2016 IL App (1st) 122605-U

No. 1-12-2605

Fifth Division
March 31, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LEONARD KIDD, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 84 C 667 (02) The Honorable Lawrence Edward Flood, Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's second-stage dismissal of defendant's postconviction petition is affirmed, where: (1) defendant failed to make a substantial showing of ineffective assistance of trial counsel, since defendant was not prejudiced in light of the overwhelming evidence against him; and (2) the evidence supporting defendant's claims of police torture was not conclusive enough to be considered "newly discovered," and was therefore barred by *res judicata.*

¶ 2 Defendant Leonard Kidd pleaded guilty to first degree murder and other charges, and was sentenced to death. However, his guilty plea was vacated on direct appeal. *People v. Kidd,* 129 Ill. 2d 432 (1989). On remand after a jury trial, he was convicted of four counts of first

degree murder, four counts of concealment of a homicidal death, one count of aggravated robbery, and one count of aggravated arson and again sentenced to death. Although his conviction and sentence were affirmed on direct appeal (*People v. Kidd*, 175 Ill. 2d 1 (1996)), his death sentence was later commuted to a life sentence by then-Governor George Ryan.

¶ 3 Defendant now appeals the second-stage dismissal of his postconviction petition. Defendant contends that the trial court erred because defendant made a substantial showing: (1) that his trial counsel was ineffective at his suppression hearing for failing to investigate and present available evidence concerning other victims of police torture in Area 2, where defendant was arrested, which would have corroborated the claims of torture he set forth in his pretrial motion to suppress; and (2) that his fifth and fourteenth amendment rights were violated because his confession was the product of torture and previously unavailable evidence now corroborates his longstanding claims of torture. For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 Before describing the proceedings in detail, we provide here a summary of some of the salient facts. On January 12, 1984, authorities responded to a fire in an apartment building located on West 91st Street in Chicago, Illinois. The bodies of Renee Coleman; Anthony Coleman, age 9; Michelle Jointer; and Ricardo Pedro were found inside the building. A medical examiner later determined that all four victims died from repeated stab wounds. A witness identified a photograph of Leroy Orange, the stepbrother of defendant, as the person whom she had last observed with one of the victims.

¶ 6 After receiving information about a conversation that Orange's wife had with defendant, police arrested defendant and transported him to Area 2 headquarters. At 2:50 a.m. on January 13, 1984, defendant signed a statement which had been transcribed by a court reporter. The transcribed statement stated that defendant had been present in the apartment when Leroy Orange stabbed the four victims, set fire to the apartment, and gathered the knives Orange used to stab the victims. Both men were later indicted.

¶ 7 On May 21, 1985, defendant testified for the defense at Orange's trial. After conferring with counsel, defendant testified that he stabbed the victims by himself and that Orange had not been present at the time of the stabbings. The State impeached defendant with a statement that he previously gave to the police on January 13, 1984, which is summarized later in the Background. *Infra* ¶¶ 93-95.

¶ 8 On August 5, 1985, defendant pleaded guilty to the murders. Defendant testified at a sentencing hearing, detailing how he had stabbed the four victims and set the apartment on fire. Following this testimony, a jury sentenced him to death. However, on direct appeal, defendant's guilty plea was vacated and his case remanded for a new trial due to the trial court's improper admonishments regarding the minimum and maximum penalties for his plea. *People v. Kidd*, 129 Ill. 2d 432, 477 (1989).

¶ 9 I. Motions to Suppress

¶ 10 On June 22, 1992, defendant filed motions to quash arrest and suppress evidence. The motions were not supported by an affidavit. However, defendant later swore to the truth of the facts alleged in the motions at the suppression hearing.

¶ 11 A. Defendant's Allegations

¶ 12 Defendant alleged the following facts in the suppression motion:

¶ 13 Defendant was arrested by officers Dennis McGuire, Robert Flood, Leonard Bajenski, and Samuel David Dioguardi. The officers arrested him without probable cause or an arrest warrant, and defendant was never informed of his *Miranda* rights. The motion alleged additional misconduct, as well as physical torture by the officers. Specifically, defendant alleged that Officer Robert Flood handcuffed defendant to a pole in the interview room and slapped him in the face. Officers Flood and McGuire produced an electrical device, forced him to stand, lowered his pants, and attached a piece of cable to his testicles, causing an electrical shock in this area. In addition, Officer Flood placed a phone book against defendant's head and struck the phone book with a piece of wood.

¶ 14 Officer Flood told defendant that the officers would release him from custody if he showed them where the knives were and if his fingerprints were not found on the knives. Officers Flood and McGuire transported defendant to the vicinity of South Justine Street, in Chicago. There, Officer Flood told defendant that he would "blow his brains out" if he did not tell the officers where the knives were. Defendant pointed to a garbage can that was found to contain charred debris and drug paraphernalia. When the officers returned defendant to Area 2 they told defendant that Leroy Orange had confessed to the murders and told defendant to "try and remember where the knives are, and we'll let you go."

¶ 15 Defendant asked officers Flood and McGuire if he was permitted to make a telephone call because he wanted to call his mother so that she could secure an attorney for him. The officers told defendant that he could not make a telephone call. After the officers denied him permission to make a telephone call, they transported him to the vicinity of South Ashland Avenue and defendant led the police to a knife in a garbage can.

¶ 16 The motion further alleged that defendant was under the influence of alcohol and cocaine at the time that he gave statements to an assistant State's Attorney (ASA), which were recorded by a court reporter. The motion requested a hearing to determine if defendant's statements were made voluntarily and to preclude the use of the statements at trial.

¶ 17 A hearing on defendant's motion to suppress statements was held on February 17, 1993. Defense counsel did not call defendant as a witness. Instead, defendant swore to the contents of the motion.

¶ 18 B. Sergeant McGuire

¶ 19 At the suppression hearing, Sergeant Dennis McGuire testified that he had been a Chicago police officer for 25 years and that he was a detective in the Area 2 violent crimes unit in January 1984. McGuire testified that, on January 12, 1984, he was working with Officer Robert Flood when they interrogated defendant from 5:15 to 5:45 p.m. McGuire read defendant his *Miranda* warnings, and defendant acknowledged that he understood his *Miranda* rights. After agreeing to speak with the officers, defendant was again interrogated by McGuire and Flood from 6:30 p.m. to 7 p.m. McGuire and Flood left the room to interrogate Orange, but returned to interrogate defendant a third time from 10:30 p.m. to 11:30 p.m. Defendant was then interviewed by an ASA. McGuire witnessed the ASA reading defendant his *Miranda* warnings and defendant's acknowledgement that he understood his rights. Throughout his interrogations, defendant did not invoke any of his *Miranda* rights. McGuire could not recall if any of the interrogation rooms in Area 2 headquarters had a pole which suspects were handcuffed to. McGuire denied using an electrical device to shock defendant and denied observing Flood place a phone book on defendant's head and hit it with a wooden board.

¶ 20 McGuire denied being present when defendant was transported to the area of the crime scene to collect evidence. Defendant was never denied permission to make a phone call, and McGuire never witnessed detectives Flood or Bajenski grab defendant by the collar and strike him. McGuire denied making defendant any promises to let him go if he cooperated and never witnessed the other detectives make any similar promises.

¶ 21 C. Detective Flood

¶ 22 Detective Robert Flood testified that he had been employed with the Chicago police department for 25 years and that he was a detective in the Area 2 violent crimes unit in January 1984. Detectives Flood and McGuire first interrogated defendant from 5:15 p.m. to 5:45 p.m. on January 12, 1984. Detective McGuire read defendant his *Miranda* warnings and defendant acknowledged that he understood them. Flood and McGuire were with defendant on four different occasions that night; the officers interrogated defendant alone during the first three occasions and were present when an ASA interviewed defendant.

¶ 23 Flood testified that he had been a detective in Area 2 for 15 years and could not recall any suspect being handcuffed to a pole. Defendant was never struck nor was he given any electric shocks during the interrogations. Detectives Flood and McGuire never transported defendant to the crime scene, and neither detective promised to let defendant go in return for his cooperation. Flood denied ever threatening to shoot defendant and denied that defendant had ever asked to make a phone call or make a request for a lawyer.

¶ 24 D. Detective Bajenski

¶ 25 Detective Leonard Bajenski testified that he had been a Chicago police officer for 26 years, a detective for 22 years and was assigned as a detective to the Area 2 violent crimes unit in January 1984. On January 12, 1984, Bajenski started work at 11:30 p.m. At 2:50 a.m.

on January 13, 1984, Bajenski entered defendant's interview room with an ASA and a court reporter. The ASA read defendant his *Miranda* warnings, and defendant acknowledged that he understood them. Defendant gave an oral statement to the ASA regarding the quadruple homicide. The interview lasted until 3:15 a.m. The court reporter then typed the oral statement into a written document and defendant signed it at 6 a.m.

¶ 26 Bajenski denied striking or observing anyone strike defendant. Bajenski denied shocking defendant and did not witness anyone shock him. Bajenski did not promise to let defendant go in exchange for his cooperation and did not hear anyone make a similar promise. Defendant did not appear to be under the influence of alcohol or cocaine at the time that he gave his statement. Defendant did not ask to make a telephone call or to speak to a lawyer.

¶ 27 During cross-examination and redirect, Bajenski testified that he and Detective Dioguardi had interviewed defendant at 4:30 p.m. on January 12, 1984. Either Bajenski or Dioguardi handcuffed defendant to a ring attached to the wall of the interview room. Bajenski's first shift on January 12 ended at 5 p.m. After his first shift, Bajenski went home to sleep before his second shift started at 11:30 p.m.

¶ 28 E. Judge Dernbach

¶ 29 Judge Dennis Dernbach testified that he had been an associate judge with the circuit court of Cook County since December 1988. In January 1984, he was employed as a deputy supervisor in the felony review unit of the Cook County State's Attorney's Office. On January 12, 1984, Dernbach arrived at Area 2 headquarters at 10:30 p.m. At 12:45 a.m. on January 13, 1984, Dernbach entered defendant's interview room with detectives Flood and McGuire and he introduced himself as an assistant State's Attorney. Dernbach read defendant his *Miranda* warnings and defendant acknowledged that he understood them.

