

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT  
COUNTY OF MCLEAN

JAMES SNOW,

Petitioner,

- vs -

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

No. 99 CF 1016

The Honorable Alesia A. McMillen,  
Judge Presiding.



---

**PETITIONER'S SUPPLEMENTAL RESPONSE  
TO THE STATE'S MOTION TO DISMISS**

Now comes Petitioner James Snow, by and through his counsel THE EXONERATION PROJECT at the University of Chicago Law School, and hereby submits his supplemental response to the State's Motion to Dismiss as follows:

**Introduction**

At oral arguments on the State's Motion to Dismiss on November 5, 2010, the State raised for the first time the argument that Mr. Snow's actual innocence claim should be dismissed because new evidence in the form of recantation affidavits cannot support an actual innocence claim unless those affidavits demonstrate that there was some state involvement in the false testimony. Counsel for Mr. Snow, who had no opportunity to respond to this contention in its written response to the State's Motion to Dismiss, therefore asked for this opportunity to respond in writing to this argument, which is incorrect. Although due process claims based on the State's knowing use of perjured testimony at trial may require such a showing, actual innocence claims do not, so there is no basis to dismiss Mr. Snow's actual innocence claim on this ground.

## ARGUMENT

At oral argument the State contended that the affidavits Mr. Snow has presented demonstrating new evidence of his actual innocence do not indicate that the State was behind the false testimony that witnesses have now recanted. Citing People v. Brown, 169 Ill.2d 94 (1996), the State argued that because there was no evidence that the State was involved in securing the testimony that various witnesses have now recanted, Mr. Snow's actual innocence claim was defective. In reality, however, there is no state involvement requirement for actual innocence claims. As Mr. Snow demonstrated in his petition, his response to the State's Motion to Dismiss, and at oral argument, he has made a substantial showing of this and his other claims and is entitled to an evidentiary hearing to further prove his claims.

### **I. There Is No State Involvement Requirement for Actual Innocence Claims**

As Mr. Snow argued before this Court last week, there is no requirement of state involvement for free-standing actual innocence claims. The right against conviction for a crime of which someone is actually innocent does stem from the due process clause of the Illinois Constitution. See, e.g., People v. Washington, 171 Ill.2d 475, 487-88 (1996). However, all that is required to make such a claim is to present supporting evidence that is new, material, non-cumulative, and that would likely change the result upon retrial. Id. at 489. In resolving free-standing actual innocence claims, the Supreme Court has never alluded to any "state involvement" requirement. See, e.g., People v. Morgan, 212 Ill.2d 148 (2004) (discussing the requirements for actual innocence claims in the context of recantation affidavits without any indication of a state involvement requirement); People v. Ortiz 235 Ill.2d 319, 333 (2009) (also discussing the requirements for actual innocence claims without reference to a state involvement requirement).

The case cited by the State, People v. Brown, 169 Ill.2d 94 (1996) is a case in which the petitioner brought a post-conviction petition that raised a due process claim based on the knowing use of perjured testimony. In that case, the Court held that a due process claim for the knowing use of perjured testimony requires a showing that the State was involved in the use of the testimony, either by the knowing use of such testimony or by lack of diligence in uncovering the falsity of the testimony. Id. at 106. The Court held that without such involvement, “the action of a witness falsely testifying is an action of a private individual for which there is no remedy under the due process clause.” Id.

This strand of due process law, however, is not applicable to actual innocence claims. Washington, the seminal Illinois case on actual innocence claims, found the right to bring a free-standing claim of actual innocence stemmed from the due process clause of the Illinois Constitution, but it did so in a case in which the Court specifically noted that Washington “*can claim no state action with regard to the evidence he now relies upon for post-conviction relief.*” Id. at 487. This is reason that the Court in Washington examined the Illinois Constitution to find a free-standing claim of actual innocence - it wanted to determine whether there was a right against the conviction of the innocent to protect those defendants where they had no other constitutional claims (i.e., where they had no due process claims because there was no state involvement in the reason they were convicted of a crime of which they were actually innocent). This is what it means to bring a free-standing claim of actual innocence. It is a claim of innocence that stands alone, apart from other constitutional violations, including a due process violation for the knowing use of perjured testimony.<sup>1</sup>

---

<sup>1</sup> The appellate court below, in setting forth the standard for actual innocence claims based on newly-discovered evidence, specifically held that such claims need not “directly implicate state conduct.” People v. Washington, 256 Ill.App.3d 445, 448 (1<sup>st</sup> Dist. 1993) (citing

## **II. Mr. Snow Has Shown He Deserves an Evidentiary Hearing on His Actual Innocence Claim**

As demonstrated to this Court in prior pleadings, Mr. Snow has shown that he deserves an evidentiary hearing on his actual innocence claim. He has presented new evidence that is material, non-cumulative, and that would change the result on retrial in that it leaves no doubt that he is not the person who shot and killed Bill Little.

