SIXTH DIVISION
September 27, 2013

No. 1-11-3336

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court
Respondent-Appellee,	)	of Cook County
	)	
v.	)	No. 88 CR 15413 (01)
	)	
TERRANCE MACK,	)	Honorable
	)	Jorge Luis Alonso,
Petitioner-Appellant.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 Held: The circuit court did not err in denying petitioner leave to file a third postconviction petition where the petitioner's allegations of police misconduct were general and not supported by the newly discovered evidence.

¶ 2 Petitioner Terrance Mack (Mack) appeals from an order of the circuit court of Cook County denying him leave to file his third *pro se* petition for postconviction relief. Mack argues: (1) newly-discovered evidence of abuse of suspects at Area 2 Headquarters of the Chicago police department, not available at the time of his suppression hearing, trial or prior postconviction proceedings, supported a colorable claim of actual innocence; and (2) his petition stated an

arguable claim the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose a police officer in his case engaged in perjury and coerced evidence by improper means in another case. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. On September 12, 1988, Mack, Adrian Hennon (Hennon) and Richard Terrell (Terrell) were indicted on charges of first degree murder (Ill. Rev. Stat. 1987, ch. 38, par. 9-1), attempt murder (Ill. Rev. Stat. 1987, ch. 38, pars. 8-4, 9-1), armed violence (Ill. Rev. Stat. 1987, ch. 38, par. 33A-2), and aggravated battery (Ill. Rev. Stat. 1987, ch. 38, par. 12-4), arising out of the drive-by shooting of 11-year-old Abdulah Asad.

¶ 5 Pretrial Proceedings

¶ 6 Prior to trial, Mack and Hennon moved to suppress identification testimony. The testimony adduced at the hearings on both motions was substantially similar. Mack testified that on September 9, 1988, at approximately 4:30 p.m., he was in custody at the 4th District police station in Chicago, Illinois. Mack testified he was in an interview room for 20-25 minutes, when he was escorted by his arresting officer to the area near the front entrance of the station. According to Mack, a group of eight or nine individuals near the station entrance observed him, and four or five of these individuals pointed at him as he was led through the area. Mack also testified he had never seen these individuals before. Mack further testified he was then escorted

to the rear of the station and transported to the Area 2 police station on 111th Street in Chicago, Illinois.[1]

¶ 7 Mack was included in a lineup at the Area 2 police station. Mack testified he could see the shadows of three individuals on the other side of the glass in the viewing room. Afterward, police personnel informed Mack he was "picked out of the lineup." Mack did not specify whether he was identified as the shooter.

¶ 8 Chicago police officer Mark Marianovich testified he and his partner, Officer John Sanchez, arrested Mack on September 8, 1988, at approximately 4:15 p.m. Officer Marianovich also testified they brought Mack into the 4th district police station at approximately 4:35 p.m., through a side door which was not near the front entrance to the station. Officer Marianovich further testified he placed Mack in an interview room, where Mack remained until approximately 6:30 p.m., at which time Mack was transported to Area 2 through the rear of the station. Officer Marianovich denied ever escorting Mack to the front of the station or displaying Mack to witnesses to the shooting in that area.[2]

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[1] The record does not indicate why the lineup was conducted at the Area 2 police station.

[2] At trial, Officer Marianovich testified regarding the events at the 4th District police station, while Officer Forgue testified about the events leading to Mack's arrest. Officer Forgue testified he "participated in the arrest," but was not involved with the search which occurred at the scene of the arrest.

¶ 9 Chicago police detective William Higgins testified he and his partner spoke with Mack in the 4th District police station interview room at approximately 6 p.m. on the date in question. Detective Higgins also denied ever escorting Mack to the front of the station or displaying Mack to witnesses in that area. Detective Higgins additionally testified witnesses to the shooting incident were present in the 4th District police station lobby on that day, but he personally escorted these individuals to the Area 2 police station before Mack was removed from the interview room.