Dernbach interviewed defendant for approximately 30 minutes, and then asked if defendant would repeat his statement so that it could be transcribed by a court reporter. Defendant agreed to provide the oral statement, which was taken down by a court reporter. Dernbach and detectives Flood and McGuire then left the interview room.

¶ 30 At 2:50 a.m., Dernbach again entered defendant's interview room with a court reporter and Detective Bajenski and defendant provided an oral statement regarding the quadruple homicide, which was transcribed by the court reporter. The interview lasted 20 minutes. Dernbach, Detective Bajenski, and the court reporter then left the room. At 6:10 a.m., the three returned and defendant reviewed a written statement transcribed by the court reporter, initialed each page, and signed the last page. The court reporter then took a Polaroid photograph of defendant, which defendant, Dernbach, and Bajenski signed.

¶ 31 Dernbach testified that defendant did not appear to be under the influence of alcohol or any drugs, and defendant had been allowed to smoke cigarettes and drink coffee during the course of the interview. Defendant told Dernbach that he had been treated well by the police. No one ever struck defendant in Dernbach's presence, no one shocked defendant, and no one told defendant that they would let him go if he cooperated. Defendant did have a mark on his head which he told Dernbach he received two weeks earlier.

¶ 32 On February 18, 1993, the trial court denied defendant's motion to suppress, finding that there did not appear to be any evidence that defendant "was struck, mistreated, abused," or "in any way forced to make the statement." The trial court found defendant's statement to have been made voluntarily.

¶ 33 III. Trial

¶ 34 A. O.J. Hassan

¶ 35 Defendant's jury trial began on May 13, 1993. The state first called O.J. Hassan, who testified that he was 53 years old and living in Atlanta, Georgia. In 1984, Hassan was an insurance consultant who lived in the same apartment building as Renee Coleman, Anthony Coleman, and Michelle Jointer. Hassan was friends with the trio and lived in an apartment directly below their apartment. On July 12, 1984, Hassan woke at 4 a.m. At 4:15 a.m. he heard a commotion coming from their apartment. Hassan heard Renee Coleman shout "you guys, stop it; you guys, stop it," but then he did not hear another sound from that apartment until 6 a.m., when he heard what sounded like people shuffling around. He also heard Renee and Anthony hysterically crying out. Hassan testified that, within two minutes, everything became very quiet. Hassan then called the police. A few minutes after calling the police, Hassan heard someone from outside the building yell that the building was on fire. Hassan then noticed that water and smoke were entering his apartment from the apartment above. Hassan ran up the stairs, grabbed a fire extinguisher, and attempted to enter the apartment above. Unsuccessful, Hassan returned to his apartment to secure his belongings and stayed there until the fire department arrived and put the fire out. Hassan then spoke to the police and provided a description of Renee Coleman's boyfriend.

¶ 36 B. Lonnie Alston

¶ 37 Next, the State called Lonnie Alston who testified that he had been a neighborhood relations officer with the Chicago police department for over 25 years. On January 12, 1984, Alston received a call to respond to West 91st Street for a fight in progress. When Alston and his partner arrived, they observed smoke and fire emanating from the windows on the third

floor. Alston reported the fire to a dispatcher, and the dispatcher told him that fire units were on the way. Alston and his partner entered the building, shouted out that there was a fire, and knocked on the doors of the second floor units. The officers then went to the back staircase, ascended to the third floor, and began alerting the third floor residents that the building was on fire. Alston's partner began coughing due to the smoke in the building, so Alston led him down to the front door. Alston was unable to reenter the building until the fire department extinguished the fire. When Alston entered the apartment where the fire had originated, he observed four bodies. Each body was bound and had multiple stab wounds. Alston reported the bodies to the zone dispatcher and protected the crime scene until detectives arrived.

¶ 38 C. Detective Flood

¶ 39 The State next called Detective Robert Flood who testified that he was a detective for the Chicago police department assigned to the Area 2 violent crimes unit, and was so assigned on January 12, 1984. At 8:30 a.m. on January 12, Flood arrived at the scene of the fire and the homicides. He was directed by his supervisor on the scene to procede to apartment 309. When he reached the third floor, he observed water on the floor in the main hallway and that the area around the door to apartment 309 was charred and burnt.

¶ 40 After he entered apartment 309, Flood went to the living room. He observed that the windows in the room were broken and the walls were blackened and charred. After remaining in the living room for a short time, Flood entered the bedroom near the front of the apartment. He described the room as "completely destroyed" by the fire. Flood next went to the bedroom near the back of the apartment. The back bedroom was also heavily damaged by fire. Inside, he found the bodies of the four victims. The body of Ricardo Pedro had been bound by a scarf, and stab wounds were visible on his neck. The hands of Michelle Jointer

had been tied behind her back with an extension cord and an article of clothing had been tied around her neck. The hands of Renee Coleman had been bound with a telephone extension cord, and a cloth had been wrapped around her neck. Anthony Coleman's hands were also bound with a telephone cord, and a cloth was wrapped tightly around his neck.

¶ 41 On a dresser in the back bedroom, Flood found a public assistance application that contained biographical information for a woman named Eniwotec Durr. In a nightstand, he found photographs of people and a green address book filled with addresses and telephone numbers. Flood requested other units to locate Eniwotec Durr.

¶ 42 At 12 p.m., Flood left the building and drove to Area 2 headquarters. There, he spoke to Eniwotec Durr. She identified Leroy Orange from one of the photographs that had been found in the nightstand. Flood found Orange's name in the green address book, and traced the phone numbers he found back to the addresses at East 75th Street and South Emerald Avenue in Chicago.

¶ 43 At 3 p.m., Flood and other officers arrived at the South Emerald Avenue address. When the officers knocked on the door, Leroy Orange answered and was immediately arrested. Flood testified that at 3 p.m., another group of officers were sent to the East 75th Street address.

¶ 44 D. Willie Coleman

¶ 45 The State next called Willie Coleman, who testified that he had raised Renee Coleman as his daughter. Renee was 27 years old in January 1984 and had a nine-year-old son, Anthony. At that time, Renee and Anthony lived with Michelle Jointer in an apartment located on West 91st Street. On the morning of January 10, 1984, Renee, Anthony, and Michelle arrived at his house. He drove Renee and Michelle to the train station. He then took Anthony to school.

Willie Coleman indicated that this was an everyday occurrence. The next day, only Renee and Anthony came to his house. He took Renee to the train station and Anthony to school. At 6 p.m., Willie picked Renee up at the train station and brought her back to his house. There, Willie, Renee, and Anthony ate dinner. Renee and Anthony left Willie's house at 8 p.m. That was the last time that Willie saw his daughter and grandson alive.

¶ 46 On the morning of January 12, 1984, Willie Coleman learned from police officers that Renee and Anthony had been murdered. He was later transported to the Cook County Medical Examiner's Office, where he identified their bodies.

¶ 47 E. Nancy Jones

¶ 48 The State next called Nancy Jones, who testified that she had been an assistant medical examiner for Cook County since July 1986. Since then, she had conducted 3,000 autopsies. Jones reviewed the autopsy reports of Renee Coleman, Anthony Coleman, Michelle Jointer, and Ricardo Pedro, which had been prepared by a chief medical examiner who had since retired.

¶ 49 Jones testified that Ricardo Pedro's autopsy report indicated that he died from 10 stab wounds on his face, neck, and chest. The report also indicated that he had traces of cocaine in his system. Michelle Jointer's autopsy report indicated that she died from 14 stab wounds on her chest, shoulder, back, and thigh. The report indicated that she also had traces of cocaine in her system. Renee Coleman's autopsy report indicated that she died from 17 stab wounds and 18 incision wounds on her face, chest, back, forearm, and hand. The report indicated that she also had traces of cocaine in her system. Anthony Coleman's autopsy report indicated that he died from seven stab wounds and six incision wounds on his head and chest. All toxicological tests done on Anthony Coleman came back negative.

¶ 50 After Jones finished testifying, the parties spoke with her, and stipulated that, if recalled, she would testify that the levels of cocaine found in the bodies of Renee Coleman, Michelle Jointer, and Ricardo Pedro indicated that the three had ingested cocaine within three hours before they died.

¶ 51 F. Mildred Dixon

¶ 52 The State next called Mildred Dixon, who testified that she had been married to Leroy Orange in January 1984. On January 11, 1984, Dixon observed Orange leave their apartment located on East 75th Street at 7 p.m., and he did not return to the apartment that evening. On January 12, 1984, Dixon woke up between 6 and 6:30 a.m. and noticed that Orange still was not home. At 9 a.m., Dixon went to work, and she returned to the apartment at 2 p.m. When she arrived at the apartment, she spoke with two detectives at her door, and let them into the apartment. The detectives asked her if Orange was home. Dixon told them that she did not know where Orange was, but called Orange's mother's house in order to locate him. Orange answered his mother's telephone, and Dixon and Orange had a short conversation. After hanging up the phone, Dixon informed the officers that Orange was at his mother' house, located on South Emerald Avenue.

¶ 53 Dixon testified that there were clothes in the apartment that were not there when she left for work that morning. She told the police that she recognized them as belonging to defendant. At 3:30 p.m., Dixon received a call from defendant, who told her that he wanted to meet her because he had something to tell her that "could put me and [Orange] away for the rest of our lives." Dixon and defendant decided that they would meet at a nearby McDonald's restaurant nearby at 4 p.m. Dixon told the officers what defendant had said and where they planned to meet.

¶ 54 At 4 p.m., Dixon met defendant at the McDonald's. Dixon testified that police officers did not enter the McDonald's before or after her. Dixon purchased a drink and sat at a table with defendant, who told her that Renee Coleman had been stabbed, and that Orange had paid someone to do it. When the officers heard this, they arrested defendant. The officers then drove Dixon to Area 2 headquarters, where she stayed until 12 a.m. Dixon saw Orange at 10:30 p.m. and noticed he was wearing different clothes than what he wore when he had left the apartment on January 11, 1984.

