludes, in part, that:

"While not all the officers named by all the claimants were guilty of prisoner abuse, it is our judgment that the commander of the Violent Crimes section of Detective Areas 2 and 3, Jon Burge, was guilty of such abuse. It necessarily follows that a number of those serving under his command recognized that, if their commander could abuse persons with impunity, so could they.

\*\*\*

The inter-office procedures followed by the State's Attorney's Office and the Chicago Police Department during at least the tenure of Jon Burge at Areas 2 and 3 were inadequate in some respects. Since 1999, however, there have been several improvements instituted by the State's Attorney's Office and the Superintendent of the Chicago Police Department."

No. 1-12-2558

It appears to us that the abuses and torture described in the 2006 Report occurred well before defendant's arrest in this case, and the detectives involved in the problems at Area 2 in the 1980's and 1990's took no part in defendant's arrest here.

¶47 Defendant implicitly acknowledges that his claims of torture at the hands of Area 2 detectives falls outside the time frame of the 2006 Report, but states in his petition that: "Defendant wants to establish that, although Jon Burge is no longer in command, the systematic pattern of brutality, torture, psychological and mental coercive tactics has not/did not cease overnight" but, in fact, was continuing when he was arrested and interrogated in April 2002. We cannot, however, make such an assumption on this record.

¶48 We note here that defendant has attached various new documents via an appendix to his brief on appeal, and urges this court to rely on these documents in making our decision in the case at bar. These documents include a short article from the Chicago Tribune discussing a civil lawsuit brought against six Chicago Police detectives, including Detective Cummings, and the City of Chicago, for alleged police abuse during a police interrogation. Also attached is unsigned, undated paperwork that purports to be the civil complaint by that defendant against the detectives and the City of Chicago. Defendant uses these newly provided documents to raise the claim for the first time in this court that Detective Cummings has, in fact, been implicated in prior police torture cases. We at this court are constrained by rules and procedure, and we will not consider new claims and new evidence brought before the court for the first time on appeal. See, e.g., *People v. Jones*, 213 Ill. 2d 498 (2004) ("As we have repeatedly stressed, the appellate court does not possess the supervisory powers enjoyed by [the supreme] court (see Ill. Const.

No. 1-12-2558

1970, art. VI, § 16 ('General administrative and supervisory authority over all courts is vested in the Supreme Court'); *Marsh v. Illinois Racing Board*, 179 Ill. 2d 488, 498 (1997) (noting that appellate court does not possess this court's supervisory powers)) and cannot, therefore, reach postconviction claims not raised in the initial petition[.]); *People v. Anderson*, 375 Ill. App. 3d 121, 139 (2007) (The appellate court cannot consider evidence "for the first time on appeal without it first being attached to defendant's postconviction petition for initial scrutiny and evaluation at the trial court level").

¶49 This court recognizes the heinous nature of the abuses detailed in the 2006 Report, and we understand the import of being vigilant in not allowing such abuse to occur again.

Nonetheless, defendant's argument fails where he is unable to show that the facts alleged, taken as true, stated the gist of a meritorious claim that his confession was the false product of police coercion.

¶50 Defendant also challenges the filing fees imposed by the postconviction court for filing a frivolous petition. 735 ILCS 5/22-105 (West 2010). Because of our disposition in the case at bar, we decline to address this issue.

¶51 III. CONCLUSION

¶52 For all of the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶53 Affirmed.