¶ 10 Chicago police detective James Butler testified he conducted the lineup in this case. Detective Butler asked the witnesses in the conference room at the Area 2 police station to view the lineup and identify the shooter or anyone they recognized as being in the automobile with the shooter. According to Detective Butler, Detective Michael McDermott brought witnesses into the viewing room and later removed them, in order to keep the witnesses separated. Detective Butler further testified Detective McDermott was occasionally in the viewing room, but not when witnesses were making identifications.

¶ 11 Witnesses to the shooting incident at issue testified during Hennon's motion to suppress. Duvon Miller (Miller)[3] testified he, Edward Verrett (Verrett) and Esau Asad (Esau)[4], all witnesses to the shooting, were present in the same area of the 4th District police station after the

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[3] Miller also testified as a rebuttal witness regarding Mack's motion to suppress.

[4] The record on appeal contains differing spellings of Esa and Esau. This order adopts the latter spelling to maintain consistency with our prior opinion on Mack's direct appeal.

incident. According to Miller, he did not previously observe any of the individuals he later identified in the lineup at the 4th District police station. Miller also testified the police did not speak to him at the 4th District police station. Miller further testified he had no conversations with police at the Area 2 station regarding who would be included in the lineup. Miller additionally testified the witnesses to the shooting went from the 4th District police station to the Area 2 police station in their own vehicles.

¶ 12 Verrett testified that during the time he was in the 4th District police station lobby, he also did not see any individual who was part of the lineup at the Area 2 police station. Verrett also testified police officers at both police stations inquired whether he and other witnesses could identify the automobile allegedly involved in the shooting. Verrett further testified police at the Area 2 station stated "they had some people in a lineup and they wanted us to see the lineup. That's all." According to Verrett, police officers did not provide him any information regarding who would be in the lineup. Verrett additionally testified he drove himself and his father from the 4th District police station to the Area 2 police station.

¶ 13 Esau testified he did not observe any of the individuals who participated in the lineup at Area 2 or at the 4th District police station. Esau also testified he spoke to a police officer for approximately 10 minutes at the 4th district police station. During this conversation, the police officer asked Esau whether he could make an identification regarding the shooting and informed Esau the witnesses would be going to another police station to view a lineup. According to Esau, a police officer at the Area 2 station "didn't tell us anything, just told me it was going to be a

lineup. That's all." Esau further testified he and Miller went from the 4th District police station to the Area 2 police station with an unnamed police officer.

¶ 14 Following argument, the trial judge denied both motions to suppress identification. Regarding the denial of Mack's motion, the trial judge specifically considered that Miller testified he did not observe anyone from the 4th District police station in the lineup at the Area 2 police station. The trial judge ultimately concluded neither Mack nor Hennon demonstrated a suggestive lineup procedure had occurred in this case.

¶ 15 Codefendants Hennon and Terrell also filed motions to suppress statements. At a hearing on the motions, Hennon testified he was repeatedly kneed in the groin by a female police officer when he refused to answer questions about the shooting. Hennon also testified that after the lineup, another police officer punched him hard enough to knock him into a wall, after which Hennon gave a statement implicating Mack. Chicago police officer Karen Brozynski and Chicago police detectives McDermott, Higgins and John Gillivan all denied physically abusing Hennon. Moreover, while the record on appeal does not contain testimony from Terrell, it does contain testimony from the aforementioned detectives denying they physically abused Terrell.[5]

¶ 16 On October 3, 1989, the trial judge granted Mack's motion for severance. The trial judge, however, ruled Mack and Hennon would be tried simultaneously before separate juries, while Terrell would receive an entirely separate trial.

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[5] The record indicates Terrell ultimately gave a statement implicating Mack as the shooter. The record does not indicate codefendants' statements were introduced at Mack's trial.

¶ 17 Trial Proceedings

¶ 18 The trial proceedings were summarized by this court's prior opinion in Mack's direct appeal:

"The State maintained that the facts of the case occurred in the following manner. On September 9, 1988, a group of boys and young men were standing in the park located at 87th and South Jeffrey Avenue, across the street from the Chicago Vocational High School. Present in this group were Esau Asad, Darren Harris, Devon Miller, Jason Murray, Elward Verrett and the decedent, 11-year-old Abdulah Asad ***.

