

**FILED**  
 JUDGE JAMES M. OBBISH-1752  
 JUN 29 2016  
 DOROTHY BROWN  
 CLERK OF THE CIRCUIT COURT  
 OF COOK COUNTY, IL

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	Post-conviction Petition
	)	98 CR 1244002
	)	98 CR 1244003
ARTURO REYES,	)	
GABRIEL SOLACHE	)	
	)	Hon. James M. Obbish,
	)	Judge Presiding.
Defendants-Petitioners.	)	
	)	

**ORDER**

Petitioners, Arturo Reyes (Reyes) and Gabriel Solache (Solache), seek post-conviction relief from the judgments of conviction entered against them on December 18, 2000 in simultaneous trials before separate juries. Following their jury trials, petitioners were found guilty of home invasion, 720 ILCS 5/12-11(A)(1); two counts of first degree murder, 720 ILCS 5/9-1(A)(1); and two counts of aggravated kidnapping 720 ILCS 5/10-2(A)(2). Both petitioners were sentenced to concurrent terms of 30 years of imprisonment in the Illinois Department of Corrections (IDOC) for each count of home invasion and aggravated kidnapping. On the two first degree murder counts, Reyes was sentenced to a term of natural life imprisonment without parole and Solache was sentenced to death. Solache's death sentence was later commuted to a term of natural life imprisonment without parole.

**BACKGROUND**

Petitioners' convictions arose from the fatal stabbings of Mariano and Jacinta Soto and the abduction of their infant, Maria, and toddler, Santiago. During March of 1998, petitioners' co-defendant Adriana Mejia (Mejia) was picked up from the hospital by her husband Rosauro Mejia (Rosauro) under the pretense of having given birth to the infant who accompanied her. Mejia also brought along a toddler boy who she explained as having been left in her care by another hospital patient by the name of Norma Salazar.

At that time, petitioners were living in an apartment with Mejia and her husband. On April 2, 1998, Mejia's sister-in-law, Guadalupe, recognized the three-year-old boy that Mejia had brought home from the hospital a few days earlier in a picture shown in a television news report about the recent murders of the Sotos and the abduction of their children. Subsequent to Rosauero's sister recognizing the toddler, petitioners accompanied Rosauero to the police station to turn the child over to law enforcement. Upon verification that the three-year-old was Santiago Soto, Officers took Rosauero, Solache and Reyes to the Area 5 police station for further questioning. After contacting the hospital and learning that neither Norma Salazar nor Mejia had ever been a patient there, detectives went to Mejia's apartment, identified the infant that she had brought home from the hospital as Maria Soto, and arrested Mejia. Rosauero, Solache and Reyes were then also arrested. Rosauero was held at Area 5 for over two days and then released without being charged.

Mejia, Reyes and Solache were interrogated separately by Chicago Police Department (CPD) Detective Reynaldo Guevara (Det. Guevara) who was fluent in Spanish, the language spoken by Mejia, Reyes, and Solache. During initial questioning Mejia, Reyes and Solache denied any involvement in the murders. However, upon being confronted with items which had blood on them, Mejia confessed to the crimes and stated that it was Reyes who had actually conducted the murders and kidnappings. It was not until the early morning hours of April 5, 1998 that all three of them signed written inculpatory statements before three separate Assistant State's Attorneys (ASAs). Mejia's statement was given to ASA David Navarro, who spoke Spanish fluently; Reyes' statement was given to ASA Thomas O'Malley, with Officer Daniel Trevino interpreting; and Solache's statement was taken by ASA Heather Brualdi, with Det. Guevara interpreting.

Prior to trial, petitioners Solache and Reyes moved to suppress their statements, in part, on the grounds that the statements had been coerced. During the hearings, there was testimony from Reyes, Solache, Mejia, Det. Guevara, and a woman named Maria Rivera (Rivera). Reyes and Solache testified to the same details of their abuse and confessions that they have testified to in the instant proceedings. Mejia testified that Det. Guevara told her he was tired of her lies, pulled her hair three times and hit her "very hard" on her back. She also testified, as had Solache, that Det. Guevara took her to the room where Solache was being held and slapped Solache in her presence. Rivera, who was called to testify in support of petitioners' claim that they were

coerced, testified that she had encountered Det. Guevara in 1996 in relation to two fatal shootings that occurred near her home. Although she had not seen the shooters, she later made a false identification of a person in a line-up as the shooter at the behest of Det. Guevara. Det. Guevara testified that the defendants were held for approximately two days before making inculpatory statements and those statements were made after Mejia implicated Reyes, Reyes implicated Solache and they were all confronted with these statements against one another.

During their trial testimony, Reyes and Solache denied any involvement in the murders. Reyes and Solache also repeated their allegations that they had been abused by Det. Guevara during interrogation. During Det. Guevara's trial testimony, he denied striking or slapping Reyes and Solache and stated that he did not see any facial injuries on them or receive any complaints that either had been struck by a police officer. Rosauero testified, in support of Reyes and Solache's claims, that Det. Guevara physically abused him. Rosauero stated that Det. Guevara asked him how much he had paid for the little girl and, when he answered that he did not pay anything for a girl, Det. Guevara hit him repeatedly. Testimony from a forensics expert established that the DNA analysis performed on bloodstained items connected only Mejia to the murders. The DNA tests did not reveal DNA matching the profile of either Reyes or Solache.

Both, Reyes and Solache, filed post-trial motions requesting a new trial alleging, *inter alia*, that the court had erred by denying their motions to suppress their inculpatory statements. The trial court denied petitioners' motions for a new trial. In relevant part, the court concluded that "[t]here was no credible evidence whatever that Solach[e] and Reyes were injured in police custody at all." and went further to explain that the motion to suppress hearing and trial testimony regarding alleged abuse was not believed and that Solache and Reyes made inculpatory statements only after they were confronted with statements which implicated them in the kidnappings and double murder.

Further details regarding the home invasion, murders, and kidnappings as established at trial are recounted in an Appellate Court opinion and need not be recapitulated here. *People v. Reyes*, 369 Ill. App. 3d 1 (1<sup>st</sup> Dist. 2006).

## PROCEDURAL HISTORY

### **I. Direct Appeal**

Petitioners' filed separate appeals, asserting almost identical claims.

#### **A. Gabriel Solache**

On direct appeal, petitioner Solache asserted that the trial court erred in denying his motion to suppress his confession because his confession: (1) was obtained after the State failed to comply with the Vienna Convention on Consular Relations; (2) was not attenuated from his illegal arrest; and (3) was obtained through the use of physical abuse and coercion by Chicago Det. Guevara.

On August 19, 2003, the Appellate Court affirmed Solache's conviction. *People v. Solache*, 341 Ill. App. 3d 1112 (1<sup>st</sup> Dist. 2003) (unpublished opinion pursuant to Supreme Court Rule 23). The Court found that suppression of his confession was not a proper remedy for a failure to comply with notice requirements under the Convention; Reyes and Mejia's statements were lawful and admissible, providing police with probable cause to arrest him; and there were intervening circumstances between his illegal arrest and confession in that he confessed due to the legally obtained evidence he was confronted with and not because he was illegally arrested. With regard to petitioner's assertion that his confession should have been suppressed because his confession was obtained through the use of physical abuse and coercion, the Court deferred to the trial court's credibility determination and held that the trial court properly found his confession to be voluntary. Specifically, the Court noted that it was not for the Court to second guess the trial court's decision finding petitioner's claim non-credible since the trial court's determination was specifically made based upon demeanor and the trial court was not required to give more credence to petitioner's claim than Det. Guevara's testimony denying abuse and coercion. Petitioner sought further review by the Illinois Supreme Court; however, on October 6, 2004, the Court denied his petition for leave to appeal. *People v. Solache*, 211 Ill. 2d 608 (2004).

#### **B. Arturo Reyes**

On direct appeal, petitioner Reyes asserted that his motion to suppress his confession should have been granted because his confession: (1) was obtained after failure to comply with the Vienna Convention; (2) was involuntary given his age, background, education, mental state, vulnerability, and the abuse he suffered; and (3) was not attenuated to his illegal arrest because:

a) he only confessed after Det. Guevara illegally seized papers from his pocket, and b) the length of his detention weighed against attenuation given his age, background, physical condition and abuse he suffered.

On September 30, 2003, the Appellate Court affirmed Reyes' conviction. *People v. Reyes*, 343 Ill. App. 3d 1292 (1<sup>st</sup> Dist. 2003) (unpublished opinion pursuant to Supreme Court Rule 23), Docket No. 1-01-2875. The Court held that the trial court properly found sufficient attenuation and admitted his statement at trial, citing *Brown v. Illinois*, 422 U.S. 590 (1975) (as quoted by the Illinois Supreme Court in *People v. Foskey*, 136 Ill. 2d 66, 87 (1990)) which set forth four factors to be considered in determining whether a confession was the product of an illegal arrest. Specifically, the Court explained that: because he was twice confronted with the statements implicating him, petitioner Reyes had time to reflect; Mejia's first statement implicating petitioner was legally obtained; and, although petitioner was initially illegally arrested, Mejia's statement provided police with intervening probable cause to question and detain petitioner and therefore the pieces of paper were legally seized from petitioner and his statement was sufficiently attenuated from the taint of his arrest and not obtained as a result of illegally seized evidence. Regarding the voluntariness of Reyes' confessional statement, the Court deferred to the trial court's credibility determinations that testimony by Rivera in support of petitioner's motion was not relevant and that ASA Tom O'Malley, Officer Daniel Trevino and jail intake paramedic Johnny Musa provided credible testimony that no injuries were observed and petitioner made no complaints of injuries. Petitioner sought leave to appeal to the Illinois Supreme Court; however, on October 6, 2004, the Court denied his petition. *People v. Reyes*, 211 Ill. 2d 605, 823 N.E.2d 975 (2004).