¶ 55 G. Reed Randolph

¶ 56 The State next called Reed Randolph, who testified that, in January 1984, he had been a lifelong resident of Chicago and a friend of Ricardo Pedro. On January 11, 1984, at 10:30 p.m., Randolph, Ricardo Pedro, another mutual friend, and the friend's wife went to the apartment of Michelle Jointer and Renee Coleman. Soon after, a man that Randolph did not recognize entered the apartment. Then Renee Coleman and the man Randolph did not know left the apartment for about an hour and a half, and returned with a pipe. At 12 a.m. in the morning of January 12, 1984, Randolph, the mutual friend, and his wife left the apartment.

¶ 57 Later that morning, Pedro's mother called Randolph and asked him to go to the apartment he had been at the night before. When he arrived, a police officer on the scene told him what had happened, and Randolph was transported to Area 2 headquarters. There, officers showed him a group of photographs from which he identified the man who he did not know from the night before. Randolph also recognized a photograph of a watch that Pedro frequently wore.

¶ 58 On cross-examination, Randolph explained that he had witnessed Pedro and the man he did not know participate in a brief, oral argument. Randolph explained that he had told Pedro

not to spend the night at that apartment because it did not feel safe. He also testified that he did not come into contact with defendant at any point during the night or early morning.

¶ 59 H. Detective McCabe

¶ 60 The State next called Detective John McCabe, who testified that he was a detective with the Chicago police department, assigned to the Area 2 violent crimes unit since February 1970. On January 12, 1984, McCabe went to the apartment building on East 75th Street in Chicago in connection with a quadruple murder investigation. While McCabe and other officers were waiting for a response at the door, Mildred Dixon returned to the apartment. At 2:30 p.m., the officers had a conversation with Dixon, who related that there were articles of clothing on the floor that had not been there when she left for work that morning. Dixon then called Orange's mother's house. When Dixon told the officers that Orange had answered the telephone at his mother's house, McCabe notified a dispatcher who sent other officers to the mother's house.

¶ 61 At 3:45 p.m., the telephone in Dixon's apartment rang. Dixon answered the telephone and had a two-minute conversation with the caller. Dixon told the officers that defendant had called and told her that he and Orange had been involved with something that could put them in jail for the rest of their lives. She told the officers that she had agreed to meet defendant at the McDonald's at 79th Street and Halsted. After meeting at the McDonald's, the officers arrested defendant and transported him to Area 2 headquarters.

¶ 62 I. Detective McGuire

¶ 63 The State next called Dennis McGuire, who testified that he was promoted to the rank of sergeant with the Chicago police department in 1986. Prior to his promotion he was a detective assigned to Area 2 violent crimes. On January 12, 1984, McGuire and his partner

Detective Robert Flood became involved in a quadruple homicide investigation. At 5:15 p.m., McGuire and Flood interviewed defendant for half an hour. During that interview, McGuire read defendant his *Miranda* warnings, and defendant acknowledged that he understood them.

¶ 64 Defendant then stated that he had gone to his brother's girlfriend's apartment around 12 a.m. on the morning of January 12, 1984, and stayed there until 4:30 a.m. During that time, defendant heard an argument between Orange and Ricardo Pedro. When that argument became violent, defendant decided to leave. Defendant said that before he was able to leave the apartment, two men entered the apartment and displayed knives. After the men arrived, defendant said that he went home. When Detective McGuire asked him more questions about going home, defendant said that he did not go home and instead waited outside the apartment.

¶ 65 Defendant told McGuire and Flood that the men with knives later left the apartment and that one of them was covered in blood. A short time after they left, Orange exited the apartment, and defendant and Orange boarded a bus to go home. On the bus, defendant asked Orange what happened in the apartment, and Orange told him: "We cut them up real bad."

¶ 66 Defendant later identified the men with the knives as "Slick Rick" and "Ricky Jones." When the officers asked defendant more questions about "Slick Rick" and "Ricky Jones," defendant admitted that he made up the name "Ricky Jones" but asserted that the man named "Slick Rick" had been at the apartment.

¶ 67 McGuire testified that he noticed that defendant was wearing a gold-colored watch. Defendant told the detectives that Ricardo Pedro gave him the watch in return for his radio.

McGuire stated that a radio was not recovered at the scene of the crime but that a radio was recovered from defendant's residence on South Emerald Avenue.

¶ 68 McGuire and Flood left the room and interviewed Orange from 5:45 p.m. to 6 p.m., and the detectives brought defendant to Orange's interview room for a brief period to show Orange that defendant was in custody. At 6:30 p.m., McGuire and Flood brought Orange to defendant's room where Orange told defendant that he had committed the murders by himself and there was no person named "Slick Rick." Defendant then told the detectives that he made up the name "Slick Rick" because he did not want Orange to be blamed alone for four murders. He then told the detectives that he might be able to take officers to recover evidence from the scene. McGuire testified that he believed that detectives McCabe, McNally, and Dioguardi then transported defendant to a designated place.

¶ 69 At 10:30 p.m., Detective Flood again interviewed defendant who stated that he had been at a bar on the evening of January 11, 1984. Orange came to the bar and spoke with defendant, and Orange and Renee Coleman then drove defendant back to his house on South Emerald Avenue. There, defendant gave Orange his radio, which he described as a "Pioneer-type radio-tv combination." Orange and Renee Coleman then left the house, and defendant returned to the bar. He later returned to his apartment. At 12:30 a.m. on January 12, 1984, defendant received a telephone call from Orange, who said he needed defendant's assistance. Defendant then left his apartment, took a bus to 91st Street and Ashland Avenue, and entered Renee Coleman's apartment at 1:30 a.m. Orange offered him cocaine, which he refused. Defendant stated that Orange and Pedro became involved in an argument that turned violent. Pedro had a razor blade and Orange had a knife, and Orange stabbed Pedro and continued to stab him in a bedroom. Orange then tied Pedro's hands and feet and left him in the bedroom.

Defendant stated that he then tried to comfort Pedro and tried to stop his bleeding with a towel. Renee and Anthony Coleman were in the bedroom where Pedro had been stabbed. At this point Orange and Jointer were having sex in the front room.

¶ 70 Defendant stated that Orange later brought Jointer back to the bedroom. At this point, Jointer's hands were bound behind her back and she had a gag around her mouth. Orange was holding a butcher knife. When Pedro once again started to argue with Orange, Orange stabbed him in the head and defendant believed that Pedro was dead. Orange then made Renee Coleman tie up Anthony Coleman. Then, Orange tied up Renee Coleman and he placed gags on both Renee and Anthony. Orange then straddled Renee, who was lying on her back, and stabbed her. Orange then stabbed Anthony. Jointer, who had witnessed the three stabbings, said "don't do it, don't do it." Orange proceeded to stab her as well.

¶ 71 Defendant stated that Orange then started to set fires in the apartment, and defendant and Orange started to gather the things they wanted from the apartment. He said that he took his television-radio combination and that Pedro then gave him his wristwatch and told defendant not to tell Orange that Pedro gave defendant the watch.[1] Orange and defendant exited the apartment and disposed of the knives, drugs, a pipe, and a pair of pants in a garbage can located in the alley behind the building. Defendant and Orange then went home.

¶ 72 J. Detective McNally

¶ 73 The State next called Detective Raymond McNally who testified that he had been a detective for the Chicago police department for 26 years and assigned to Area 2 violent crimes in January 1984. At 7 p.m. on January 12, 1984, detectives McNally, McCabe, and

[1] Defendant stated that Pedro told defendant not to tell Orange about the watch, even though defendant had stated that Pedro had previously been stabbed in the head by Orange and was dead.

Dioguardi transported defendant to South Justine Street. Defendant directed them to a garbage can in the alley, in which they found a freebasing pipe, a spoon, burnt debris, and clothing. The detectives called the crime lab so that these items could be recovered as evidence. They then transported defendant back to Area 2 headquarters.

¶ 74 At 10:30 p.m., the detectives transported Orange to his apartment on East 75th Street. There, Orange showed them a blue sweater, which he claimed to have been wearing at Renee Coleman's apartment the night before. The detectives transported Orange back to Area 2 headquarters at 11:20 p.m. Upon returning to Area 2 headquarters, the detectives learned that defendant had again been interviewed. At 11:30 p.m., they transported defendant to the alley on South Ashland Avenue. There, defendant directed the detectives to a dumpster which contained a knife. The detectives called the crime lab so the knife could be inventoried as evidence. They then transported defendant back to Area 2 and ended their shifts.

¶ 75 At 9:30 a.m. on January 13, 1984, detectives McNally, McCabe, and Dioguardi transported defendant to the alley on South Justine. Defendant directed them to a pair of trashcans which contained two knives, one of which was missing its tip. The detectives called the crime lab so that the knives could be recovered as evidence and transported defendant back to Area 2 headquarters.

¶ 76 K. Lorraine Pedro

¶ 77 The Sate next called Lorraine Pedro, who testified that she was the mother of Ricardo Pedro who lived with her on South Aberdeen Street in Chicago. On January 11, 1984, Ricardo Pedro left the house at 10 p.m. and that was the last time she saw Ricardo Pedro alive. On January 12, 1984, she received information about the fire and drove to the Cook County morgue, where she identified the remains of her son. Also on January 12, she

identified Ricardo Pedro's watch. The parties then stipulated that if Lorraine Pedro were shown a photograph of Ricardo Pedro at the morgue she would identify it as depicting her son in a deceased condition.

¶ 78 L. Pearl Jointer

¶ 79 The State next called Pearl Teresa Jointer who testified that she was the mother of Michelle Jointer. Pearl last saw her daughter around Christmas of 1983, but spoke to her on the phone every day until January 11, 1984. On January 12, 1984, Pearl went to the morgue, where she identified the remains of her daughter.