The State maintained that around 3:15 p.m. on the date in question, a Suzuki jeep approached the aforementioned group of men and the individuals in the jeep exchanged words with Murray. The persons in the jeep then drove away but they later returned as promised. When they returned in the jeep, they were accompanied by a group of men who arrived in a gray Chevrolet Nova. The passengers in both vehicles exited and began to display the sign of a street gang known as the Black Gangster Disciples. The group included defendant, Hennon and Richard Terrell. Verrett testified that defendant was pointing people out and saying, 'shoot him, shoot him.' Esau Asad maintained that defendant said, 'I'll pop you.' Murray stated that defendant said, 'pop that shorty, pop him.'

When this interaction ended, the group that defendant arrived with got back into their vehicle and drove away. Verrett testified that defendant and Hennon left in the Nova, and that the car made a U-turn about one block away from the location where the

men had argued and started to return. Verrett further testified that as the car approached him, he saw defendant, Hennon and Terrell. Verrett stated that Hennon was the driver. Verrett testified that defendant was sitting in the front seat on the passenger side, that he had his arm stuck out of the window, and that he had a gun in his hand. Verrett related that as the Chevrolet approached him, 'Terrance Mack stuck his arm out of the window and started firing.' Similarly Esau Asad, Harris and Miller all testified that Hennon was the driver and that defendant was the gunman. Several shots were fired, one of which fatally wounded Abdulah Asad while another hit Murray in the arm. The car moved away from the scene after the shots were fired.

Police officer Earl Parks arrived on the scene shortly thereafter. Officer Parks transported the unconscious Abdulah Asad, his brother Esau Asad and the injured Jason Murray to the hospital. Officer Parks announced that a shooting had occurred over the police radio. Police officer Ronald Forgue heard the message and spotted the gray Chevrolet five to six minutes later. The Chevrolet stopped under a viaduct where defendant and Terrell exited the vehicle. After a brief foot chase both men were arrested. Shortly thereafter, Hennon was arrested.

Later that day around 8:20 p.m., Esau Asad, Harris, and Miller went to Chicago Police Area 2 police headquarters to view a lineup of suspects in the shooting. All three eyewitnesses identified defendant in the lineup as the gunman. After the *** three witnesses testified, the court ordered that the two juries be separated for the rest of the proceedings.

At defendant's trial, the sole issue was whether defendant was the gunman. Defendant's testimony is distinguishable from the State's version of events in that while he admitted that he participated in the argument which took place near Chicago Vocational High School, he denied being in the Chevrolet when the shooting occurred. Defendant testified that he left the scene in the Suzuki after the argument.

According to defendant, on September 9, 1988, he met Hennon and Terrell who were sitting in a gray Chevrolet Nova at 96th and South Oglesby. Defendant testified that they then saw Haroon Binwalee, Mark Watts and Terrance Hill who were driving in Binwalee's Suzuki jeep. Defendant stated that Binwalee, Hill and Watts asked him, Hennon and Terrell to accompany them to the Chicago Vocational High School where they were having a disagreement with members of a street gang known as the Vice-Lords. Defendant testified that he, Hennon and Terrell agreed to assist Binwalee. Defendant testified that after both vehicles arrived at their destination, he engaged in an argument with members of the Vice-Lords. Defendant admitted that he was a member of the Black Gangster Disciples street gang. According to defendant, both groups exchanged gang signs and slogans. Defendant testified that he then left the scene in the jeep with Binwalee and Watts.

According to defendant, Binwalee and Watts then dropped him off at his home located at 9612 South Oglesby. Defendant testified that he spoke to his aunt upon his arrival at home. Defendant maintained that Hennon and Terrell later arrived at his home in their Chevrolet, at which time he got into the car with them and left. Defendant's aunt,

Mamie Mack, testified that she was present when Hennon and Terrell arrived and drove away with her nephew. Defendant was then arrested.