## **II. Post-conviction**

### **A. First Stage Proceedings**

Petitioners filed separate initial post-conviction petitions, alleging substantially similar claims regarding their inculpatory statements and errors made by the State and their trial and appellate counsels. On December 17, 2003, petitioner Reyes filed an initial post-conviction petition, asserting that his counsel rendered ineffective assistance by failing to investigate the abuse and coercion he experienced by Det. Guevara. On December 18, 2003, petitioner Solache filed an initial post-conviction petition asserting that his trial counsel and appellate counsel rendered ineffective assistance; the State withheld exculpatory evidence in violation of the rule

articulated in *Brady v. Maryland*, 373 U.S. 83 (1963); and there was newly discovered evidence in support of his claim of abuse and coercion which demonstrated that Det. Guevara engaged in a pattern of abuse and coercion. On March 2, 2004, the court summarily dismissed petitioner Reyes' petition and on March 12, 2004, the court summarily dismissed petitioner Solache's petition and denied his motion for leave to file one of his post-conviction petition claims under seal. Reyes and Solache appealed the summary dismissal of their petitions and their appeals were consolidated. (Reyes, No. 1-04-1047, and Solache, No. 1-04-1150). In Reyes' appeal, he additionally argued that newly discovered evidence established that Det. Guevara engaged in a pattern of abuse and coercion, referencing the newly discovered evidence included in Solache's petition.

On December 11, 2006, the Appellate Court reversed and remanded the matter to the trial court for second stage proceedings to be conducted before a different trial judge. *People v. Reyes*, 369 Ill. App. 3d 1 (1<sup>st</sup> Dist. 2006). Specifically, the Court held that the petitioners' new allegations and new evidence were sufficiently material, conclusive and newly discovered to meet the test set forth in *People v. Patterson*, 192 Ill. 2d 93 (2000) as applied to a first-stage proceeding. The Court further held that, as set forth in *Patterson*, the doctrine of *res judicata* may be relaxed with regard to defendants' claims of abuse by Det. Guevara in the interest of fundamental fairness.

#### **B. Second Stage Proceedings**

On remand, on June 13, 2008, petitioners filed amended petitions for post-conviction relief, asserting identical claims with varying issues. Petitioner Solache asserted that: (1) newly discovered evidence of repeated physical and mental coercion of suspects and witnesses by Det. Guevara and numerous incidents of other violent, illegal and unethical conduct requires a new trial where his conviction rests solely on Det. Guevara's testimony and where his defense was that Det. Guevara beat him into making a false confession; (2) he was denied his right to a fair trial where the State failed to disclose material evidence that was favorable to the defense regarding past misconduct by Det. Guevara that both impeached Det. Guevara and corroborated his testimony that he only confessed after being beaten by Det. Guevara; and (3) his trial and appellate counsels rendered ineffective assistance. Petitioner Reyes asserted that: (1) newly discovered evidence showed that his statements were involuntary and the product of physical coercion by Det. Guevara; (2) he was denied a fair trial because the State failed to disclose

complaints of brutality and unconstitutional coercion in violation of his right to due process as interpreted in *Brady v. Maryland*, 373 U.S. 83 (1963); and (3) his trial and appellate counsels rendered ineffective assistance. On June 17, 2009, the State moved to dismiss petitioners' claims.

Upon reviewing petitioners' claims, as well as the State's motion to dismiss, and hearing arguments from all parties; this court determined that the sole claim warranting a third stage evidentiary hearing, based on petitioners' substantial showing of a constitutional violation, was the claim that there is newly discovered evidence that Det. Guevara engaged in abuse and coercion in other instances and that such instances demonstrate that their confessional statements were involuntary and the result of abuse and coercion.

### **C. Third Stage Proceedings**

On February 13, 2013, third stage evidentiary proceedings commenced with witness testimony; and, after hearing closing arguments from each party, this court took the matter under advisement. As stated above, the sole claim before the court is petitioners' claim that there is newly discovered evidence that Det. Guevara engaged in abuse and coercion in other instances and that such instances demonstrate that their confessional statements which were admitted at trial and ultimately led to their convictions were the result of abuse and coercion and, therefore, involuntary. Petitioners' request that this court suppress their involuntary confessions and vacate their judgments of conviction or, alternatively, that this court grant them a new motion to suppress hearing.

### **ANALYSIS**

The Post-Conviction Hearing Act (the "Act") (725 ILCS 5/122-1 *et seq.* (LEXIS 2003)) provides a remedy to criminal defendants who claim that a substantial violation of their federal or state constitutional rights occurred at the proceedings which resulted in their convictions, when such a claim has not been, and could not have been, adjudicated previously." *People v. Johnson*, 191 Ill. 2d 257, 268 (2000), citing *People v. Griffin*, 178 Ill. 2d 65, 72-73 (1997) and *People v. Brisbon*, 164 Ill. 2d 236, 242 (1995). The Act sets forth a three-stage process for adjudicating post-conviction petitions. 725 ILCS 5/122-1 *et seq.* (West 2014). At the third stage, which occurs after the petitioner makes a "substantial showing of a constitutional deprivation" entitling him to a hearing, the petitioner may present testimony and evidence in support of his

claims for relief. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). Whereas the court must accept as true all well pleaded facts not rebutted by the record during the first and second stages, it is during the third stage evidentiary proceedings that the court engages in fact-finding and credibility determinations to reach a disposition. *People v. Coleman*, 183 Ill. 2d 366, 385 (1998). At the evidentiary hearing, the trial court, “serves as the fact finder, and, therefore, it is the [trial] court’s function to determine witness credibility, decide the weight to be given testimony and evidence, and resolve any evidentiary conflicts.” *People v. Domagala*, 2013 IL 113688, ¶ 34. In order to obtain relief, “the burden of proof is upon the petitioner to show [the] denial of [a] constitutional right by a preponderance of the evidence.” *People v. Coleman*, 2013 IL 113307, ¶ 92.

Criminal defendants have a right to protection against self-incrimination under the 5<sup>th</sup> amendment of the United States Constitution. U.S. Const., amend. V. The protection against self-incrimination brought about by state actors is provided for by the due process clause of the 14<sup>th</sup> amendment which states that no State shall, “deprive any person of life, liberty, or property, without due process of law.”, XIV §1. *Malloy v. Hogan*, 378 U.S. 1, 6 (1964). “It is ‘axiomatic’ that a conviction based ‘in whole or in part, on an involuntary confession, regardless of its truth or falsity’ violates a defendant’s constitutional rights.” *Peoples v. Hughes*, 2015 IL 117242, ¶31; citing *Miranda v. Arizona*, 384 U.S. 436 (1966). In order to be properly admitted into evidence during trial, confessional statements must have been made freely, voluntarily and without inducement of any sort. *People v. Richardson*, 234 Ill. 2d 233, 252 (2009). “When police conduct results in a violation of constitutional rights, evidence obtained as a result of that violation...is to be suppressed.” *People v. McCauley*, 163 Ill. 2d 414, 448 (1994), citing *New York v. Harris*, 495 U.S. 14 (1990).

As a preliminary matter, this court notes that throughout the proceedings there was evidence introduced concerning matters that are not relevant to the issue of abuse, coercion and other tactics allegedly employed by Det. Guevara. For instance, the brutal nature of the crimes and the vast details describing the events leading up to petitioners’ arrests must not divert attention from the primary purpose of the proceedings; as the instant matter is a collateral proceeding on the issue of deprivation of constitutional rights during interrogation and not a redetermination of guilt or innocence. See *People v. Evans*, 186 Ill. 2d 83, 89 (1999). More significantly, the issuance and acknowledgment of Miranda rights, as discussed in each incident,



does not vitiate the claims of abuse put forth by petitioners or those persons subject of the incidents petitioners submitted in support of their claims. In the instant proceeding, the basis for petitioners claims is not that their confessional statements were involuntary and therefore inadmissible during trial by virtue of not being given their Miranda rights as set forth in *Miranda v. Arizona*, 384 U.S. 436, 475-77(1966). Rather, their contention is solely that their statements were involuntary by virtue of the abuse and coercion that they suffered. Accordingly, since the issuance of Miranda rights is neither the basis for petitioners' claim for relief nor conclusive in the determination of whether abuse and coercion occurred, the reading and acknowledgement of Miranda rights in each incident is not a focus of this court's analysis.

The lack of visible injuries, as observed in a photograph or otherwise, is relevant in that the lack of injuries could undermine testimony; however, it is not conclusive as to whether abuse is likely to have occurred. Although the visibility of injuries is a strong indication of physical abuse; it does not follow that the nonappearance of bruising, bleeding or swelling affirmatively proves that no abuse occurred. For instance, marks can fade or injuries can possibly be hidden underneath clothing. Slaps in the face and punches in the stomach, which are claimed to have been suffered by petitioners (and the witnesses they presented), are the types of abuse that are likely to have not left visible or lasting indications of physical abuse. Conversely, repeated punches to the face constitutes a striking that is more likely to leave visible marks and, therefore, is the type of abuse that would require corroborating physical injury evidence to substantiate a claim of abuse. See *People v. Hobley*, 159 Ill. 2d 272, 312(1994); *People v. Hobley, (Hobley II)* 182 Ill. 2d 404, 448 (1998). Indeed, it is where the extent of the alleged abuse is not consistent with the reasonably expected corresponding visible injuries that the evidence corroborating a petitioner's claim of abuse, or the lack thereof, weighs most heavily. Thus, "[t]he fact that the defendant has suffered a physical injury is only one of many factors to consider when determining whether evidence of prior allegations of police brutality is admissible. The question of relevancy is a determination to be made by the trial court after a consideration of, *inter alia*, the defendant's allegations of torture and their similarity to the prior allegations." *People v. Patterson*, 192 Ill. 2d 93, 144-146 (2000).