¶ 80 M. James Thomas

¶ 81 The State next called James Henry Thomas, who was first examined outside of the presence of the jury. Over the defense's objection,[2] the trial court ruled that Thomas could testify. In front of the jury, Thomas testified that he had been a Chicago firefighter for 13 years. On the morning of January 12, 1984, Thomas and his unit were dispatched to a building fire at 92nd Street and Ashland Avenue. There, he observed fire and smoke emanating from the third floor. Thomas entered the apartment that was on fire and helped to extinguish it. This process lasted 25 minutes. When he went back outside to the firetruck, Thomas was approached by a black man who was not a police officer or firefighter. The man asked Thomas if anyone in the building was dead. Thomas informed the man that they found four bodies in the apartment, and the man asked him if the bodies had been burnt. Thomas told the man that the bodies had not been burnt. When the man heard this he said, "Damn," and walked away down 91st Street.

[2] The defense objected on the ground that the witness was unreliable in that he could not identify defendant with 100% certainty. The defense also objected on the ground that the newspaper article containing the photograph of defendant was hearsay.

¶ 82 Thomas made an in-court identification of defendant as the man who had asked about the bodies. On January 14, 1984, Thomas read a newspaper article about the fire which contained photographs of two individuals, and Thomas recognized one as the man who had asked him about the bodies on January 12, 1984. Thomas informed his lieutenant, and on January 17, 1984, Thomas spoke to police officers who had come to the fire station.

¶ 83 On cross-examination, Thomas testified that he had testified at the trial of Leroy Orange. Defense counsel read part of the transcript of that trial into the record. At that trial, Orange's attorney had shown Thomas a photostatic copy of the newspaper article from January 14, 1984, and asked him to identify defendant as the man who asked him questions about the bodies. Thomas admitted that he could "not say if it was definitely the man or not." On cross during defendant's trial, Thomas admitted that he was not 100% sure that defendant was the man who had asked about the bodies as, "[i]t's been nine-and-a-half years."

¶ 84 N. Christine Sahs

¶ 85 The State next called Christine Sahs who testified that she was a private consultant in forensic analysis and, in 1984 she was a microanalyst in the Chicago police department crime lab. On January 14, 1984, Sahs conducted tests on knives recovered during the investigation of a quadruple homicide. She testified that she was able to confirm that each knife tested positive for blood but that the sample amount on each knife was insufficient to determine the blood type. Sahs also conducted tests on a portion of a knife blade which revealed traces of blood belonging to Ricardo Pedro.

¶ 86 Sahs tested clothing belonging to defendant and Orange, including a v-neck pullover sweater, a grey pair of pants, two sets of boots, and a red jacket, but she was unable to determine whether blood was present on these articles of clothing. She also tested articles of

clothing that had belonged to the victims, which she concluded were covered in blood and had multiple perforations that ranged from a quarter inch to two inches long.

¶ 87 O. Dennis Guest

¶ 88 The State next called Dennis Guest who testified that that he was a detective assigned to the bomb and arson section of the Chicago police department. On January 12, 1984, Guest was assigned to investigate an apartment fire on West 91st Street. He was able to determine that two separate fires had been started in the apartment; one in the bedroom where the bodies were found and another in the bedroom that was closer to the front door of the apartment. Guest determined that these two fires were separate at all times and that the fires never merged into one fire. He also determined that no accelerants, such as gasoline, were used to start the fires.

¶ 89 P. Judge Dernbach

¶ 90 The State next called Judge Dennis Dernbach, who had previously testified at defendant's suppression hearing. At trial, Dernbach testified that he had been an attorney since 1974. In 1984, he was employed as a deputy supervisor in the felony review unit of the Cook County State's Attorney's Office. At 9:30 p.m. on January 12, 1984, Dernbach was called to Area 2 headquarters concerning a quadruple homicide on West 91st Street. At 12:45 a.m. on the morning of January 13, 1984, he interviewed defendant with detectives Flood and McGuire. Dernbach read defendant his *Miranda* rights and defendant acknowledged that he understood them. Dernbach then interviewed defendant for 30 minutes, and then asked if defendant would repeat his oral statement so that it could be transcribed by a court reporter. At 2:30 a.m., Dernbach returned to the interview room with Detective Bajenski and a court reporter. Defendant then provided an oral statement, which the court reporter recorded. The court

reporter then typed a transcript of the statement, which Dernbach reviewed with defendant. Defendant initialed each page and signed the last page of the statement. The court reporter took a Polaroid photograph of defendant, which defendant also signed.

¶ 91 Q. Defendant's Statement

¶ 92 The State offered defendant's signed statement into evidence. The trial court admitted the statement and published it to the jury. In summary, defendant stated in the statement the following:

¶ 93 Defendant was read and understood his *Miranda* rights. On the night of January 11, 1984, he had been at a bar located at 79th Street and Halsted Avenue. Defendant's brother Leroy Orange and Renee Coleman showed up at the bar, and Orange asked defendant for his television-radio combination. Orange and Coleman then transported defendant back to defendant's house on South Emerald Avenue. Defendant gave Orange his television-radio combination and then defendant returned to the bar. At 12 a.m. on January 12, 1984, defendant left the bar and returned to his house. At 12:30 a.m., defendant received a telephone call from Orange, who said that he needed defendant's assistance. Defendant then left his apartment, took a bus to 91st and Ashland Avenue, and entered Renee Coleman's apartment at 1:30 a.m. Ricardo Pedro, Michelle Jointer, Renee Coleman, and Anthony Coleman were all present in the apartment. Orange was in the apartment smoking cocaine. Defendant stated that, at 3:30 a.m., Orange and Pedro became involved in an argument that turned violent. Pedro had a razor blade and Orange had a knife. Orange stabbed Pedro in the upper chest, tied him up with a belt and a scarf, and left him in the bedroom. Defendant then tried to stop Pedro's bleeding with a towel. Renee and Anthony Coleman were also in the bedroom where Pedro had been stabbed. At this point, Orange and Michelle Jointer were in

the front part of the apartment. Defendant approached Orange and told Orange that Orange needed to take Pedro to the hospital.

¶ 94 Orange returned to the room and repeatedly stabbed Pedro. Orange then brought Jointer, who had her hands tied behind her back, back to the room and put her on the bed. Orange then made Renee Coleman tie up Anthony Coleman. Orange tied up Renee Coleman and placed cut up sheets in Renee and Anthony's mouths. Orange then stabbed Renee, Anthony, and Michelle Jointer. Orange then set the bed on fire.

¶ 95 Pedro then gave defendant his watch, which defendant put on a dresser. Orange later took the watch from the dresser. Orange then grabbed the knives and set fire to the bed in the front bedroom. Defendant and Orange then left the apartment and Orange hid the knives in garbage cans in an alley. Orange also tried to burn the clothes that he had been wearing. Defendant later took officers to that alley to recover evidence.

¶ 96 R. Orange's Statement

¶ 97 On cross-examination, Dernbach testified that he interviewed Orange in the presence of a court reporter at 3:56 a.m. on January 13, 1984. Orange reviewed and signed the statement, which the court reporter had typed. Defense counsel offered Orange's signed statement into evidence and the trial court admitted the statement and published it to the jury. In summary, Orange stated the following:

¶ 98 Orange was read and understood his *Miranda* rights. Orange and Renee Coleman went to a bar at 79th Street and Halsted Avenue to see defendant, who is his stepbrother. Orange asked defendant if he could borrow defendant's television-radio combination in order to purchase cocaine. The three then drove to defendant's house on South Emerald Avenue. There, defendant gave Orange his television-radio combination. Orange and Renee Coleman

then left defendant's house and drove to Renee's apartment on West 91st Street. Ricardo Pedro, Anthony Coleman, and Michelle Jointer were all at the apartment. When Orange arrived at the apartment, he started freebasing cocaine. At 12:30 a.m., January 12, 1984, Orange called defendant because he was having problems with Pedro. Defendant arrived at the apartment at 1:30 a.m., and at 3:30 a.m., Orange and Pedro started a physical altercation during which Orange stabbed Pedro, bound his hands and feet, and placed him in the back bedroom. Orange then returned to the front of the apartment and smoked cocaine with Jointer.

¶ 99 At 5:30 a.m., Orange returned to the back bedroom. Pedro, Renee, and Anthony Coleman were in the room, but not defendant. Orange stabbed Pedro another few times and tied Jointer up. He made Renee tie Anthony up and then he tied Renee up. Then defendant entered the room. Orange proceeded to stab Renee, Anthony, and Jointer. He then set the bed on fire and started a fire in the front bedroom with matches and newspaper.

¶ 100 Orange and defendant then left the apartment. They took a watch, the television-radio combination, the knives, a pipe, and a spoon to the back alley and hid the knives in garbage cans. Orange removed and attempted to burn the clothing that he had been wearing in the apartment.

¶ 101 S. Defendant's Testimony in Orange's Trial

¶ 102 The State next called Barbara Kimbrough who testified that she was an official court reporter for the circuit court of Cook County. On May 21, 1985, she was assigned to record the trial of Leroy Orange, and defendant was called to testify on behalf of Orange. The State offered defendant's testimony from Orange's trial into evidence at defendant's trial. The trial

court admitted a transcript of defendant's testimony into evidence and published it to the jury. In summary, defendant testified to the following:

¶ 103 Defendant was 24 years old and was the half-brother of Orange. Although he had been charged with murder in the same case, defendant was voluntarily testifying at Orange's trial after conferring with his lawyer. At 2 a.m. on January 12, 1984, defendant arrived at the apartment of Renee Coleman. There, he smoked cocaine, drank alcohol, and joined in a game of cards with Orange, Renee Coleman, and Michelle Jointer. Defendant received the cocaine from Ricardo Pedro, who was standing in the kitchen of the apartment.

¶ 104 At 2:30 a.m., Orange left the apartment, and defendant and Pedro entered the back bedroom to smoke cocaine and PCP. When Pedro asked defendant for money for the drugs that defendant had just smoked, defendant walked back to the kitchen and unplugged his television-radio combination. Pedro then approached defendant with a butcher knife. Defendant became scared, knocked the knife out of Pedro's hand, retrieved it from the ground, and stabbed Pedro. Anthony Coleman walked into the room and announced that Pedro was bleeding, and Renee Coleman and Jointer walked toward the back bedroom.