Initially, defendant was taken to Area 4 police headquarters. Defendant alleged that while he was at the station, he was taken out to the front desk where he was exposed to witnesses who later identified him in the lineup as the gunman. The police and the witnesses later denied that this incident occurred. Defendant was then transported to Area 2 police headquarters for questioning. It was there, at 8:20 p.m., where defendant was identified in a lineup.

With respect to physical and non-testimonial evidence of the crime, no weapons or shells were recovered from the scene of the crime, the Chevrolet, or from defendant's person. In addition, no gun shot residue test was conducted on any of the occupants, although one was requested by Officer Ronald Forgue." *People v. Mack*, 238 Ill. App. 3d 97, 99-101 (1992).

¶ 19 In addition to the facts recited in this court's prior opinion, we observe the trial record further indicates Verrett, while at the 4th District police station, informed police officers the shooter wore a blue Adidas Olympic shirt and had lines or "z"s in his hair. Verrett denied stating to police the shooter wore a blue Bears cap. Officer Brozynski testified she recorded Verrett describing the shooter as wearing a blue Bears cap in her police report, but added she wrote the report after the fact and the cap may have been worn by someone else. Esau testified he described the shooter's shirt and haircut to police while at the hospital. After the close of the

evidence, the jury found defendant guilty of first degree murder, attempt first degree murder, armed violence and aggravated battery. *Id*. at 101.

¶ 20 Direct Appeal

¶ 21 Mack appealed, arguing the trial court: (1) violated his right to due process and a fair trial when it refused to allow him to introduce a statement made by his codefendant Hennon; (2) encroached upon his constitutional right to present his case by trying him and Hennon simultaneously in separate trials; (3) violated his constitutional right to present his defense by refusing to allow him to present testimony that a gunshot residue test was requested but never conducted; and (4) abused its discretion when it sentenced him to 60 years imprisonment for first degree murder and 30 years imprisonment for attempt first degree murder. *Id*. at 99. This court rejected Mack's arguments and affirmed the judgment of the trial court. *Id*. at 109. The Illinois Supreme Court denied his petition for leave to appeal. *People v. Mack*, 148 Ill. 2d 649 (1993).

¶ 22 Federal *Habeas Corpus* Proceedings

¶ 23 Mack then petitioned for a writ of *habeas corpus* in the United States District Court for the Northern District of Illinois, claiming the trial court denied him a fair trial by refusing to completely sever his case from Hennon's and failing to reorder the trial so Hennon's defense case would precede Mack's, permitting Hennon to testify on Mack's behalf. The district court denied Mack's petition. See *Mack v. Peters*, 80 F.3d 230, 234 (7th Cir. 1996). The United States Court of Appeals, Seventh Circuit, affirmed the denial of Mack's petition. *Id*. at 238.

¶ 24 State Postconviction Petition

¶ 25 On November 4, 1996, private counsel filed a postconviction petition on Mack's behalf, alleging Mack's trial counsel was ineffective in failing to make a sufficient offer of proof to establish the admissibility of Hennon's statement. The trial court summarily denied the petition, based on untimeliness and forfeiture. Mack's private counsel filed a motion to vacate the summary dismissal, which the trial court denied. On September 19, 1997, Mack's private counsel filed a "motion for leave to appeal." Upon subsequent inquiry, Mack learned his counsel never filed an appeal.

¶ 26 Successive Postconviction Petition

¶ 27 On October 12, 1999, Mack filed a *pro se* successive postconviction petition, alleging newly discovered evidence in the form of a March 9, 1998, affidavit of Terrell in which Terrell averred Mack was not present at the time of the shooting. Mack also alleged his original postconviction proceedings were fundamentally unfair due to ineffective assistance of his private counsel. The trial court summarily dismissed the petition without stating a reason.