Additionally, the non-reporting of abuse in the various incidents, including those of petitioners, is similarly not conclusive as to whether the abuse is more or less likely to have occurred. Where abuse is not revealed through report by the victim, such failure to report can

reasonably be attributed to the victim being at risk for further abuse by virtue of being held in custody. This court takes notice of the instances where Det. Guevara's alleged abuse was not reported and, although the failure to report is not determinative on the issue of whether abuse is likely to have occurred, the lack of reporting in various instances is a factor in the consideration of the evidence presented.

## **I. Petitioners Reyes and Solache**

### **A. Testimony**

In the instant proceedings, petitioners testified to their claims of abuse and coercion and called Det. Guevara to testify with regard to same. In turn, the State presented evidence including testimony from the Assistant State's Attorneys who took the confessional statements made by petitioners and their co-defendant Mejia.<sup>1</sup>

#### **i. Petitioner Reyes**

Reyes testified that, during questioning, he was placed in an interview room at Area 5 and, when Det. Guevara entered the room to question him, Det. Guevara immediately slapped him in the face, handcuffed him and asked him why he committed the murders, home invasion, and kidnappings. Reyes stated that Det. Guevara continued to ask him questions over a long period of time and Det. Guevara had slapped him in multiple instances where he would answer "no". Reyes also testified that the contents of his pants were removed and Det. Guevara brought Mejia to the interrogation room at which time Mejia stated that Reyes had done everything. Reyes testified that he signed the confessional statement and identified photos of the Sotos, Mejia, and Solache, as he was told to by Youth Officer Daniel Trevino (Ofc. Trevino), because Det. Guevara had slapped him earlier and he believed Ofc. Trevino when Ofc. Trevino told him he would help him.

Reyes testified that being slapped by Det. Guevara coerced him to confess, yet he maintained that Det. Guevara did not tell him to sign the document and was not present when he signed the confessional statement. According to Reyes, the written and oral confessional

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<sup>1</sup> Former ASA David Navarro, who interviewed and took the written confessional statement of Mejia, testified that he had created the pre-printed Miranda rights section in Spanish, as shown on Mejia's confessional statement and that he believes that the same form was copied and provided to Solache and Reyes as well. He also testified that his interaction with Mejia was conducted in Spanish since Spanish was her first language and he is fluent in Spanish in addition to English. Navarro was not asked about and did not testify regarding any abuse or coercion on the part of Det. Guevara. ASA Navarro's testimony contributed nothing in refutation of Reyes', or Solache's, allegations because he had no interaction whatsoever with petitioners and was not present during their interrogation or confessional statements.

statements that he made concerning the events surrounding the murders, kidnappings and home invasion were false statements which Ofc. Trevino told him to make and Ofc. Trevino tricked him into signing the written confession. Reyes further testified that long periods of time had passed between the times when Det. Guevara slapped him and when he signed to statement and when Ofc. Trevino told him that he would help him and the time that he signed the statement. Reyes admitted to initialing and signing each page of the confessional statement; however, he claims that he did not read the contents of the confessional statement because Ofc. Trevino rushed him to sign, he was not given an opportunity to review the document, and he could not read English.

On cross-examination, the State inquired into Reyes capability to understand English at the time of his filing of his post-conviction petition in December of 2003. Reyes testified that he had written his petition in Spanish and other IDOC inmates translated the petition into English. He maintained that he more or less knew what was contained in the petition and that he was aware that the notarization of his signature on the affidavit constituted a swearing to the truth of the statements contained in his petition. The State additionally introduced transcripts of testimony from CPD and correctional facility personnel, Officer Basurto and Johnny Musa, who encountered Reyes after the alleged abuse. Both Basurto and Musa testified that Reyes did not report abuse or appear to have been abused.

Although Det. Guevara was called to testify in these proceedings he neither admitted nor denied the allegations to which Reyes testified; rather, he asserted his 5<sup>th</sup> amendment constitutional right to not answer the questions posed. Det. Guevara declined to answer questions regarding whether he: interrogated Reyes in connection with murders of the Sotos; threatened, struck and coerced a confessional statement from Reyes; was lying when he said other people were blaming Reyes for the murder; found any evidence connecting Reyes to the murder during his investigation; or knew that Reyes did not actually have the information to put in his confessional statement or that the statement Reyes made would be used against him in court.

Former ASA Tom O'Malley (ASA O'Malley), who took Reyes' confessional statement through the Spanish-English translation by Ofc. Trevino, testified regarding the abuse which Reyes claims to have suffered. ASA O'Malley testified that no one yelled at, threatened or struck Reyes in his presence. ASA O'Malley also testified that, in observing Reyes' demeanor and appearance during his interview and the memorialization of Reyes' confessional statement,

Reyes did not seem upset, nervous or afraid of him or Ofc. Trevino and there were no signs of a recent beating such as bruises, red marks or bleeding. ASA O'Malley further testified that he has no first-hand knowledge with regard to what happened when Det. Guevara and Reyes were in the same room because he was never in the room with Reyes and Det. Guevara at the same time. During his testimony, ASA O'Malley referenced Reyes' interview statement that he had been treated very well by police. ASA O'Malley testified that, the interview and preparation of the confessional statement as well as the issuance of Reyes' Miranda rights were facilitated through the use of Ofc. Trevino as the Spanish interpreter because he was not fluent in Spanish and Spanish was Reyes' primary language. Reyes said the word "si" in response, and initialed "si" on the statement near the pre-printed Spanish translation of the Miranda rights located within the statement.

There was no eyewitness testimony presented that directly contradicted petitioner's allegation of abuse and coercion. Det. Guevara asserted his 5<sup>th</sup> amendment right to not answer the questions posed by petitioner's counsel regarding his interaction with Reyes and Reyes' allegations of abuse and, accordingly, neither admitted nor denied any of Reyes' accusations. Ofc. Trevino did not testify in these proceedings and, therefore, this court was not presented with an affirmation or denial of Reyes' version of events by the only person who could communicate with Reyes as a fluent Spanish speaker. The only testimony presented in an effort to rebut petitioner's claim of abuse and coercion was ASA O'Malley, who was neither present during interrogation nor capable of understanding the translation between Reyes and Ofc. Trevino.

ASA O'Malley, the only witness called by the State in response to Reyes' allegations of abuse, had no firsthand knowledge regarding the interaction that took place between Reyes and Det. Guevara. Although O'Malley testified as to his perception of Reyes' demeanor and appearance and referenced Reyes' confessional statement assurance that he was treated well by police officers, O'Malley was never in the same room with Det. Guevara and Reyes and, therefore, could not attest to whether or not Reyes was actually abused by Det. Guevara. While O'Malley testified that Ofc. Trevino provided the English version of what Reyes stated, O'Malley did not and could not provide reliable testimony as to what Reyes may or may not have said because O'Malley was not fluent in Spanish. The exact exchange between Reyes and Ofc. Trevino could not be refuted by ASA O'Malley because O'Malley understood nothing aside from the familiar Spanish word "si" which mean "yes" in English.

Reyes provided reliable testimony regarding the abuse and coercion he claims to have suffered. Petitioner's testimony concerning the filing of his post-conviction petition, written in English (a language he could not speak or write), did not diminish his credibility because it is not unbelievable that he indeed entrusted another inmate with the translation of his petition into English and accordingly believed that his words were being accurately translated. Unless the facts section of his petition, as pointed out by the State, differed from his testimony regarding the facts in the instant proceeding; whether or not he had his petition translated to a language he could not read, however sworn to be truthful, is irrelevant. The un rebutted testimony regarding the abuse Reyes claims to have suffered at the hands of Det. Guevara is sufficiently reliable to render his confessional statement involuntary.

**ii. Petitioner Solache**

Petitioner Solache testified that during interrogation he denied any involvement in the home invasion, murders and kidnappings and after he was handcuffed to a wall Det. Guevara entered the room, hit him in the face, asked him why he had "done it", told him that he did not want any more lies and threatened that something bad was going to happen to him. He states that, in spite of telling Det. Guevara that he had already spoken to the other detective and told him his whereabouts at the time of the crimes, Det. Guevara did not believe him and proceeded to slap him. Solache also testified, as he had during his pre-trial motion to suppress hearing, that Det. Guevara then brought Mejia into the room, asked him if he was going to keep denying the crime in front of the lady, slapped him, and after escorting Mejia out of the room repeatedly punched him in his stomach until he confessed to committing the crimes. Solache states that he told Det. Guevara that he had committed the crimes because Det. Guevara was hitting him and he could not take it, however, Solache maintains that he did not provide any details of the crime.

Solache testified that the written and oral confessional statements that he made concerning the events surrounding the murder, kidnapping and home invasion were untrue. He stated that, subsequent to his encounter with Det. Guevara, Det. Guevara placed him in another room with an ASA where Det. Guevara remained present and acted as a translator between him and the ASA. During Det. Guevara's questioning him in Spanish, and the ASA's drafting of the statement, Solache never spoke to the ASA directly. When the ASA finished writing she gave the statement to Det. Guevara and Det. Guevara gave it to him and told him to put his name on the pages. Solache testified that Det. Guevara did not read the statement back to him and he did

not read the statement on his own; rather, he states that he simply signed the statement because Det. Guevara told him to do so and he had to do whatever Det. Guevara said because Det. Guevara had already struck him. Solache states that he could not understand verbal or written English and, therefore, he did not know what Det. Guevara told the ASA or what information was included in the statement.

The State's cross-examination of Solache consisted of questions regarding the issuance of his Miranda rights; whether he attempted to report the abuse he suffered to others; whether he had any visible injuries or indications that he was struck; and the origin of the scar on his head. While Solache testified that no one told him that he had a right to an attorney, he acknowledged that he signed and placed his initials at the bottom of the pre-printed recitation of Miranda rights contained in the written statement. Solache testified that he did not immediately report any abuse to law enforcement or correctional facility personnel, that he only later reported the abuse to his public defender. Solache acknowledged that he had no bleeding as a result of being struck and there were no visible injuries indicated in the photo taken of him. He admitted that during his testimony in his motion to suppress hearing he falsely testified that the scar on his head originated from a car accident rather than being struck by his cousin in 1997.