¶ 105 Defendant grabbed Anthony, held the knife to Anthony's neck, and told Renee and Jointer that he just wanted to leave the apartment. Renee retrieved a knife from the kitchen and told defendant to let go of Anthony. Renee and Michelle Jointer started yelling at defendant. He ordered Renee and Jointer to tie Pedro up, which they did. When they were finished, he told Renee to tie up Jointer and Anthony. After she tied up Anthony, Renee tried to attack defendant. Defendant stuck his knife out and Renee ran into it. He began swinging the butcher knife at Renee and eventually tied her up. He then sat on the bed and thought about what he could do. Jointer convinced defendant to untie her, and she and defendant

walked to the living room, where they smoked cocaine and defendant attempted to have sex with her. During his attempt, he felt a rush to his head and ran to the bathroom to throw up. He told Jointer to stand in the bathroom and not move. He went into the kitchen to drink water. When Jointer followed him to the kitchen, he grabbed a knife, tied her up with a television cord, and took her to the back bedroom.

¶ 106 Pedro had broken out of his restraints and started to attack defendant. Defendant stabbed Pedro, Renee, Jointer, and Anthony repeatedly. He initially tried to blame Orange for what had happened, but Orange was not in the apartment and did not participate in the stabbing.

¶ 107 On cross-examination, the State impeached defendant with the signed statement which he gave to ASA Dernbach on January 13, 1984.

¶ 108 T. Norbert Rajewski

¶ 109 The parties stipulated that, if Norbert Rajewski were called, he would testify that, in January 1984, he was employed as an evidence technician for the Chicago police department. At 8 a.m. on January 12, 1984, he processed the crime scene on West 91st Street. In spite of his experience and training, due to the smoke, soot, water, and fire damage, he was unable to recover any fingerprints from apartment 309 which were suitable for comparison. Similarly, his analysis of the knives recovered in the case revealed that the handles were too porous to permit the recovery of a suitable fingerprint and that the blade portions of the knives did not contain any recoverable fingerprints.

¶ 110 U. Defendant's Testimony at Sentencing Hearing

¶ 111 The State next called Samma Freeman who testified that she was an official court reporter for the circuit court of Cook County. On August 13, 1985, she heard and recorded

defendant's testimony at a sentencing hearing.[3] The State offered defendant's testimony from that hearing into evidence and published it, with a number of redactions, to the jury. In summary, defendant testified to the following:

¶ 112 Orange and Renee Coleman met with defendant at a bar located at 79th Street and Halsted Avenue. Renee asked defendant if she could purchase his television-radio combination. He agreed, and the three of them drove to defendant's house on South Emerald Avenue. Renee invited defendant to her apartment that night so that she could pay him for the television-radio combination. She took the television-radio combination, and she and Orange left defendant's house. Defendant returned to the bar, returned home later that night, and then took a bus to Renee Coleman's apartment.

¶ 113 When defendant arrived at the apartment, Michelle Jointer opened the apartment door, handed defendant a hand of cards, and told him to finish a card game that she had been playing with Orange, Renee, and Ricardo Pedro. Jointer then went over to the stove to "cook some cocaine in a tube," and the group smoked cocaine and drank alcohol while playing the card game. At some point, defendant and Pedro entered the back bedroom to smoke cocaine and PCP. Orange left the apartment and Renee and Michelle Jointer stayed in the front of the apartment. When defendant decided to leave the apartment, he walked into the kitchen and unplugged the television-radio combination. As he turned around, defendant observed Pedro holding a butcher knife. Pedro suggested that the television-radio combination was paid for

[3] Freeman was referring to defendant's sentencing after his initial guilty plea, which was vacated by the Illinois Supreme Court due to improper admonishments regarding the minimum and maximum penalties for his plea. *People v. Kidd*, 129 Ill. 2d 432, 477 (1989). On direct appeal, the Illinois Supreme Court affirmed the use of this testimony, finding that "there was no causal connection between the trial judge's failure to correctly admonish defendant about his minimum sentence" and defendant's admissions at the sentencing hearing. *People v. Kidd*, 175 Ill. 2d 1, 32 (1996).

by the drugs that defendant had just smoked. Defendant walked back to the bedroom to collect his coat; Pedro followed him. In the bedroom, defendant knocked the knife out of Pedro's hand, grabbed the knife off the ground, and stabbed him. Pedro fell on the bed and reached up to grab defendant, who then stabbed Pedro a second time, causing Pedro to fall from the bed to the floor.

¶ 114 Anthony Coleman then ran into the back bedroom and announced that Pedro was bleeding, which prompted Renee and Michelle Jointer to walk from the kitchen to the back bedroom. Defendant grabbed Anthony, held a knife to his body, and told Renee and Jointer that all he wanted to do was to leave the apartment. However, Renee retrieved a knife from the kitchen and approached defendant. Defendant told Renee to drop the knife, and told her and Jointer to tie up Pedro. After the two women tied up Pedro, defendant told Renee to tie up Jointer. After Jointer was tied up, defendant told Renee to tie up Anthony. After tying up Anthony, Renee attacked defendant, but defendant swung the butcher knife at her, stabbed her, and tied her up.

¶ 115 Jointer then tried to talk to defendant, who took her to the front room and untied her. Jointer told defendant that it was the PCP that made him act like that and that he should smoke more cocaine to make him feel better. They sat on the couch and smoked cocaine. Defendant told her to undress and they went to the front bedroom. When defendant bent over to remove his pants, he felt like he needed to throw up, so he told Jointer to follow him to the bathroom. After throwing up in the bathroom, defendant took Jointer to the kitchen so that he could drink a glass of water. Defendant then took Jointer to the back room where he tied her up with a television cord.

¶ 116 Defendant sat on the bed and thought about what was happening. While defendant was thinking, Pedro escaped from his bindings and hit defendant on the back of the head. The two engaged in a struggle which ended when defendant repeatedly stabbed Pedro until he stopped moving. Defendant then saw "red things" and heard noises in his head, which confused him. Defendant stabbed Jointer, Renee, and Anthony. After they were dead, the noises stopped. Defendant then collected the knives that he had used and his television-radio combination and placed them in a brown bag. He set the back bedroom on fire in order to "burn those red things up." Defendant exited the apartment, walked to the alley behind the building, and disposed of the knives in separate garbage cans.

¶ 117 V. Stipulations

¶ 118 Next the parties stipulated to the fact that defendant was born on March 22, 1961, and that, on January 12, 1984, he was 24 years old. It was also stipulated that police recovered a television-radio combination at the South Emerald Avenue address on January 12, 1984. Although it was inventoried and impounded with the clerk of the circuit court of Cook County, it had since been lost.

¶ 119 W. Detective McGuire Recalled

¶ 120 At the start of his case in chief, defendant recalled Detective McGuire, who testified that defendant and Orange were together only for a minute during their otherwise separate interrogations on January 12, 1984.

On cross-examination, McGuire testified that he was present when Orange was arrested at 3 p.m. and that he transported Orange to Area 2 headquarters, where Orange was placed in an interview room. Officers later transported defendant to Area 2 headquarters and placed him in a separate interview room. Detectives McGuire and Flood interviewed Orange at 3:30 p.m.

and defendant at 5:15 p.m. During the first interview of Orange, Orange mentioned that two men came to the apartment and that the men were mad at "Rick" for a drug deal that had ended badly. During the first interview of defendant, he stated that a person named "Ricky Jones" and a person named "Slick Rick" had come to the apartment. During those two interviews, Orange and defendant were kept in separate rooms. The detectives again interviewed Orange at 6 p.m., and told Orange that defendant was also being interviewed, which Orange stated he did not believe. The detectives then brought defendant into Orange's room to show Orange that defendant was in police custody. The officers then immediately removed defendant from Orange's interview room and brought him back to his own interview room. At 6:15 p.m., detectives started to interview defendant. They brought Orange into defendant's interview room where Orange told defendant that Orange had killed all four victims. The detectives then removed Orange from defendant's interview room, and defendant stated that he had lied about "Slick Rick" because he did not want Orange to be blamed for all four murders.

¶ 121 X. Linda Wetzel

¶ 122 The defense next called Dr. Linda Wetzel, a psychologist specializing in neuropsychology, who testified that she evaluated defendant on May 5 and 8, 1993. Prior to the evaluation, Dr. Wetzel reviewed three separate reports that the Chicago Board of Education had written concerning IQ tests administered to defendant at age 7, age 10, and age 15. The reports indicated that at age 7, defendant had an IQ of 64; at age 10, defendant had an IQ of 67; and at age 15, defendant had an IQ of 63. Dr. Wetzel stated that "[t]he American Association for Mental Retardation" considers any person with an IQ of 75 or less to be mentally retarded. Dr. Wetzel interviewed and tested defendant for four hours during

which she found defendant to be "cooperative, very polite," and "kind of childlike in his eagerness to please." She determined through testing that defendant's IQ was 73 and that his reading, spelling, and math abilities were below a third-grade level. His score on a standardized memory test was two standard deviations below the mean score. Dr. Wetzel concluded that defendant suffered from diffuse organic brain impairment and that he was mentally retarded.

¶ 123 On cross-examination, Dr. Wetzel admitted that part of her opinion was based on the assumption that defendant had told her the truth. Although she did not consult the "Diagnostic and Statistical Manual for Mental Disorders," she explained that she was more concerned with making a diagnosis of whether he had an organic brain impairment than she was with making a psychiatric diagnosis.

¶ 124 IV. Verdict, Sentencing, and Appeal

¶ 125 The jury found defendant guilty of four counts of murder, four counts of concealment of a homicidal death, one count of armed robbery, and one count of aggravated arson. Following an eligibility hearing and a death penalty hearing, the jury sentenced defendant to death. Defendant's sentence was affirmed on direct appeal. *People v. Kidd*, 175 Ill. 2d 1 (1996). The supreme court held that "[t]he testimony at the suppression hearing established that the defendant's statements were not the products of coercion." *Kidd*, 175 Ill. 2d at 27. Defendant's death sentence was later commuted to life in prison by then-Governor George Ryan.