¶ 28 On appeal, this court reversed and remanded for further proceedings in light of the then-recent Illinois Supreme Court opinion in *People v. Boclair*, 202 Ill. 2d 89 (2002). On remand, Mack's appointed counsel presented an amended successive postconviction petition, supported by a second affidavit executed by Binwalee, which asserted Mack and Binwalee left the area before the shooting occurred. The State filed a motion to dismiss, which the trial court granted.

¶ 29 Mack again appealed. This court affirmed the dismissal. *People v. Mack*, No. 1-06-0568 (April 14, 2008) (unpublished order under Supreme Court Rule 23). The Illinois Supreme Court denied Mack's petition for leave to appeal. *People v. Mack*, 229 Ill. 2d 645 (2008).

¶ 30 Third Postconviction Petition

¶ 31 On April 29, 2011, Mack filed his third postconviction petition. Mack's *pro se* petition raised two issues. First, Mack alleged the police officers at the 4th district and Area 2 police stations who investigated the shooting "were part of the culture of corruption at Area Two under the command of Jon Burge" and conspired to frame him for the shooting. Second, Mack alleged ineffective assistance of counsel, a claim Mack does not raise in this appeal.

¶ 32 In support of his claims, Mack attached not only the entire 2006 Report of the Special State's Attorney regarding the allegations of torture by police officers under the command of Jon Burge at Area 2 and Area 3 headquarters (2006 Report), but also an excerpt from the report regarding an allegation of police misconduct stemming from Detective McDermott's interrogation of Alfonso Pinex at Area 2 on June 28, 1985. The 2006 Report examined the Pinex case and concluded sufficient evidence existed to indict and find Detective McDermott guilty beyond a reasonable doubt for aggravated battery, perjury, and obstruction of justice. The 2006 Report found Detective McDermott, working with another detective, denied Pinex's requests for counsel and beat him until he soiled himself in order to obtain a confession in a murder investigation.

¶ 33 Mack's petition further alleged the State knew of McDermott's corrupt practices, based on the 2006 Report, which noted Judge Michael Getty granted Pinex's motion to suppress. Judge Getty found the detectives questioned Pinex after he asserted his *Miranda* rights, but declined to reach the issue of whether Pinex was beaten. Mack also attached the motion for substitution of judge the State filed regarding Judge Getty in Mack's case, which alleged the judge was

prejudiced against the State. In addition, Mack attached an affidavit executed by Terrell, which avers Detective McDermott physically beat and abused him to coerce him into implicating Mack in the shooting.

¶ 34 On September 28, 2011, the circuit court entered an order denying Mack leave to file his third postconviction petition. The circuit court rejected Mack's claim of actual innocence, explaining: (1) Mack had not consistently claimed he and his codefendants were tortured and coerced into making statements inculpating Mack as the shooter; and (2) Mack did not make an inculpatory statement, his codefendants did not testify at his trial, and his codefendants' statements were not used against him. The circuit court also rejected Mack's claims of ineffective assistance of counsel as waived. On October 24, 2011, Mack filed a timely notice of appeal to this court.

¶ 35 DISCUSSION

¶ 36 On appeal, Mack maintains the trial court erred in denying him leave to file his third petition for postconviction relief. Mack argues: (1) newly-discovered evidence of abuse of suspects at Area 2 Headquarters of the Chicago police department, not available at the time of his suppression hearing, trial or prior postconviction proceedings, supports a colorable claim of actual innocence; and (2) his petition stated an arguable claim the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose a police officer in his case engaged in perjury and coerced evidence by improper means.

¶ 37 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2010)) provides "a method by which defendants may assert that, in the proceedings which resulted in their

convictions, there was a substantial denial of their federal and/or state constitutional rights." *People v. Wrice*, 2012 IL 111860, ¶ 47 (citing 725 ILCS 5/122-1 (West 2010)). A proceeding under the Act is a collateral attack on the judgment of conviction. *People v. Edwards*, 2012 IL 111711, ¶ 21. The Act generally contemplates the filing of only one postconviction petition. *People v. Ortiz*, 235 Ill. 2d 319, 328-29 (2009) (citing 725 ILCS 5/122-3 (West 2006) ("Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived.")). Thus, a petitioner seeking to institute a successive postconviction proceeding must first obtain "leave of court." *People v. Tidwell*, 236 Ill. 2d 150, 157 (2010).