Det. Guevara and the ASA who took Solache's statement, ASA Heather Brualdi, were called to testify regarding Solache's allegations of abuse and coercion. Det. Guevara asserted his 5<sup>th</sup> amendment right to not answer any questions relating to Solache's interrogation. Specifically, Det. Guevara asserted his 5<sup>th</sup> amendment right in response to all questions such as: whether he was aware of any evidence connecting Solache to the murders; whether he threatened, struck, physically coerced, verbally coerced Solache; whether he served as a translator during the ASA's interview and drafting of Solache's written confessional statement or told Solache what to say in the statement; whether he brought Ms. Mejia into the room.

Corroborating Solache's testimony, ASA Brualdi testified that Det. Guevara served as a translator between her and Solache because she did not speak Spanish. She stated that Det. Guevara was present the entire time she spoke with Solache and that during the two interviews she conducted with Solache she did not observe any injuries or bruising to his face and he did not make any gestures to her indicating that he had been physically abused or appear disheveled or to have been in any pain. ASA Brualdi admitted that the only person in the room she could understand was Det. Guevara and that, for the most part, she could not understand what was

being said because Solache only spoke Spanish. ASA Brualdi further testified that she, Det. Guevara, and Solache signed each page of the confessional statement, which she drafted in English, and initialed the corrections made upon review of the statement.

There was no testimony presented rebutting Solache's claims of abuse and coercion, as Det. Guevara answered no questions regarding Solache and ASA Brualdi was not present during Solache's interrogation. While both Solache and ASA Brualdi provided credible testimony, ASA Brualdi's testimony did not rebut Solache's claims of abuse and coercion. ASA Brualdi's testimony established that she was in an interview room with Solache and Det. Guevara during the taking of Solache's written confessional statement; however, her testimony did not establish that she had personally observed Det. Guevara during the interrogation where he is alleged to have threatened and physically abused Solache. Further, during her interview of Solache, she could not have known what was being said by Solache and Det. Guevara because she was not fluent in Spanish. Given that ASA Brualdi did not understand the Spanish exchange between Solache and Det. Guevara, she could not have been able to discern whether there was a word-for-word translation and whether Solache provided his own statements or was being misquoted by Det. Guevara. Because the only witnesses called to testify regarding petitioner's claim of abuse, Det. Guevara and ASA Brualdi, provided no testimony regarding the interrogation where the abuse allegedly occurred or the content of Solache's confession, Solache's testimony regarding abuse and coercion stands un rebutted.

Solache has consistently maintained that he was threatened and physically abused in the manner in which he testified during the instant proceedings. The origin of the scar on his head and his previous false testimony regarding such is not dispositive on the issue of whether he was struck by Det. Guevara and coerced into confessing. The court observes the inconsistency in his testimony regarding the scar, however, notes that such discrepancy without more is insufficient to render the remainder of his testimony unreliable. For instance, the additional presence of multiple inconsistencies, inconsistencies related to the issue of abuse and coercion, or testimonial evidence rebutting his claims of abuse would be factors that would work together to discredit Solache's testimony overall. However, such is not the case here. As such, this court finds that Solache's testimony regarding the abuse and coercion is sufficiently credible insofar as his testimony establishing his claim must be adequate enough for the determination of whether he has presented new evidence to support his claim.

**II. NEWLY DISCOVERED EVIDENCE:  
PATTERN AND PRACTICE OF ABUSE AND COERCION**

In support of their claims that Det. Guevara physically abused them and coerced their confessional statements in violation of their right to due process, petitioners presented evidence and testimony regarding unrelated incidents where Det. Guevara allegedly engaged in abusive, coercive, and otherwise questionable conduct during suspect interrogations and witness statements and identifications of suspects. These unrelated incidents vary in type and year of occurrence. Det. Guevara was also questioned regarding each of these incidents. In opposition of petitioners' evidence, the State presented evidence including testimony from the assistant state's attorneys, detectives and other individuals who were involved in these unrelated incidents.

For new evidence to be sufficient to warrant a new trial, it must be newly discovered; material and not merely cumulative; and of such conclusive character that it will probably change the result upon retrial. *Patterson*, 192 Ill. 2d 93 (2000); citing *People v. Molstad*, 101 Ill. 2d 128, 134 (1984) (quoting *People v. Baker*, 16 Ill. 2d 364, 374 (1959)); *Hobley*, 182 Ill. 2d at 449. Evidence is considered "newly discovered" if: (a) it has been discovered since the trial; and, (b) the defendant could not have discovered it sooner through due diligence. *Id.* at 334. Evidence is material if it is relevant and probative of petitioner's innocence. *People v. Coleman*, 2013 IL 113307, ¶ 96. Evidence is considered cumulative when it adds nothing to what was already before the jury. *Id.*; *People v. Molstad*, 101 Ill. 2d 128, 135 (1984). In addition to serving as a basis for a new trial, sufficient "new evidence that would have been pertinent to the trial court's rulings and 'special circumstances'" may warrant relitigation of a motion to suppress. *People v. Cannon*, 293 Ill. App. 3d 634, 640 (1<sup>st</sup> Dist. 1997), citing *People v. Enis*, 163 Ill. 2d 367, 387 (1994); *People v. Holland*, 56 Ill. 2d 318, 321-22, (1974).

As noted earlier, on appeal of the denial of their first stage post-conviction claims, the Appellate Court found that petitioners had stated the gist of a constitutional claim that there was new evidence supporting their claims of abuse and coercion. Contrary to petitioners' assertion, the *Patterson* inquiry did not end there; as the Court merely held that their claims survived summary dismissal under *Patterson* and not that they had made a substantial showing of a violation of their constitutional rights under *Patterson*. During the instant proceedings, this court determined that the evidence submitted in relation to the nine incidents/witnesses discussed below is indeed both new evidence and material evidence. Accordingly, the remaining issue for



this court's consideration is whether petitioners have made a sufficient showing that the evidence submitted is of such conclusive character that it would probably change the result of earlier proceedings. See *People v. Coleman*, 2013 IL 113307, ¶113; *People v. Whirl*, 2015 IL App (1st) 111483, ¶¶108-110. In doing so, the court has made the following fact-finding and credibility determinations.

#### **A. INTERROGATED SUSPECTS**

Petitioners presented evidence, including live testimony, of four individuals who were interrogated by Det. Guevara and claim to have been abused and coerced into providing confessional statement leading to their murder convictions. The four individuals, Adrian Duta, Adolfo Frias, LeShurn Hunt, and Daniel Pena had encounters with Det. Guevara in 1994, 1993, 1986 and 1983, respectively.

##### **i. Adrian Duta**

Adrian Duta (Duta) testified that, on March 23, 1994, Det. Guevara questioned him, struck him in his head with a folder and punched him in his stomach prior to his signing of a confessional statement admitting to the murder of Paul Sukipson (Sukipson) which had occurred two months prior. Duta testified that Det. Guevara became angry when he denied any knowledge of the murder in question and that, although he continued to deny any knowledge of the murder after Det. Guevara punched him, he eventually signed a confessional statement because Det. Guevara physically abused him and told him he could go home if he signed the statement. He stated that the first time Det. Guevara told him that he could go home if he signed the statement he agreed to do so because he was tired and ready to go home. Duta testified that during the interrogation Det. Guevara conducted, ASA Karen Iwasaki (ASA Iwasaki) was present and ASA Iwasaki said nothing when Det. Guevara punched him and told him that he could go home if he signed the written confessional statement. Duta confirmed that it was his signature and initials next to changes made within his statement.

During his testimony, Det. Guevara asserted his 5<sup>th</sup> amendment right to decline to answer questions regarding Duta's interrogation and confessional statement. Specifically, Det. Guevara asserted the 5<sup>th</sup> amendment when he was asked whether he interrogated and physically abused Duta; whether Duta initially denied involvement in the crime and only agreed to sign the statement after such abuse; and whether he testified and gave truthful testimony at Duta's suppression hearing on May 10, 1995.

ASA Iwasaki testified that she did not witness any abuse of Duta by Det. Guevara and Duta did not report to her, on his own or when he was asked, that he had been struck. She further testified that, although she stepped outside the interview room at various intervals, she remained in close proximity to Duta and could see him and that no one could have entered the interview room for any length of time without her being aware of their entry. She further stated that Det. Guevara was out of the police station for a lengthy amount of time, doing the legwork necessary to bring witnesses to the station and collect all available evidence on the murder, while she was outside the interview room. ASA Iwasaki also testified that Duta had initially been brought in for an aggravated battery, however, suddenly began to provide her with details of Sukipson's murder.

Duta's testimony contained a number of inconsistencies. Duta initially denied knowing who gave Det. Guevara the details provided in the statement, however, later contradicted himself when he testified that he had provided the information to Det. Guevara and the statement was prepared for him to sign based on that information. Additionally, Duta acknowledged that his testimony in the instant proceedings did not reflect the assertion he made in his affidavit that Det. Guevara had punched him in the arm and slapped him in the face with an open palm. Further, Duta initially testified that Det. Guevara questioned him about some murder he knew nothing about; however, upon cross-examination he admitted that he in fact committed the murder. Duta also admitted that he told law students working for counsel for Solache that he had made up a confession, Det. Guevara then changed the confession to match the facts that had been given to him by a witness to the crime, and there was a public defender present during the interrogation; all assertions which differ from his testimony in the instant proceeding.