¶ 126 V. Postconviction Proceedings

¶ 127 A. *Pro Se* Petition

¶ 128 On December 21, 1995, defendant filed his *pro se* petition for postconviction relief. This petition did not allege physical abuse by Area 2 officers, but it did allege coercion by a "Lt. Harley" who allegedly told defendant that he had to "go back" to "talk with either the police or representative [sic] of the State's Attorney's Office."

¶ 129 B. First Amended Petition

¶ 130 Attorneys, working *pro bono*, were appointed by the capital litigation division of the Office of the State Appellate Defender to file a first amended petition on behalf of defendant. Between November 1997 and February 2000, these attorneys were granted multiple 90-day filing extensions.

¶ 131 On February 14, 2000, the attorneys filed the "First Amended Petition for Postconviction Relief and Petition for Relief from Judgment"[4] on behalf of defendant wherein he challenged the voluntariness of his confession. This petition alleged that defendant's statements on January 13, 1984, were the product of coercion. Specifically, this petition alleged the following facts:

¶ 132 Commander Jon Burge, detectives McGuire, Flood, McWeeny, McNally, McCabe, Dioguardi, Bajenski, Madigan, and other unidentified police officers were involved in the interrogation of defendant. During that interrogation, officers held a plastic bag over

[4] The caption of defendant's first amended postconviction petition mentions a petition for relief from judgment. The contents of this petition do not specify the statutory grounds for this petition for relief from judgment, and the petition does not present arguments supporting a petition for relief from judgment. Defendant's second amended postconviction petition includes a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2006). However, defendant makes no claims on this appeal with respect to section 2-1401.

defendant's head, kneed him in the groin, beat him by striking a phone book which was placed over his head, slapped and punched him, attached cables from a black box to his testicles and electrocuted him, threatened to kill him, and forced him to walk barefoot through the snow.

¶ 133 During his bond hearing, held on January 14, 1984, defendant was limping and complained that officers "jumped on me, and made me tell [*sic*] that I had done something *** I did not do." The assistant public defender (APD) who represented both defendant and Orange claimed that one of the two told him about a black box that the officers used to shock him. In February 1993, Jon Burge was dismissed by the City of Chicago's Police Commission.

¶ 134 In May 1997, the Office of Professional Standards (OPS) released a report (hereinafter the Goldston Report) which details how over a 13-year period, Jon Burge and "numerous officers under his command tortured approximately fifty subjects" at the Area 2 police station.

¶ 135 The first amended petition claimed that previously unavailable evidence corroborated defendant's claim that he was physically and emotionally coerced to confess, that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to provide the defense with evidence of a pattern and practice of police brutality at Area 2, and that trial counsel was ineffective in failing to investigate and present evidence of systematic police abuse to substantiate defendant's claims of torture. The petition also claims that defendant's trial counsel was ineffective for acknowledging that he would not vigorously defend him and for failing to present adequate mitigation evidence regarding defendant's mental retardation and organic brain dysfunction to the sentencing jury.

¶ 136 C. Second Amended Petition

¶ 137 On April 24, 2002, a special prosecutor was appointed to investigate allegations of police misconduct by the officers under the command of Jon Burge. On May 10, 2002, defendant's attorneys filed a motion for discovery in response to the State's motion to dismiss the first amended petition. On January 10, 2003, then-Governor George Ryan commuted defendant's death sentence to a life sentence. On June 20, 2003, the supervision of the defense of defendant's case was assigned to the Illinois Attorney General. On April 7, 2009, defendant's case was reassigned to the Cook County State's Attorney, and a special prosecutor was appointed to handle the defense of the petition.

¶ 138 On June 3, 2010, the Office of the State Appellate Defender filed a second amended postconviction petition and petition for relief of judgment[5] on behalf of defendant, which replaced the previous two filings.[6] The second amended petition alleges many of the same claims as the first amended complaint, but also specifically targets trial counsel's ineffectiveness at defendant's suppression hearing. It highlights the fact that trial counsel was aware or should have been aware that defendant's previous trial counsel had filed a motion to substitute judges based on the fact that the original judge had recently decided a motion to suppress with similar claims of torture. The petition alleged that, at the time of defendant's suppression hearing on February 17, 1993, Jon Burge had recently been expelled from the police force for using torture in his interrogations. Further, the Illinois Supreme Court and this court had issued several opinions noting similar claims of torture. *People v.*

[5] Defendant filed his petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2006).

[6] The previous two filings were defendant's original *pro se* petition for postconviction relief filed in 1995 and his first amended petition for postconviction relief filed in 2000.

Wilson, 166 Ill. 2d 29 (1987); *People v. Banks*, 192 Ill. App. 3d 986 (1989); *People v. Bates*, 218 Ill. App. 3d 288 (1991).

¶ 139 On October 27, 2010, the State filed a motion to dismiss defendant's second amended petition, citing the "The Report of the Special State's Attorney" (the Report). The Report examined over 100 claims of police torture at Area 2, including the defendant's. After interviewing defendant, the authors of the Report concluded that they did not believe his claims of police torture.

¶ 140 In an order dated July 26, 2012, the trial court granted the State's motion and dismissed the petition at the second stage of the postconviction proceedings. The trial court found: (1) that *res judicata* barred defendant's claim that previously unavailable evidence corroborated his claims of a coerced confession; (2) that defendant failed to make a substantial showing that the State had committed *Brady* violations; (3) that defendant failed to make a substantial showing that his appellate and trial counsel were ineffective; (4) that defendant's section 2-1401 petition for relief from judgment was untimely and therefore must be dismissed. In this order, the trial court referred to the Report, and the Report's determination that defendant's testimony to the special State's Attorney was, "so improbable, if not bizarre, so lacking in any corroboration and contradicted by so many others that any prosecution of any police officers based on his testimony would be futile. In short, we do not believe [defendant.]"

¶ 141 On August 14, 2012, defendant filed a notice of appeal, and this appeal followed.

¶ 142 ANALYSIS

¶ 143 On this appeal, defendant contends that the trial court erred by dismissing his postconviction petition at the second stage, because he made a substantial showing: (1) that his trial counsel was ineffective for failing to investigate and present available evidence

concerning other victims of police torture in Area 2, which would have corroborated the claims of torture defendant set forth in his pretrial motion to suppress; and (2) that his fifth and fourteenth amendment rights were violated because his confession was the product of torture and previously unavailable evidence corroborates his longstanding claims of torture. For the following reasons, we affirm.

¶ 144 I. Stages of a Postconviction Petition

¶ 145 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 1996)) enables criminal defendants to initiate collateral proceedings to challenge prior convictions on grounds of a substantial denial of constitutional rights. *People v. Barrow*, 195 Ill. 2d 506, 518-19 (2001). Proceedings pursuant to the Act consist of three stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). To survive the first stage, a *pro se* litigant's petition need present only the gist of a constitutional claim. 725 ILCS 5/122-2.1 (West 1996); *People v. Jones*, 213 Ill. 2d 498, 504 (2004). While this is a low threshold (*Jones*, 213 Ill. 2d at 504), the Act allows the trial court to summarily dismiss any petition it finds frivolous or patently without merit. 725 ILCS 5/122-2.1 (West 1996); *People v. Hodges*, 234 Ill. 2d 1, 10 (2009).

¶ 146 At the second stage, an indigent petitioner is appointed counsel (725 ILCS 5/122-4 (West 1996)). The attorney reviews the petition and an amended petition may be filed; and the State is allowed to file responsive pleadings, including a motion to dismiss (725 ILCS 5/122-5 (West 1996)). If the State files a motion to dismiss, the trial court is required to rule on the legal sufficiency of the allegations contained in the petition, taking all well-pleaded facts as true. *People v. Ward*, 187 Ill. 2d 249, 255 (1999). The trial court does not engage in fact-finding or credibility determinations at the dismissal stage; rather such determinations are made at the evidentiary stage. *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 74. If the trial

court determines that the petitioner has made a substantial showing of a constitutional violation, then the petition proceeds to the third stage, at which the trial court conducts an evidentiary hearing. 725 ILCS 5/122-6 (West 1996); *People v. Edwards*, 197 Ill. 2d 239, 246 (2001).

¶ 147 Since this case was dismissed at the second stage, our inquiry is whether the allegations raised by defendant in his petition demonstrate a substantial violation of his constitutional rights. *People v. Edwards*, 197 Ill. 2d 239, 245-46 (2001). At the second-stage proceedings, we review the trial court's decision under a *de novo* standard of review. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). Under the *de novo* standard of review, the reviewing court does not need to defer to the trial court's judgment or reasoning. *People v. Vincent*, 226 Ill. 2d 1, 14 (2007). *De novo* review is completely independent of the trial court's decision. *United States Steel Corp. v. Illinois Pollution Control Board*, 384 Ill. App. 3d 457, 461 (2008). *De novo* consideration means that the reviewing court performs the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). In conducting a second-stage review, we must consider both the petition and any accompanying documentation and we may affirm the dismissal of a postconviction petition on any basis supported by the record. *People v. Minniefield*, 2014 IL App (1st) 130535, ¶ 93.

¶ 148 II. Credibility Determinations

¶ 149 We initially note that the trial court erred in making credibility determinations during the second stage of postconviction proceedings. In this regard, the case at bar is similar to *People v. Sanders*, 2016 IL 118123. In *Sanders*, the defendant filed a second successive postconviction petition and presented affidavits swearing to the fact that defendant's co-defendant had admitted his guilt in front of the affiants. *Sanders*, 2016 IL 118123, ¶ 14. At

second-stage proceedings, the State filed a motion to dismiss the petition, which the trial court granted. *Sanders,* 2016 IL 118123, ¶ 19. In so ruling, the trial court noted that it had heard the codefendant testify in the past and that it found the codefendant to be "a complete liar" and that his testimony was "[t]otally incredible and not worthy of belief." *Sanders*, 2016 IL 118123, ¶ 19. This court affirmed the trial court's ruling. *Sanders*, 2016 IL 118123, ¶ 20. On appeal, the Illinois Supreme Court found that the trial court erred in making credibility determinations at the second stage of postconviction proceedings. *Sanders*, 2016 IL 118123, ¶ 42. The supreme court noted that "[c]redibility determinations may only be made at a third-stage evidentiary hearing," and that the court's rejection of the codefendant's prior testimony "cannot be substituted for a third-stage evidentiary hearing in petitioner's case." *Sanders,* 2016 IL 118123, ¶ 42.