¶ 38 A court will relax the statutory bar to successive postconviction petitions "when fundamental fairness so requires." *People v. Morgan*, 212 Ill. 2d 148, 153 (2004); see *People v. Pitsonbarger*, 205 Ill. 2d 444, 458 (2002). Our supreme court has identified two situations in which fundamental fairness will allow the filing of a successive postconviction petition.

¶ 39 First, a petitioner may satisfy the cause-and-prejudice test to establish fundamental fairness requires an exception be made to the procedural bar in section 122-3 of the Act. *Pitsonbarger*, 205 Ill. 2d at 459. In general, "cause" is defined as "an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings," and "prejudice" is defined as an error which "so infected the trial that the resulting conviction or sentence violated due process." 725 ILCS 5/122-1(f) (West 2010); see *People v. Flores*, 153 Ill. 2d 264, 279 (1992) (citing *McCleskey v. Zant*, 499 U.S. 467, 493 (1991)).

¶ 40 Second, even where a petitioner has not met the cause-and-prejudice test, a successive petition may be considered where it sets forth a claim of actual innocence. *Ortiz*, 235 Ill. 2d at

330. Such claims are cognizable in a postconviction petition because it is a violation of the Illinois Constitution's guarantee of due process for an innocent person to be convicted. See *Morgan*, 212 Ill. 2d at 154; *People v. Washington*, 171 Ill. 2d 475, 489 (1996). To establish actual innocence in a postconviction petition, the petitioner must present evidence which is newly discovered, is material and noncumulative, and is "of such conclusive character that it would probably change the result on retrial." *Morgan*, 212 Ill. 2d at 154; see *Washington*, 171 Ill. 2d at 489. The petitioner alleging actual innocence generally must support his or her claim "with new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence – that was not presented at trial." *Schlup v. Delo*, 513 U.S. 298, 324 (1995) (cited approvingly in *Edwards*, 2012 IL 111711, ¶ 32).

¶ 41 Of course, a petitioner not only has the burden to obtain leave of court, but also must submit enough in the way of documentation to allow a circuit court to make its determination. *Tidwell*, 236 Ill. 2d at 161. "This is so under either exception, cause and prejudice or actual innocence." *Edwards*, 2012 IL 111711, ¶ 24.

¶ 42 We turn now to the standard of review, which the parties mention only in passing. Indeed, the parties here agree this court should review the trial judge's decision *de novo*, under this court's existing case law. See, *e.g.*, *People v. LaPointe*, 365 Ill. App. 3d 914, 923 (2006) (*aff'd on other grounds*, 227 Ill. 2d 39 (2007)). We note *La Pointe* involved a cause-and-prejudice claim. *Id.* In *Edwards*, which involved an actual innocence claim, the court ruled a trial court should deny leave "only where it is clear, from a review of the successive petition and the documentation provided by the petitioner that, as a matter of law, the petitioner cannot set

forth a colorable claim of actual innocence." *Edwards*, 2012 IL 111711, ¶ 24. The *Edwards* court generally acknowledged "decisions granting or denying leave of court are reviewed for an abuse of discretion." *Id*. at ¶ 30. The supreme court rule also acknowledged, however, the rule announced in *Edwards* requires a determination "as a matter of law" petitioner cannot set forth a colorable claim, which suggested *de novo* review was appropriate. *Id*. The *Edwards* court concluded: "We need not decide this question in this case, however. Petitioner's claim of actual innocence here fails under either standard of review. His supporting documentation is too insufficient to justify further proceedings. We therefore leave this issue for another day and a more appropriate case." *Id*.

¶ 43 Similarly, in this case, we need not decide whether the standard of review is *de novo* or abuse-of-discretion, as Mack's supporting documentation is insufficient under either standard. For the following reasons, Mack's failure to provide sufficient documentation is fatal to his claim of actual innocence and his *Brady* claim. *Edwards*, 2012 IL 111711, ¶ 24.