Aside from his allegation of abuse, Duta's testimony was substantially similar to ASA Iwasaki's testimony in most other respects. Notably, Duta never claimed to have been abused while ASA Iwasaki was out of the interview room. ASA Iwasaki testified credibly and there is no reason for the court to believe that her testimony was inaccurate or unreliable. Because Duta's testimony was unreliable, as shown by the multiple inconsistencies, his testimony that he experienced abuse and was coerced into confessing is not credible.

**ii. Adolfo Frias**

Adolfo Frias (Frias), who underwent interrogation by Det. Guevara on July 29, 1993, testified that Det. Guevara insisted he was guilty of murder and threatened him prior to his making of a confessional statement admitting to murdering his neighbor Dora Alva. Frias testified that during questioning his right hand was handcuffed to a wall, Det. Guevara hit him in his face multiple times, another detective placed his foot on his private parts, and yet another detective hit him in his stomach. Frias testified that the beating did not last long and that he agreed to say that he was guilty after his nephew was brought by the interrogation room looking as if he had been beaten and Det. Guevara told him that that was what would happen to his wife and that he and his wife were going to prison.

Frias testified that, after he told Det. Guevara that he would take the blame if they let his family go, Det. Guevara told him to tell him how it happened and when he told Det. Guevara he was not at the murder scene Det. Guevara told him the narrative he must recite in order to be believed by the Judge. Frias testified that he had only spoken with the ASA for a minute or two, everything he said was translated through Det. Guevara, and he did not attempt to tell the ASA he was beaten. He acknowledged his signing and initialing in various places of the confessional statement and that there was a section written in Spanish which provided the Miranda rights, yet he claims that he never read anything contained in the document. Frias stated that he did not know what the document contained because he could not read English and that Det. Guevara had simply told him that the document contained what they had already agreed upon. Det. Guevara was questioned during the instant proceedings regarding his encounter with Frias and he asserted his 5<sup>th</sup> amendment right, declining to answer questions such as whether he interrogated, threatened or hit Frias; whether he witnessed other officers beat Frias and failed to intervene in the beating; and whether he testified and provided truthful testimony at Frias' suppression hearing.

Former ASA Martin Fogerty, who interviewed Frias and drafted his confessional statement, testified that Frias did not seem frightened of Det. Guevara and he did not see any bruises or red marks on Frias or anything indicating aggression or hostility by Det. Guevara during his initial meeting with Det. Guevara and Frias. Fogerty stated that during the two times that he met with Frias Det. Guevara was present, however, Det. Guevara did not serve as an interpreter for him. Fogerty did not recall whether Det. Guevara went back into the interrogation

room with Frias when he left the room to write the statement, however, he was aware that Frias had been interviewed at an earlier time by Det. Guevara and another detective. Fogerty stated that at no time, during his two interviews of Frias or when he returned to the room alone, did Frias ever tell him that anyone had threatened him or his wife, threatened to take away his children, or that anyone promised him anything, coerced or forced him to make the confession. Fogerty admitted that he had no firsthand knowledge of how Frias was treated by the detectives prior to his arrival, which was inconsistent with his previous testimony during Frias' trial proceedings on August 31, 1995.

Frias' testimony differs from that of ASA Fogerty's on a number of points. While Frias states that he only spoke with the ASA for a minute or two prior to signing a statement that was prepared out of his presence, ASA Fogerty testified that his first interview of Frias lasted for approximately 1 hour and the second lasted at least 20 minutes. Frias testified that Det. Guevara acted as a translator between himself while Fogerty testified that he spoke to Frias in English and Det. Guevara did not serve as a translator aside from assisting with Frias' expression of a few English words. Frias testified he did not receive Miranda warnings from officers, the ASA or by virtue of reading the Spanish section of his statement which recited his rights and he did not remember giving away those rights. Fogerty testified that Frias was made aware of his Miranda rights by his recitation of those rights to him and Det. Guevara's reading of the rights to him in Spanish and Frias reading of the pre-printed Spanish Miranda rights on the form which he acknowledged by signing underneath the section.

Although Frias' testimony conflicted with Fogerty's in the above outlined manner, there was no testimony provided by either Fogerty or Det. Guevara which stood in direct contradiction to Frias' assertions of abuse and coercion. Moreover, it is apparent that Frias did not readily confess to the murder, rather his confession came about a day later. Fogerty did not take Frias' confessional statement on Frias' first day in custody and Fogerty does not recall the detectives who gave him an overview of the murder telling him on the first day that Frias had confessed. In the day preceding Frias' interview with Fogerty, Fogerty had interviewed five witnesses, including Frias' wife. That Frias did not readily confess supports Frias' assertion that he was not initially willing to confess. The lack of testimony contradicting Frias' claim that he was abused and coerced to confess, combined with the lengthy passage of time before he ultimately made a

confessional statement, makes Frias' claim that he unwillingly confessed due to abuse sufficiently credible.

**iii. LeShurn Hunt**

LeShurn Hunt (Hunt), who was interrogated on February 15, 1983 by Det. Guevara, testified that Det. Guevara slapped him and told him the factual details to include in his confessional statement wherein he admitted to committing armed robbery and murder. Hunt testified that, during questioning, Det. Guevara became angry and slapped him when he told Det. Guevara that he had told his brother not to talk to interviewing detectives because his lawyer would be arriving later. Hunt stated that Det. Guevara tried to convince him to go along with certain information and that he ultimately gave a court reported confessional statement in the presence of Det. Alan Jaglowski (Det. Jaglowski ) and ASA Alfred Petrocelli due to the physical abuse he had suffered at the hands of Det. Guevara and other detectives. Hunt maintained that, when he told the ASA that he was being physically abused, ASA Petrocelli stated that he was there solely to take his statement and then told Det. Jaglowski what Hunt had told him. Hunt states that, after Jaglowski subsequently aggressively confronted him about wishing to change his statement, he complied and no longer resisted giving the statement containing information given to him by Det. Guevara and other detectives.

During the instant proceedings, Det. Guevara asserted his 5<sup>th</sup> amendment right in response to questions such as whether he assisted in the interrogation of Hunt and slapped Hunt in the face prior to his confession; whether Hunt denied involvement in the crime being investigated; and whether he testified truthfully at Hunt's suppression hearing. The State did not present any witnesses to refute Hunt's testimony. There were no other witnesses called to testify regarding Hunt's encounter with Det. Guevara.

The State introduced an affidavit from former ASA Petrocelli, wherein he stated that he took Hunt's court reported confessional statement and did not observe any physical or verbal abuse by Det. Guevara or any other detective or officer. Other documentary evidence submitted includes an affidavit from Hunt, Hunt's letter to the Office of Professional Standards, Hunt's confession, the decision rendered in Hunt's direct appeal, *People v. Hunt*, 247 Ill. App. 3d 1102 (1<sup>st</sup> Dist. 1993), and the decision rendered in the appeal of his federal civil rights case, *Hunt v. Jaglowski*, 926 F.2d 689 (7<sup>th</sup> Cir. 1991).

Hunt's testimony was not consistent or reliable. Throughout his testimony, he provided various answers to questions posed. For instance, Hunt initially testified that Det. Guevara was not in the room when he confessed to the murder; however, he soon after contradicted himself stating that Guevara was indeed present during his statement for a period of time. Additionally, Hunt stated that he only testified in his criminal trial and that he did not testify in the federal civil trial; however, when the court questioned him seeking clarification on his inconsistent narrative, he then stated that he testified in the federal case that Det. Guevara had provided him with information that he included in his confession. It is also worthy of note that, subsequent to serving his sentence for the murder which he claims to have been abused and coerced into confessing to, he was convicted of an armed robbery and is currently serving a 29 year term of imprisonment, after which he will be transferred to Wisconsin to serve a term of imprisonment on another armed robbery. Overall, Hunt's reactions to questions posed demonstrated a disposition indicating untruthfulness. Moreover, his credibility was impeached to such an extent that his account concerning Det. Guevara is equivocal and sketchy at best. As such, Hunt's testimony does not serve as adequate support for petitioners' claim.

**iv. Daniel Pena**

Petitioners assert that Daniel Pena's (Pena) encounter with Det. Guevara involved abuse and coercion to provide a confessional statement and, in support thereof, petitioners presented documentary evidence. During a proceeding in his case, Pena testified, that during interrogation on January 22, 1986, Det. Guevara hit him multiple times in different areas of his body with a flashlight after he denied knowledge of the murder while being questioned at Area 5. He also claimed that Officer Patrick McCarthy (Ofc. McCarthy) hit him and pressured him into cooperating, along with Det. Guevara. Pena maintained that he was tired of getting beaten, so he complied with their demands and made a statement. At some point prior to giving his statement, during the day or so he had been in custody, Pena was taken to a lock-up where he saw two friends whom he told about the beating. Pena stated that he was later taken to the State's Attorney's office, showing visible bruises, and requested a doctor. One of the friends Pena saw in the holding cell testified, corroborating his testimony that he was beaten and bruised. Pena's brother-in-law testified that he saw Pena in the police station and Pena appeared beaten up.

During his court reported confessional statement, Pena stated that one or two officers "smacked" him a few times when he was arrested and since he had been at the police station one

officer mistreated him. Pena further stated that he was not giving the confessional statement because he was mistreated and that he was giving the statement of his own free will and wanted to give the statement because it was the truth.

During Pena's motion to suppress hearing, Ofc. McCarthy, the undercover narcotics officer whose efforts led to Pena's arrest on the drug charge for which he was originally brought to the station, testified that after the vehicle they occupied was curbed by other officers he and Pena were "dragged out of the car, thrown on the trunk of the car, and handcuffed". Ofc. McCarthy stated that he did not hit Pena and he did not see any other officers hit Pena. The next time he saw Pena was at the station was when he poked his head into the interview room briefly to show Pena he was an officer and he did not see any bruises on Pena. Det. Guevara testified denying that he or the other detective present during interrogation abused, coerced, or threatened Pena. Also, during the motion to suppress hearing, the parties stipulated that Cermak Health Services treated Pena in response to his complaining of pain in his leg and the treating physician found an abrasion and bruising on his nose and leg. On appeal of his conviction, the Appellate Court held that Pena's statement was made voluntarily. *People v. Pena*, 174 Ill. App. 3d 281 (1<sup>st</sup> Dist. 1988). The Court reasoned that although Pena's confessional statement corroborated evidence that he was injured during his arrest, Pena's description of the abuse was inconsistent as he initially stated that he was beaten over a period of five hours and later stated the duration was two hours and he stated that he was repeatedly beaten in the head, ribs, and legs while the extent of that description was not corroborated by medical evidence.