¶ 150 In the case at bar, the trial court relied on the Report in determining that defendant's claims of abuse were unbelievable. Specifically, the trial court relied on the Report's determination that defendant's testimony to the special State's Attorney was, "so improbable, if not bizarre, so lacking in any corroboration and contradicted by so many others that any prosecution of any police officers based on his testimony would be futile. In short, we do not believe [defendant.]" By relying on the report, the trial court substituted the Report's credibility determinations for its own credibility findings which would occur at a third-stage evidentiary hearing. As the Illinois Supreme Court stated in *Sanders*, a court may not make this type of credibility determination while ruling on a second-stage motion to dismiss. *Sanders,* 2016 IL 118123, ¶ 42.

¶ 151 Although we find that the trial court erred in making credibility determinations in second-stage postconviction proceedings, this does not end our analysis. Reviewing courts may

affirm the dismissal of a postconviction petition on any basis supported by the record. *People v. Minniefield*, 2014 IL App (1st) 130535, ¶ 93.

¶ 152 III. The *Strickland* Test

¶ 153 Defendant first alleges that his petition made a substantial showing of ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, an accused must show that counsel's actions were professionally unreasonable and that he suffered prejudice as a result. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *People v. Maxwell*, 148 Ill. 2d 116, 142 (1992).

¶ 154 Under *Strickland*, a defendant must prove both (1) that his attorney's actions constituted errors so serious as to fall below an objective standard of reasonableness; and (2) that absent these errors, there was a reasonable probability that his trial would have resulted in a different outcome. *People v. Johnson*, 2011 IL App (1st) 092817, ¶ 72; *People v. Ward*, 371 Ill. App. 3d 382, 434 (2007). Under the first prong of the *Strickland* test, defendant must prove that his counsel's performance fell below an objective standard of reasonableness "under prevailing professional norms." *People v. Johnson*, 2011 IL App (1st) 092817, ¶ 72.

¶ 155 Under the second prong of the *Strickland* test, the defendant must show that, "but for" counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *Johnson*, 2011 IL App (1st) 092817, ¶ 72. "[A] reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome–or put another way, that counsel's deficient performance rendered the result of the trial unreliable or fundamentally unfair." *Johnson*, 2011 IL App (1st) 092817, ¶ 72. In other words, the defendant must show that he was prejudiced by his attorney's performance. *Johnson*, 2011 IL App (1st) 092817, ¶ 72.

¶ 156 When reviewing a ruling on a motion to suppress, overcoming the prejudice prong requires the defendant to show a reasonable probability both that: (1) the suppression motion would have been granted; and (2) the trial outcome would have been different if the evidence had been suppressed. *People v. Patterson*, 2014 IL 115102, ¶ 81; *People v. Bew*, 228 Ill. 2d 122, 128-29 (2008).

¶ 157 The failure to satisfy either the deficiency prong or the prejudice prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Hughes*, 2015 IL App (1st) 131188, ¶ 75. Therefore, our analysis of defendant's ineffective assistance claim may proceed in any order. *Patterson*, 2014 IL 115102, ¶ 81 ("we may properly resolve claims of ineffective assistance after examining only the prejudice prong"); *People v. Kirklin*, 2015 IL App (1st) 131420, ¶ 109.

¶ 158 IV. The Second Prong: Prejudice

¶ 159 Under the second prong of the *Strickland* test, the defendant must show that, "but for" counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *Johnson*, 2011 IL App (1st) 092817, ¶ 72. This standard does not require a defendant to demonstrate that counsel's conduct more likely than not altered the outcome in the case. *People v. Patterson*, 192 Ill. 2d 93, 122 (2000). Instead, "[a] reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome–or put another way, that counsel's deficient performance rendered the result of the trial unreliable or fundamentally unfair." *Johnson*, 2011 IL App (1st) 092817, ¶ 72. In other words, the defendant must show that he was prejudiced by his attorney's performance. *Johnson*, 2011 IL App (1st) 092817, ¶ 72.

¶ 160 On appeal, defendant argues that he was prejudiced by his trial counsel's alleged failure to present evidence at defendant's suppression hearing that would have corroborated his claims of police torture. Specifically, defendant cites: (1) evidence that John Burge was involved in and fired for police torture in Area 2;[7] (2) a report by special prosecutor Michael Goldston which documented and reviewed 50 complaints of police torture at Area 2 (the Goldston Report); and (3) medical forms from Cermak Health Services which documented allegations of abuse made by defendant.

¶ 161 Defendant has failed to make a substantial showing of ineffective assistance of counsel, because he is unable to show that he was prejudiced by his pretrial counsel's alleged failure at his suppression hearing to present evidence of the torture of other Area 2 suspects. Even if we assume *arguendo* that counsel's performance was unreasonable due to this alleged failure to present evidence that John Burge had tortured suspects at Area 2, that Burge had been fired by the City of Chicago seven days prior to the hearing, that the Goldston Report[8] listed defendant as having alleged police torture at Area 2, and that defendant complained of general police abuse to Cermak Health Services, defendant *still* cannot show prejudice.

¶ 162 We first note that there is no indication that John Burge took an active role in questioning defendant. The evidence consists of: (1) testimony by Judge Dennis Dernbach that Burge called Dernbach to the station to interview defendant and Orange; and (2) two general progress reports that list Burge as one of 17 officers involved with the arrest of defendant and

[7] Specifically, defendant cites the case of *People v. Wilson*, 116 Ill. 2d 29 (1987), and multiple newspaper and magazine articles as evidence that Burge and several detectives under his command tortured suspects at Area 2.

[8] The Goldston Report is described in ¶ 135, *supra*.

Orange, and one of 39 officers involved with investigating the quadruple homicide. Defendant's motion to quash, which he swore to in open court, alleges that only detectives Flood and McGuire were involved in questioning him. Testimony by detectives Flood, McGuire, and Bajenski, as well as by Judge Dernbach, also fail to establish that Burge was involved in defendant's questioning or that any police torture occurred. Since defendant's motion to suppress did not allege that Burge was involved in defendant's questioning, the impact of evidence concerning torture at Area 2 by Burge is unclear. What defendant is claiming is that police officers Flood, McGuire, and Bajenski committed acts of police torture causing him to confess to the crime.

¶ 163 Portions of the Goldston Report were made public in February 1992. The Golston Report chronicled the torture and abuse allegations of 50 suspects who had been held at Area 2 headquarters. Fifteen of those suspects alleged that they were abused by "unidentified" officers, and one suspect specifically alleged that Detective Flood had participated in police abuse. As we noted in *People v. Tyler*, 2015 IL App (1st) 123470, even one incident of similar misconduct by the same detective can be sufficient to show intent, plan, motive, and could impeach the officer's credibility. *Tyler*, 2015 IL App (1st) 123470, ¶ 186. The contents of medical forms from Cermak Health Services show that, at 5:20 p.m. on January 14, 1984, defendant alleged that the police kicked him in the abdomen, mid-back, and right thigh. He also alleged that police stepped on the right side of his face and pricked his left buttock with a needle. The medical officer conducting the intake exam noted tenderness in defendant's abdomen, testicles, right thigh, left side mid-back, and left buttock. Although the examiner did not notice any discoloration or bruising, the examiner made a diagnosis of soft tissue trauma.

¶ 164 While the Goldston Report and the forms from Cermak Health Services support defendant's claims of police abuse, defendant was not prejudiced by trial counsel's alleged failure to present them at his suppression hearing because the evidence that defendant committed these crimes is overwhelming. On two separate occasions prior to the suppression hearing, defendant voluntarily testified that he stabbed the four victims. On May 21, 1985, 2½ months prior to his initial guilty plea and seven years before the hearing on his motion to suppress statements, defendant voluntarily testified in Orange's trial. He did so after conferring with his attorney, knowing that he was charged with the same offenses as Orange. When he was called by the defense, defendant testified that he alone stabbed the four victims and set the apartment on fire, and that Orange left the apartment before these incidents took place. This testimony was admitted into evidence and published to the jury during defendant's subsequent trial.

¶ 165 Similarly, on August 13, 1985, defendant voluntarily testified at his sentencing hearing following his initial guilty plea.[9] At the hearing, he testified that, after Orange had left the apartment, defendant stabbed the four victims and set the apartment on fire. This testimony was also admitted into evidence and published to the jury during defendant's subsequent trial.

[9] As noted above, defendant gave this testimony at a sentencing hearing following the guilty plea he entered in this case in 1984. This guilty plea was vacated by the Illinois Supreme Court, and the case was remanded for trial. *People v. Kidd*, 129 Ill. 2d 42 (1989). The defense objected to the use of this testimony at trial, and raised the issue on direct appeal. The Illinois Supreme Court affirmed the use of the testimony, finding that "there was no causal connection between the trial judge's failure to correctly admonish defendant about his minimum sentence" and defendant's admissions at the hearing. *People v. Kidd*, 175 Ill. 2d 1, 32 (1996). Ultimately, the court held that "the defendant in this case voluntarily chose to testify at that time." *People v. Kidd*, 175 Ill. 2d 1, 32 (1996).