¶ 44 Actual Innocence

¶ 45 Mack argues his petition stated a colorable claim of actual innocence. As previously noted, in order for Mack's request for leave of court and his supporting documentation to set forth a colorable claim of actual innocence, "they must raise the probability that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." *Edwards*, 2012 IL 111711, ¶ 33; see *Morgan*, 212 Ill. 2d at 154.

¶ 46 Mack argues the 2006 Report offered in support of his successive petition demonstrates that Detective McDermott had a practice of coercing unreliable evidence and providing false

testimony to buttress the reliability of that evidence. Mack relies on the 2006 Report's findings regarding McDermott's mistreatment of Alfonso Pinex.

¶ 47 In *People v. Anderson*, 402 Ill. App. 3d 1017 (2010), Anderson filed a successive postconviction petition alleging actual innocence supported by documents relating to investigations of police misconduct at the Area 2 police station. *Id*. at 1026-27. In particular, Anderson claimed his confessions were the product of coercion by Detective McDermott and another detective. *Id*. at 1031. This court observed the 2006 Report and an undated "Request For A [Public] Hearing Before the Cook County Board On the Special Prosecutors' Police Torture Investigation and Report" (Request) were newly discovered evidence, as neither was available when Anderson pleaded guilty and Anderson could not have discovered them sooner through the use of due diligence. See *id*. at 1032-33.

¶ 48 The *Anderson* court observed the 2006 Report "at best, *** identifies one single instance of misconduct by Detectives Maslanka and McDermott with regard to Alfonzo Pinex." *Id*. at 1034-35. This court observed the 2006 Report did not provide any new evidence to corroborate Anderson's allegations that police coercion was deployed against him, but in fact, affirmatively impeached his credibility with respect to those allegations. *Id*. at 1035. Moreover, the Request contained only generalized allegations of abuse by Detective McDermott and other detectives and officers. This court stated: "We have previously held that '[g]eneralized claims of misconduct, without any link to defendant's case, *i.e*., some evidence corroborating defendant's allegations, or some similarity between the type of misconduct alleged by defendant and that presented by the evidence of other cases of abuse, are insufficient to support a claim of coercion.'

" *People v. Anderson*, 402 Ill. App. 3d 1017, 1036 (2010) (quoting *People v. Anderson*, 375 Ill. App. 3d 121, 137-38 (2007).[6]

¶ 49 In contrast, in *People v. Almodovar*, 2013 IL App (1st) 101476, the petitioner's initial postconviction petition alleged the State failed to disclose key prosecution witnesses who identified defendant in a lineup and at trial had been shown a photograph of Almodovar by Detective Reynaldo Guevara shortly before they viewed the lineup. *Id*. at ¶ 2. Almodovar's successive petition presented evidence Detective Guevara was involved in a pattern of flagrant misconduct whereby he manipulated witnesses to falsely identify individuals in multiple other cases. *Id*. at ¶ 3. Although this court ruled Almodovar's petition met the cause-and-prejudice test (*Almodovar*, 2013 IL App (1st) 101476, at ¶¶ 65-68, 75), we further noted "a strong argument could be made that defendant's successive petition would meet" the actual innocence standard as well. *Id*. at ¶ 77. The *Almodovar* court, which recounted Detective Guevara's trial testimony at

[6] In this case, the trial judge here applied an analysis of the similarity of the allegations to the reported prior misconduct, based *People v. Patterson*, 192 Ill. 2d 93 (2000), where our supreme court deemed evidence material and likely to change the outcome of the trial where defendant: (1) consistently claimed he was tortured; (2) in a manner strikingly similar to other claims of torture; (3) by officers identified in other allegations of torture; and (4) consistent with official findings that torture, as alleged by defendant, was systemic and methodical at Area 2 under Burge's command. See *id*. at 145.

length (*id*. at ¶¶ 21-27), highlighted the importance of the credibility of his testimony (*id*. at ¶ 79).