In the instant proceedings, Det. Guevara asserted the 5<sup>th</sup> amendment in response to questions such as whether: he arrested Pena on a drug warrant, questioned Pena about a murder, struck Pena during questioning when he told him he did not know anything, denied Pena a lawyer when Pena asked for a lawyer during interrogation, denied Pena's request to make a phone call; told Pena what to say in his confession; testified truthfully in Pena's trial; and whether it was only after he had treated Pena in such manner that Pena confessed. The other testifying witness who was present at the station, former ASA William Connelly (ASA Connelly), testified that Det. Guevara was present during the taking of Pena's statement and that no one threatened or mistreated Pena in his presence. ASA Connelly maintained that Pena did not make any off the record complaints to him, and Pena did not seem afraid, apprehensive or nervous around the detectives, specifically Det. Guevara. ASA Connelly testified that he did not

follow-up by asking any more details about Pena's statement that he had been mistreated by police because he assumed that the mistreatment was part of the arrest.

ASA Connelly was not present during interrogation was only able to attest to what he perceived subsequent to the interrogation. Oddly, although Connelly maintained that Pena did not appear nervous, afraid or beaten, Pena did in fact state to him, in the presence of Guevara, that he was mistreated during arrest and at the station. Pena's explicit assertion raised the issue of mistreatment, whether or not Connelly perceived him as not being nervous, afraid or beaten. It is questionable why, even after Pena reported being mistreated, ASA Connelly did not follow-up with a single question seeking to clarify when and how such alleged mistreatment had occurred. Similarly unexplained, ASA Connelly claimed to have not seen any bruising on Pena; however, a doctor from the jail recorded an abrasion and bruising on Pena's nose, consistent with Pena's claim of being hit.

Aside from Pena's testimony, none of the other testimony provided addressed Pena's interrogation. Ofc. McCarthy stated that he saw Pena at the police station only very briefly when he poked his head into the interview room and Det. Guevara asserted his 5<sup>th</sup> amendment right to not answer any questions regarding his encounter with Pena. Unlike Ofc. McCarthy, there was no affirmation from Det. Guevara that his testimony during Pena's motion to suppress hearing was truthful. Ofc. McCarthy's testimony that he was not present during the interrogation; the lack of confirmation or denial from Det. Guevara about what exactly occurred during interrogation; and ASA Connelly's interaction with Pena, occurring after the interrogation, which ignored Pena's report of mistreatment and the bruising supporting it, all constitute evidence which fails to rebut Pena's claim that he was abused and coerced by Det. Guevara.

## **B. WITNESSES**

Petitioners presented evidence, including live testimony, of five individuals who encountered Det. Guevara where he was involved in witness questioning and or suspect identification and is said to have engaged in threats, abuse, coercion and suggestive identification procedures. Petitioners presented documentary evidence concerning Wilfredo Rosario, Jose Melendez and Robert Ruiz; and live testimony from David Velasquez, Retired CPD Detective Dorsch. These five individuals had encounters with Det. Guevara in 1991, 1997, 1995 and 1991, and approximately 1998, respectively.



**i. David Velasquez**

David Velasquez (Velasquez) testified that, on May 10, 1991, Det. Guevara abused him and coerced him to make a witness statement regarding a murder committed by his fellow members of the street gang Spanish Cobras. Velasquez testified that he was approached by Det. Guevara and his partner Det. Halverson regarding a murder that his cousin, Jason Rivera, had told police that they witnessed and when he told Det. Guevara and his partner that he did not know anything about the murder they took him to rival gang territory, told rival gang members that he had murdered their member and knew the other Spanish Cobra involved. Velasquez testified that the rival gang members became enraged, calling him names and threatening to beat and kill him, and he begged the detectives to let him back in the car, telling them he would do anything they wanted him to do. Velasquez further testified that, when he was subsequently taken to the police station, Det. Guevara slapped, choked, and poured water on him and told him how to recite his witness statement to the ASA and to just sign whatever she brings in front of him. Velasquez testified that he answered a female ASA's questions by giving her false information and that, during his testimony in the subsequent murder trial of one of the offenders he stated that he had been forced to give the statement and that he had given the statement because he thought Det. Guevara would pin a murder on him.

In the instant proceedings, Det. Guevara asserted the 5<sup>th</sup> amendment in response to questions concerning whether he interviewed Velasquez in 1991; whether Velasquez initially told him knew nothing about the murder; whether he took him to rival gang territory and accused him of murder in front of the other gang members to scare him or threaten his life; and whether he then took Velasquez to the police station, questioned him, and struck him to coerce a statement from him.

Jason Rivera (Rivera), Velasquez' cousin, testified that he was not threatened, abused or coerced to provide his written witness statement by Det. Guevara or any other police officers. Rivera further testified that he and Velasquez both experienced revenge from the Spanish Cobras as a result of their cooperation with the police. Rivera testified that he witnessed Spanish Cobras beating Velasquez with wooden two-by-fours, knocking Velasquez' teeth out, and that he (Rivera) had to relocate twice because the Spanish Cobras burned his house down and one of the defendants threatened him and his family and forced him to speak with his defense attorney.

Former ASA Patrick Walsh (ASA Walsh), testified that Det. Guevara was not present during the taking of Velasquez' statement and he never saw Det. Guevara in the same room as Velasquez. ASA Walsh acknowledged that he knew Det. Guevara was involved with the investigation, as he had seen Det. Guevara the previous night when he had taken Rivera's statement, and believed that Det. Guevara was likely at the station on the second night when he interviewed Velasquez. Walsh stated that during his interview of Velasquez, only Det. Halvorsen was present and there was no female ASA present during his questioning. ASA Walsh later came into contact with Velasquez again in August of 1992, during his narcotics courtroom assignment, when a gang crimes ASA notified him that Velasquez was in custody and in the building. At that time, Velasquez told ASA Walsh that he could not stand by the statement that he had provided to Walsh because he was afraid for his life because after giving the statement he had been shot, beaten, and harassed by his gang and the rival gang. ASA Walsh testified that he never investigated the claims Velasquez made about being under threat by multiple gangs.

Overall, the testimony provided regarding Velasquez' encounter with Det. Guevara does not negate Velasquez' account of abuse and coercion. Neither Rivera nor ASA Walsh claims to have been present during Velasquez' encounter with Det. Guevara. Therefore, neither had personal knowledge regarding any abuse or coercion Velasquez' claims to have experienced. Additionally, there was no testimony provided from Det. Halvorsen the only other individual who is said to have been present during both the initial threat that Velasquez would be left in the hostile presence of the rival gang as well as the questioning that subsequently took place at the police station. While ASA Walsh provided credible testimony and was at the station as early as the day prior to his taking of Velasquez' statement, Walsh has no direct knowledge about what actually occurred during Velasquez' encounter with Det. Guevara in or outside the police station.

Overall, Velasquez provided credible testimony regarding the threats and abuse he allegedly suffered at the hands of Det. Guevara. His testimony only lacked credibility on facts such as the gender of the ASA who took his statement and the length of his interaction with the ASA, which are both minor and unrelated to the matter at hand. There was consistent testimony provided among Velasquez, Rivera and ASA Walsh regarding the retribution Velasquez suffered from his gang and the rival gang which establishes that Velasquez' indeed refused to stand by his witness statement because he was afraid for his life. The showing that Velasquez was intimidated from testifying does not negate his claims of abuse and coercion, especially the instance where

detectives are said to have dangled him like bait in rival gang territory. Because Velasquez' account, detailing abuse and coercion, is sufficiently credible and was not contradicted by any individual who was present and capable of refuting those occurrences; Velasquez' encounter with Det. Guevara is an incident which adequately supports petitioners' claims.

**ii. Wilfredo Rosario**

During his testimony in a murder trial, Wilfredo Rosario (Rosario) claimed that in January of 1991, when he was questioned about witnessing events surrounding a fatal shooting in July of 1988, Det. Guevara told him to state that he heard more shots than he actually heard and threatened him that if he did not cooperate police would charge him with gun possession, lock him up and let the Latin King street gang deal with him. Rosario testified that, upon being arrested for gun possession, Det. Guevara and his partner asked him whether he knew anything about various murder cases. He claimed that the only information that he knew about those cases was what he had heard around town. Rosario stated that he had fabricated details he provided to the detectives because, at the time, he had already received death threats from the Latin Kings for previously providing information and being scheduled to testify in another murder case and he was afraid for his life. In addition to being threatened with gun charges, Rosario claimed that Det. Guevara had threatened to charge him with the murder or conspiracy.

Rosario testified that the same course events had occurred on the earlier occasion where he had cooperated in the investigation of another murder case; that Det. Guevara held him in jail for several hours and told him that if he did not cooperate he would be charged with the murder. Prior to trial, during the grand jury hearing, Rosario stated that he was not promised anything, threatened to provide the statement or mistreated by the police or ASA. An officer who had questioned Rosario testified that Rosario had told him that he was in the witness protection program and since he was no longer in fear for his safety he knew that it was his civic duty to come forward and tell what he had seen over 2 years earlier.