¶ 166 Thus, *even if* counsel's performance was unreasonable due to a failure to present evidence of a pattern of abuse and torture at Area 2, defendant cannot show a "reasonable probability" that the introduction of this evidence would have changed the outcome of either his suppression hearing or trial. *Johnson*, 2011 IL App (1st) 092817, ¶ 72. In light of defendant's repeated and voluntary admissions of guilt prior to the hearing, the abuse evidence does not "undermine confidence in the outcome" of the hearing, which concluded with a finding that other statements by defendant to the same effect were also voluntary. *Johnson*, 2011 IL App (1st) 092817, ¶ 72. In addition, the other evidence at his trial was overwhelming, in light of his voluntary testimony at both Orange's trial and his own sentencing hearing, which he does not challenge on appeal. As a result, defendant is unable to show prejudice, and his claim of ineffective assistance of counsel cannot succeed. See *People v. Smith*, 341 Ill. App 3d 530, 547 (2003) (even though counsel may have been deficient, defendant was not prejudiced by counsel's failure, since the evidence against defendant was overwhelming.)

¶ 167 IV. Fifth and Fourteenth Amendment Abuse Claim

¶ 168 Defendant next claims that he made a substantial showing that his fifth and fourteenth amendment rights were violated because his confession was the product of torture by police detectives, and previously unavailable evidence corroborates his claims. On appeal defendant's petition cites: (1) the Goldston Report; (2) the Office of the Special Prosecutor's report on police torture; (3) the assertion of the fifth amendment right against self-incrimination by detectives Flood and McGuire in a civil case involving police torture; (4) the indictment and conviction of Jon Burge for obstruction of justice and perjury; and (5) judicial findings and settlements granting relief to other victims of police torture.

¶ 169 A. *Res Judicata*

¶ 170 The trial court found that defendant's claim of police abuse and torture was barred by *res judicata*, as those claims were examined and rejected on direct appeal. *People v. Kidd*, 175 Ill. 2d 1, 27 (1996). " 'The preclusion doctrines of *res judicata*, collateral estoppel, and law of the case prevent a defendant from "taking two bites out of the same appellate apple" ' and avoid 'piecemeal post-conviction litigation.' " *People v. Ortiz*, 235 Ill. 2d 319, 332 (2009) (quoting *People v. Tenner*, 206 Ill. 2d 381, 395 (2002), quoting *People v. Partee*, 125 Ill. 2d 24, 37 (1988)). However, "[w]here a defendant presents newly discovered, additional evidence in support of a claim, collateral estoppel is not applicable because it is not the same 'claim.' " *Ortiz*, 235 Ill 2d at 332 (quoting *Tenner*, 206 Ill. 2d at 397-98). Therefore, the use of *res judicata* doctrine is dependent on whether defendant's evidence is "newly discovered."

¶ 171 B. Evidence is Not "Newly Discovered"

¶ 172 Newly discovered evidence is "evidence that has been discovered since the trial and that the defendant could not have discovered sooner through due diligence." *Ortiz*, 235 Ill. 2d at 334. Such evidence must be "material to the issue and not merely cumulative of other trial evidence, and of such a conclusive character that it would probably change the result of retrial." *Ortiz*, 235 Ill. 2d at 336.

¶ 173 First, defendant's petition cites the Report of Special Prosecutors Egan and Boyle (OSP Report) as newly discovered evidence that supports his claim of police torture. Defendant cites multiple portions of the OSP Report, including: two statements that defendant gave to the special prosecutors; and multiple memos written for his file, which detail the prosecutors' investigation of defendant's allegations. Notably, however, defendant does not include the portion of the OSP Report that contains the prosecutors' conclusions regarding his torture

allegations. The OSP Report concludes that "prosecution of any police officers based on [defendant's] testimony would be futile." As a result, the OSP Report is not of such a conclusive character that it would probably change the outcome of a retrial.

¶ 174 Second, defendant's petition cites Burge's perjury conviction as newly discovered evidence that supports his claim of police torture. In February 2008, a federal grand jury indicted Lieutenant Burge with three counts of perjury and obstruction of justice. Following a jury trial, Burge was convicted of all counts and sentenced to 54 months of incarceration. The conviction was affirmed on direct appeal. *United States v. Burge*, 711 F.3d 803 (7th Cir. 2013).

¶ 175 As noted above, there is no evidence that suggests that Burge was involved in questioning defendant. Testimony at both defendant's suppression hearing and defendant's trial shows that only detectives Flood, McGuire, Bajenski and then-ASA Dernbach were involved in the questioning of defendant at Area 2 headquarters. As such, evidence of the indictment and conviction of Jon Burge for perjury and obstruction relating to torture at Area 2 is not of such a conclusive character that it would probably change the result of a trial.

¶ 176 Third, defendant cites, as newly discovered evidence, numerous judicial findings and settlements granting relief to other victims of police torture by Jon Burge and other detectives in Area 2.[10] While we cannot condemn strongly enough the practice of torture to induce

[10] Defendant's petition cites the cases of *United States ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999); *Hinton v. Uchtman*, 395 F.3d 810, 822-23 (7th Cir. 2005); *People v. Clemon*, 259 Ill. App. 3d 5 (1994); *People v. Cannon*, 293 Ill. App. 3d 634 (1997); *People v. Patterson*, 192 Ill. 2d 92 (2000); *People v. King*, 192 Ill.2d 189 (2000); *People v. Wrice*, 2012 IL 111860; People v. Cortez Brown, 90 CR 23997 (Cir. Ct. Cook County). Defendant also cited Cook County circuit court orders that were entered in the cases of: (1) Stanley Wrice, see *People v. Wrice*, 2012 IL 111860 (affirming the judgment of the appellate court reversing the trial court's order denying defendant leave to file his second successive postconviction petition and remanding to the trial court for appointment of postconviction

suspects to make confessions, we conclude that these cases are not of such a conclusive character that they would probably change the result of defendant's trial for the following reasons. As noted above, there is no evidence that suggests that Burge was involved in questioning defendant. Testimony at both defendant's suppression hearing and defendant's trial shows that only detectives Flood, McGuire, Bajenski and then-ASA Dernbach were involved in the questioning of defendant at Area 2 headquarters. Also, the cases that defendant cites do not mention detectives Flood, McGuire, or Bajenski.

¶ 177 Fourth, defendant cites the Goldston Report as newly discovered evidence that corroborates his claims of police torture. As noted above, portions of the Goldston Report were released to the public in February 1992. The remainder of the Report was released to the public in May 1997 pursuant to an order by Judge Ruben Castillo in the case of *Wiggins v. Burge*, 173 F.R.D. 226, 230 (N.D. Ill. 1997). One of the 50 suspects from the report alleged that Detective Flood participated in abuse. Defendant also claims that the invocation of the fifth amendment by Lieutenant Burge and detectives Flood and McGuire constitute newly discovered evidence. They invoked this right during deposition testimony in the case

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counsel and second-stage postconviction proceedings); People v. Wrice, No. 82 C 8655 (Cir. Ct. Cook County Dec. 10, 2013) (on remand from the Illinois Supreme Court); see also Chanbonpin, K., Illinois Torture Inquiry and Relief Commission, 45 Loy. U. Chi. L.J. 1085 (2015) (discussing the Wrice case throughout); (2) James Andrews, see Possley, M., "James Andrews," www.law.umich.edu/special/exoneration/Pages/citedetail.aspxz?caseid-4068 ("On October 15, 2007, Cook County Circuit Judge Thomas Sumner vacated Andrews' murder convictions and on February 1, 2008, the charges were dropped."); Ahmed, A., "Conviction out, man to walk free," articles.chicagotribune.com/2009-01-11/news091100085_1_jonburge-chicago-police-board-tortured ("James Andrews, who implicated Fauntelroy in the slaying, was also convicted of the murder and robbery. Andrews alleged he had been tortured as well. He was released early last year after a judge dismissed his confession."); and (3) Eric Caine, see "Alleged Burge Torture Victim Going Free After 25 Years," Chicago.cbslocal.com/2011/03/16/alleged-burge-torture-victim-going-free-after-25-years (on March 16, 2011, Cook County Judge William H. Hooks ordered Eric Caine, 45, to be released during a hearing Wednesday," after Caine had served 25 years for two murders which he claimed he was tortured into confessing that he committed.

of *Patterson v. Burge*, 328 F. Supp. 2d 878 (N.D. Ill. 2004).[11] While we may draw a negative inference from a party's invocation of the fifth amendment in a civil proceeding, a reviewing court is not required to make such an inference. *Whirl*, 2015 IL App (1st) 111483, ¶ 107. Even if we were to draw inferences that are favorable to defendant, we cannot say that the Goldston Report and the invocation of the fifth amendment by Lieutenant Burge and detectives Flood and McGuire are of such a conclusive character that they would probably change the result of defendant's trial, in light of his repeated and voluntary admissions of guilt.

¶ 178 Defendant made two voluntary statements that he was the person who killed the four victims. As noted above, on May 21, 1985, defendant voluntarily testified at Orange's trial, and confessed to killing the victims and setting the fires in the apartment. Similarly, on August 13, 1985, defendant voluntarily testified at his sentencing hearing following his initial guilty plea.[12] At the sentencing hearing, defendant testified that, after Orange left the apartment, defendant stabbed the four victims and set the apartment on fire.

¶ 179 In light of these admissions, it would be difficult to say that the evidence presented by defendant's postconviction petition is of such a conclusive character that it would probably change the result of a trial.

¶ 180 CONCLUSION

¶ 181 In light of defendant's voluntary testimony stating that he was the person who killed the four victims, defendant has failed to make a substantial showing that he was prejudiced by the alleged ineffective assistance of counsel. Since the evidence supporting defendant's

[11] These depositions are included in the supplemental record.

[12] See ¶ 111 and footnotes 3 and 9, *supra*, regarding the admissibility of this testimony.

claims of police torture is not conclusive enough, in light of his voluntary testimony, to be considered "newly discovered," defendant's claims of police coercion are barred. *Kidd*, 175 Ill. 2d at 27 ("[t]he testimony at the suppression hearing established that the defendant's statements were not the products of coercion.") Accordingly, we affirm the trial court's second-stage dismissal of defendant's second amended postconviction petition.

¶ 182 Affirmed.