¶ 50 In this case, Mack generally alleges there was misconduct by Detective McDermott "and his colleagues at Area 2" during the investigation which led to the charges against him. Detective McDermott, however, is the only individual Mack identifies from the 2006 Report as being involved in his case. The 2006 Report does not refer to any alleged police misconduct regarding Mack. Mack's third postconviction petition specifies only the alleged incident at the 4th District police station, in which Mack was allegedly brought before witnesses in the lobby prior to observing a lineup. The record, however, establishes Mack testified during the pretrial hearing on the motion to suppress identification he had never seen the individuals in the 4th District lobby, but admitted at trial he participated in the argument which took place near Chicago Vocational High School. The logical inference to be drawn from Mack's own testimony is the individuals in the 4th District lobby were not the eyewitnesses to the shooting. Moreover, the eyewitnesses denied observing Mack in the 4th District lobby. Furthermore, the police officers involved in arresting Mack and later transporting him to Area 2 denied escorting him through the front of the station. In addition, the record does not indicate Detective McDermott was involved in removing Mack from the 4th District police station.

¶ 51 In his appellate brief, Mack makes the even more general allegation Detective McDermott had the opportunity to influence eyewitnesses at Area 2. At most, the record in this case establishes Detective McDermott brought witnesses into the viewing room at Area 2 and

later removed them, in order to keep the witnesses separated. Detective McDermott was occasionally in the viewing room, but not when witnesses were making identifications.

¶ 52 The testimony from the eyewitnesses regarding what Area 2 police told them about the lineup, however, does not suggest Detective McDermott influenced their identifications. Mack produced no new evidence from the eyewitnesses recanting their prior testimony. Moreover, Mack alleges a type of misconduct which is not similar to the physical abuse and perjury described in the 2006 Report.[7] The alleged misconduct in this case was not even contemporaneous with the misconduct in the Pinex case identified by the 2006 Report. Unlike *Almodovar*, Mack did not initially allege Detective McDermott was involved in a suggestive lineup and produced no evidence Detective McDermott had engaged in a pattern of coercing or influencing testimony from eyewitnesses in other cases. See *Almodovar*, 2013 IL App (1st) 101476, at ¶¶ 2-3. Mack does not identify any testimony from Detective McDermott regarding the motion to suppress or his trial relevant to his current claims.

¶ 53 In short, most of Mack's allegations are too general to support granting leave to file a successive postconviction petition. Mack's specific allegations of misconduct either fail to relate

[7] Hennon and Terrell alleged physical abuse in their cases. Mack however, made no such allegation. Moreover, the statements given by Hennon and Terrell were not introduced as evidence in Mack's trial. Furthermore, the Hennon and Terrell statements did not induce Mack to give an inculpatory statement, and Mack cites no evidence the eyewitnesses knew of his codefendants' statements.

to Detective McDermott or fail to establish misconduct similar to the misconduct identified in the 2006 Report. Mack has failed to produce evidence "of such conclusive character that it would probably change the result on retrial." *Morgan*, 212 Ill. 2d at 154. Mack's successive petition and supporting documentation do not permit a court to determine that Mack can set forth a colorable claim of actual innocence. *Edwards*, 2012 IL 111711, ¶ 24. Accordingly, we conclude the trial judge did not err in denying Mack leave to file a successive postconviction petition based on a claim of actual innocence.

¶ 54 *Brady* Violation

¶ 55 Mack also maintains his petition stated an arguable claim the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose McDermott's perjury and coercion of evidence in the Pinex case. Mack acknowledges in his brief this claim is subject to the cause-and-prejudice test. Given our conclusions that Mack's evidence of police misconduct was not sufficiently related to his case and unlikely to change the result on retrial, we conclude Mack's evidence cannot establish the prejudice necessary for a postconviction *Brady* claim. See *People v. Orange*, 195 Ill. 2d 437, 456-58 (2001) (and cases cited therein).

¶ 56 CONCLUSION

¶ 57 For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 58 Affirmed.