In the instant proceedings, former ASA Eileen Rubin (ASA Rubin) testified that Rosario appeared unharmed and, over the course of several hours she spent interviewing Rosario, she did not see any detective or officer mistreat Rosario. ASA Rubin stated that there was no detective named Reynaldo Guevara present and that she does not know Det. Guevara. Upon arriving at the station, ASA Rubin met with Detectives Jim Capesius and John McKenna, however, she did not know who questioned Rosario prior to her arrival. In Rosario's written witness statement, he

stated that during his attendance at a house party he witnessed fellow Latin King gang members remove a man from their vehicle and shoot him 7 times in "Snake Alley". Rosario also stated that he was treated well by the police and had not been threatened or promised anything in exchange for his statement. ASA Rubin provided no testimony stating that she had any firsthand knowledge regarding Rosario's treatment prior to her arrival. During the instant proceedings, Det. Guevara asserted the 5th amendment in relation to all questions asked regarding Rosario.

Rosario's testimony does not carry much weight because it was not credible. For instance, Rosario claimed to have been pressured to give a witness statement under the threat of being charged with gun possession; however, he was facing criminal charges whether or not he provided a witness statement. Indeed, even after giving the statement he was ultimately charged with the unlawful use of a weapon and sent to jail. Additionally, Rosario had an incentive to provide the information which he claimed to have been fabricated to the police. Rosario had previously provided information on a murder committed by the Latin Kings and in order to avoid being charged with gun possession and being placed in jail it is quite possible that he self-servingly told detectives what he thought they wanted to hear in this case as well. Since, according to Rosario's testimony, there was already the view that certain people were responsible and he did not want to go to jail and be deprived of drugs, it is likely that Rosario identified the individuals for personal gain rather than due to force. As such, evidence concerning Rosario's account of threats and misconduct on the part of Det. Guevara is not a reliable account in support of petitioners' claim.

### **iii. Robert Ruiz**

Robert Ruiz (Ruiz) identified shooters who fired fatal gunshots at his friend, however, during his testimony at the murder trial of the accused, "Santiago Brothers", he denied that he had seen the defendants murder his friend and claimed that the statements he made to police, the ASA and the grand jury were all false and came about as a result of pressure from Det. Guevara. Ruiz testified that he identified the Santiago Brothers because Det. Guevara told him to do so during questioning in early July of 1997. Specifically, he stated, Det. Guevara showed him a photo array, told him that his friend had picked out the defendant in the photo, and told him how to state what had happened. Although Ruiz stated that he was not abused or threatened by Det. Guevara, he claims to have been locked in a room. Ruiz admitted that when he made his witness statement to the ASA and was asked how he was treated he answered that he was treated well

and that he never told the ASA that he had been hit, yelled at or instructed to identify anyone. While the State questioned Ruiz during the Santiago Brothers' murder trial, ASA Thomas Darman notified the lead prosecutor that a man sitting in the front row was making motions across his neck with his hand and the prosecutor, accordingly, notified the court.

Jose Reyes (Reyes), who was with Ruiz at the time of the shooting, testified during a deposition conducted in a civil case against Det. Guevara that neither he nor Ruiz were one-hundred percent sure that the Santiagos were the shooters. Reyes maintained that he did not have a good view of the shooters and that he had concluded that the Santiagos were the shooters and identified them because other people in the neighborhood were saying that it was them. In spite of being unsure, Reyes told Ruiz that he was one-hundred percent sure that the Santiagos were the shooters.

Ruiz' sudden allegation that he had been directed to identify the defendants is not reliable. It appears more likely that he made an identification that may or may not have been based on neighborhood buzz and then became unwilling to proceed with the identification only after trial had begun. The incident at trial could be reasonably interpreted as intimidation and that intimidation could have influenced Ruiz to recant his grand jury testimony and attribute his identification of the defendants to inappropriate persuasion by the questioning detective who happened to be Det. Guevara. There has been no explanation provided as to why Ruiz would suddenly change course and admit to being persuaded by Det. Guevara to identify the Santiago Brothers. Ruiz' hollow allegation of a suggestive photo array does not carry much weight as evidence supporting petitioners' claim that Det. Guevara engaged in a pattern and practice of abuse.

#### **iv. Jose Melendez**

Jose Melendez (Melendez) testified during the murder trial of Thomas Sierra (Sierra) that, while he was being shown a photo array by Det. Guevara, Det. Guevara told him who to point out by holding one picture in his hand, while the other photos were placed on the table, and telling Melendez that he had reason to believe that the guy in the picture he held was the shooter. Melendez testified that he was driving in a car along with two passengers when occupants of another vehicle fired shots at them, fatally striking one of his passengers. As he drove away from the scene he was stopped by police and gave a description of the car from which the shots came. Approximately one week later he was picked up by Det. Guevara and shown a photo array.

When Det. Guevara asked him if he recognized anyone, he stated that he had not. Melendez stated that Det. Guevara's indication was the reason why he then identified the defendant, Sierra.

Former detective Lt. John McMurray (Lt. McMurray) testified in these proceedings that, on May 23, 1995 when he responded to the shooting and spoke with Melendez near the scene and at the station, Melendez was upset yet coherent and cooperative, and provided details regarding the shooting, the shooter and the shooter's vehicle. Based on the descriptions given, Lt. McMurray spoke with Melendez again two days later, when suspect Sierra had been picked up and Melendez and Rodriguez came to the station to view the line-up, and Melendez identified the vehicle Sierra had driven at time of the shooting that was recovered and put in the station parking lot. Lt. McMurray stated that he did not observe Det. Guevara at the crime scene and that Det. Guevara was not present when Melendez identified the shooter's vehicle. Lt. McMurray was not present when Det. Guevara conducted the photo array. Melendez did not complain about mistreatment or Det. Guevara in any way to Lt. McMurray, rather Melendez was very cooperative. In the instant proceedings, Det. Guevara asserted the 5<sup>th</sup> amendment in response to all questions asked concerning Melendez.

Alberto Rodriguez (Rodriguez), who provided testimony through a deposition conducted by the State, testified that he did not know whether Melendez saw the shooter and that even he himself was unable to provide a detailed description of the shooter (such as facial hair) because the windows were tinted. Rodriguez stated that at the time of the shooting he could only ascertain that the shooter was Hispanic and that he did not recall giving a description immediately after the incident or identifying anyone from the hundreds of photos he was shown by officers during his initial visit to the police station. Rodriguez later identified an individual as the shooter and stated that he was not coerced, forced, or influenced to identify the individual.

Melendez' testimony during Sierra's trial is reliable evidence constituting a credible account of misconduct engaged in by Det. Guevara. Lt. McMurray's testimony only referenced that Melendez described the shooter and did not provide any details concerning that description which would establish that his claim that Melendez had seen the shooter's face was more or less truthful. As such, Lt. McMurray's testimony that Melendez had seen and described the shooter, when compared against Melendez' testimony that he had done neither, has little weight. Furthermore, during Melendez' testimony as a witness for the State in Sierra's trial, Melendez did not waver from his assertion that he had not seen or actually believed that Sierra was the

shooter. While Melendez clearly stated in his written witness statement that he saw and identified the shooter; the statement, a memorialization consistent with his false identification during the photo array, does not prove that his claim of a suggestive photo array is fictitious.

Additionally, Rodriguez' testimony did not serve to diminish Melendez' assertion that he had not seen the shooter. Rodriguez' ability to ultimately identify the shooter does not indicate that Melendez had likewise been able to identify the shooter. This is so in spite of Melendez being the driver and, therefore, closer to the shooter who sat in the passenger seat of the vehicle situated to the left of Melendez' vehicle. As the driver, Melendez may not have had the opportunity to get a sufficient look at any of the occupants of the vehicle the shooter occupied; as is more likely than not given that Melendez alerted Rodriguez to keep an eye on the vehicle occupants. The Appellate Court's affirmation of Sierra's conviction and sentence, stating that there was sufficient evidence to support the jury's finding that Melendez' identification of the Sierra was more credible than his repudiation, *People v. Sierra*, 297 Ill. App. 3d 1123 (1998), similarly does not invalidate Melendez' claim that he did not view the shooter and had only identified Sierra due to Det. Guevara's suggestion.

Significantly, there was no evidence presented contradicting Melendez' assertion that Det. Guevara conducted a suggestive photo array. Neither Rodriguez nor Lt. McMurray were present during Det. Guevara's interaction with Melendez and, therefore, whether Det. Guevara suggested Melendez to identify the defendant in the photo array is not within Rodriguez' and Lt. McCarthy's knowledge. Lt. McCarthy was only able to provide his observation that Melendez did not complain of mistreatment and that he was very cooperative at the time that he had spoken with Melendez at the scene and at the station during his identification of the vehicle the shooter occupied. Moreover, the only person who could have refuted Melendez' account, Det. Guevara, did not provide testimony regarding the encounter. Because Melendez' account is reliable and stands un rebutted, his account adequately supports petitioners' claim that Det. Guevara engaged in various forms of misconduct while conducting investigations.

**v. Retired Detective William Dorsch**

William Dorsch (Det. Dorsch), a retired CPD Detective, testified that he worked with Det. Guevara on an investigation where Det. Guevara demonstrated questionable conduct during a witness' viewing of a photo array. Det. Dorsch testified that, when he was assigned to Area 5 homicide, Det. Guevara brought in two teen boys for the purpose of identifying a suspect in a

murder investigation. The witnesses provided the license plate number of a vehicle from which they claim the driver fatally shot the driver of another vehicle. Once officers identified the owner of the vehicle and acquired a photo of him, a photo array was conducted. Det. Dorsch testified that, when the first witness viewing the photos had not identified anyone after a considerable period of time, Det. Guevara "reached out and put his finger right on the photo and said, 'that's him', and the kid said, 'Yeah that's him, I was just about to say it was him. He looks a little different'". The second witness was unable to identify anyone from the photo array. The suspect, a local university student who worked at Walgreens, was located and brought into the station for a physical line-up. During the separate physical line-ups conducted for each witness, where Det. Guevara was not present, the first witness again identified the individual he pointed out in the photo array and the second witness again identified no one. Dorsch testified that, in spite of his discomfort with the interference with the identification by Det. Guevara, he contacted felony review for the initiation of charges against the suspect. Det. Dorsch stated that when he contacted felony review he expressed his discomfort.

Det. Dorsch stated that he told his supervisor that he was uncomfortable with the identification and, the next morning, he went out and spoke with the witnesses about his discomfort with the photo array identification and asked them whether they were comfortable with putting an innocent person in jail. Both of the teens then admitted to Det. Dorsch that they had been paid to identify the individual by "Spanky"<sup>2</sup>, the man who had accompanied them to the police station during their first and second visits, and that the individual they identified had been dating Spanky's ex-girlfriend. Det. Dorsch took the two witnesses to Branch 66, where they told the State's attorney that they had been paid money to identify the suspect, the suspect was not the offender, the suspect had been dating the ex-girlfriend of the man who paid them. Det. Dorsch then asked the ASA that the student who had been charged be released and the charges against the student were subsequently dismissed.

Det. Dorsch testified that he did not report Det. Guevara's conduct during the photo array in a written report, or to a supervisor, or to the ASA that came out after the photo array. He

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<sup>2</sup> The individual nicknamed "Spanky" was identified by the identifying teen (Ferdinand Vargas), in a photograph shown to him during these proceedings, as Sam Perez-Melendez, an individual who had earlier testified in the instant proceedings that he had prior dealings with Det. Guevara wherein Det. Guevara picked him up and suggested to him that a certain four gang members should be identified as committing a murder and that he, accordingly, identified the individuals because he believed that Det. Guevara would pin a murder on him if he did not. Sam Perez-Melendez' testimony was excluded prior to Vargas' identification of him as "Spanky".



stated that he did not immediately report the incident because the task at hand was getting a proper identification and if the second witness had identified the same individual on the second day then perhaps he could have written off Det. Guevara's pointing as an error or mistake. When asked whether he reported the incident to anyone in his chain of command, Det. Dorsch responded that many people knew of it and an official report had never been made by anyone. In these proceedings, Det. Guevara asserted the 5<sup>th</sup> amendment in response to all questions asked regarding the witness identification in this case.

Ferdinand Vargas, the teen who made the identification during the photo array and physical line-up, testified that he identified the person whom he was directed to identify by Spanky and that no police officer directed him to select anyone in the photo array, threatened him or promised him anything. Vargas testified that Spanky, whom he did not know very well, told him and his friend Jonathan Nelson that he knew who committed a murder that occurred and that he would pay him and Nelson money and a car radio to point the person out at the police station, as if they themselves had witnessed the murder. After Vargas and Nelson agreed, Spanky showed them a photo of a man, provided them with a license plate number and pointed out a Chrysler LeBaron and told them to provide that information to police. Vargas states that he studied the photo and practiced remembering the license plate number on the way to the station and when he arrived at the station he pointed out the individual in the photo array and identified the make and model of his car in the station parking lot.

Det. Dorsch's account was credible, as it contained no inconsistencies concerning the issue at hand and stands unrefuted. As noted, Det. Guevara did not answer questions regarding the incident. The only witness providing testimony in refutation of the evidence presented by petitioners, lacked credibility. Vargas' testimony was not credible on the issue of whether Det. Guevara directed him to identify a certain individual. Notably, Vargas was willing to lie to send an innocent person to prison for a murder he did not commit and equally as troubling is that he simply agreed to do so at the behest of a person he barely knew for little to nothing. Overall, Vargas' demeanor and testimony indicated that he was an unreliable witness. Because Vargas was not a reliable witness, this court does not believe that his testimony, that Det. Guevara did not suggest to him which individual should be selected from the photo array, is credible. Furthermore, since Det. Dorsch's account was credible and was not refuted, his testimony is un rebutted and constitutes evidence which sufficiently support petitioners' claim.

## CONCLUSION

At issue in the instant post-conviction proceedings, is whether or not petitioners have made a sufficient showing that the new evidence they have submitted is of such conclusive character that it would probably change the result of earlier proceedings. In this matter, where petitioner's allege their right to due process was violated by a detective's procuring of involuntary confessional statements through abuse and coercion and the admission of those statements into evidence during their respective trials, the court's analysis requires a determination on whether the outcome of the motion to suppress hearing could have been different if the court had before it the new evidence which was obtained after trial. As stated earlier, petitioners have indeed requested a new motion to suppress hearing.

In addition to testifying on their own behalf and calling Det. Guevara to testify, petitioners provided evidence of various accounts alleging a variety of misconduct on the part of Det. Guevara, ranging from suggestive identifications to abuse and coercion. As discussed, these witness accounts had varying credibility and weight. The accounts of the unrelated incidents provided by petitioner are sufficiently similar to the accounts testified to by petitioners in that they all include threats, abuse and coercion to secure statements and occurred within a range of time so as to constitute a pattern and practice. Altogether, these incidents include details implying that Det. Guevara would employ methods to secure a confessional or witness statement by whatever means that he could.

None of the testimony or evidence, provided in an effort to discredit the accounts detailed in petitioners' new evidence, originated from any individual with personal knowledge of the specific occurrences concerning Det. Guevara. While the testimony introduced in opposition of petitioners' new evidence was generally credible, the fact remains that such testimony is unrelated to the specific issue at hand: the tactics carried out by Det. Guevara. Similarly, any inconsistencies indicating diminished credibility on the part of the petitioners' witnesses were only determinative insofar as such inconsistencies related to the specific issue at hand rather than ancillary details which have no bearing on the abuse, coercion, and other misconduct which is alleged to have occurred. Because there was no evidence presented in direct refutation of claims of abuse, coercion and other misconduct, petitioners newly discovered evidence is un rebutted.

Significantly, all accounts, including and especially those put forth by petitioners, stood unrefuted by Det. Guevara. As noted, Det. Guevara asserted his 5<sup>th</sup> amendment right to decline to

answer questions regarding the any of the interrogations and witness questioning conducted in the incidents testified to in these proceedings. In instances where a witness believes he might subject himself to prosecution if he answers questions during a court proceeding, the United States Constitution's 5<sup>th</sup> amendment privilege against self-incrimination gives him the right to refuse to provide incriminating testimony against himself. *People v. Redd*, 135 Ill. 2d 252, 304 (1990). Where a witness asserts the 5<sup>th</sup> amendment in post-conviction proceedings, the court is not only permitted to draw a negative inference from the refusal to testify, but should do so in circumstances where the petitioner's evidence goes unrebutted by the State. *Whirl*, 2015 IL App (1st) 111483. Because petitioners' evidence was unrebutted by the State and there was no testimony from Det. Guevara regarding the conduct he is alleged to have engaged in, this court draws the negative inference that he refused to answer so as to avoid admitting wrongdoing while under oath. The inference that Det. Guevara possibly engaged in wrongdoing overwhelmingly supports petitioners' claim that he engaged in abuse and coercion in the incidents submitted as new evidence as well as their own interrogations.

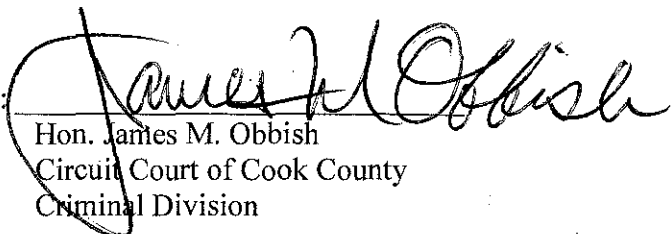
While petitioners have maintained that they were abused and coerced into providing confessional statements as early as their pre-trial motions to suppress, they did not then have the additional multiple unrelated incidents which they have submitted here to support their assertions. As the Appellate Court expressed in petitioners' post-conviction appeal, "If even a fraction of the allegations included in this evidence had been presented prior to trial, it appears likely that Guevara's credibility would have been damaged and defendants' confessions would have been suppressed. Without these confessions, the State's case against defendants would have been severely weakened." *Reyes*, 369 Ill. App. 3d 1, 19 (1<sup>st</sup> Dist. 2006). Further, this court agrees with Appellate Court's view that the various incidents put forth as evidence of "allegations of Guevara's improperly influencing witnesses' identifications of suspects" is evidence that is "relevant to whether defendants in the case at bar were similarly coerced". *Id.* at 21.

After reviewing the evidence in third stage evidentiary proceedings, it is abundantly clear that, the uncontradicted accounts of these specific interactions entailing abuse, coercion and improper influence in addition to the negative inference drawn from Det. Guevara's assertion of his 5<sup>th</sup> amendment privilege against self-incrimination lend credence to petitioners' allegations of abuse and coercion. A majority of the new evidence presented by petitioners is credible and,

given that those accounts are un rebutted, the new evidence is conclusive enough to establish that the outcome of petitioners' previous motion to suppress would likely have been different. Had petitioners been armed with these multiple credible and un rebutted accounts of the incidents introduced in these proceedings at the time of their motion to suppress, the court would have likely rendered a different decision and excluded their statements from introduction during trial in protection of their right to due process. In order to determine whether petitioners' new evidence in support of their claim of abuse and coercion would render their confessional statements involuntary and, therefore, inadmissible at trial, a new motion to suppress hearing should be held.

Accordingly, this court finds that petitioners have made a substantial showing that they were denied their constitutional right to due process, by a preponderance of the evidence, and are therefore entitled to new motion to suppress hearings. Consistent with the relief requested by petitioners during arguments, a new motion to suppress hearing is hereby GRANTED. At this time, petitioners' requests that this court vacate their convictions are DENIED.

ENTERED:

  
Hon. James M. Obbish  
Circuit Court of Cook County  
Criminal Division

DATED:

6-29-16