The Jeff Pelo affidavit is clearly a critical piece of evidence that would have changed the result at Mr. Snow's trial. The best the State could offer at oral argument about Jeff Pelo's affidavit is to suggest that Mr. Pelo is unreliable, but issues about Mr. Pelo's credibility cannot be resolved at this stage; they are reserved for the third-stage evidentiary hearing. Mr. Pelo's affidavit makes crystal clear that after arriving at the station in response to an alarm call, he watched the station to determine what was going on. He kept looking at the door, and when he saw Danny Martinez walking around the parking lot he watched what Martinez was doing and is sure that no one but Mr. Little was inside the gas station at that time. (Am. Post-Conviction Pet., Ex. 1, Pelo Aff. at ¶¶ 55-56). This affidavit alone would change the result on retrial, particularly given that, as set forth in Mr. Snow's amended petition, it is supported by newly obtained police radio tapes, the prior testimony of Officer Paul Williams, and prior statements of Danny Martinez to the police. It is also supported by Jeff Pelo's interview with the police before Mr. Snow's trial. In that interview, attached to Mr. Snow's amended petition as Exhibit 5 (and given on March 2, 1999, before Danny Martinez ever identified Mr. Snow), Pelo stated that he was watching Martinez at the time that Martinez claimed he was looking at the man who came out of

---

People v. Lovitz, 101 Ill. App.3d 704, 709 (1981)). In upholding this decision, the Supreme Court implicitly adopted this same reasoning.

the gas station, and that Martinez left the gas station lot on his own and without being ordered to leave, further contradiction of Martinez's trial testimony.<sup>2</sup>

Similarly, Carlo Luna's affidavit is new, material and non-cumulative evidence supporting Mr. Snow's actual innocence. At trial Mr. Luna testified that from down the street from the gas station he observed a man walking out from the gas station, although he did not see Danny Martinez in the parking lot. He later identified Mr. Snow in a lineup as being that man. (Amended Post-Conviction Petition at ¶¶ 24-25.) In his affidavit presented with Mr. Snow's petition, he clarifies that he is not sure he identified the right person, is not sure he could identify the face of the person that he saw, and that he identified Snow because he "best fit the description" and because "[a]s a 14 year old I thought the police had caught the right person." (*Id.* at ¶ 78.)<sup>3</sup> This affidavit, plus all of the evidence in Mr. Snow's Amended Petition discrediting Martinez, makes clear that at a new trial there would be *no* witnesses providing a credible identification of Mr. Snow as being at the scene of the crime. This, plus the lack of

---

<sup>2</sup>It is also worth noting that in his affidavit Mr. Pelo states that part of the reason that his trial testimony did not include a statement that no one could have left the gas station while he was on the scene was that in a pretrial interview with Detective Katz and Griffin, Griffin implied that he should say the opposite. (Am. Post-Conviction Pet., Ex. 1, Pelo Aff. at ¶ 25.) Thus, there was arguably some state involvement in this recantation affidavit.

<sup>3</sup>As described in Mr. Snow's amended petition, Thomas Sanders' testimony at Mr. Snow's co-defendant's trial supports this recantation. (Am. Post-Conviction Pet., Ex. 8, Sanders Testimony in People v. Claycomb, 99 CF 1017.) In that proceeding, Sanders, a police sketch artist, testified that shortly after the crime he met with Danny Martinez and then Gerardo Gutierrez and developed composite drawings based on his conversations with both of them. (*Id.* at 6-11.) Sanders admitted, however, that he then spoke with Carlos Luna but did not make a composite drawing based on what Luna told him because "he didn't think that he could provide enough information to complete an effective composite." (*Id.* at 12.) For the other witnesses, he was able to elicit specific details about the person those witnesses believed they saw, and generate a composite drawing based on that information. For Mr. Luna, he was not able to engage in this process because Mr. Luna simply didn't have a good enough look at the person he said he saw walking outside the gas station.

physical evidence connecting him, leaves his conviction based solely on testimony about his purported confessions, testimony which is also undercut by new evidence.

As Mr. Snow argued in his response to the State's Motion to Dismiss, newly discovered affidavits discredit the trial testimony claiming that Mr. Snow made inculpatory statements about his involvement in this crime. He has presented new affidavits from Dawn Roberts, Dan Tanasz and Ronnie Wright in which those witnesses admit that their trial testimony was false.

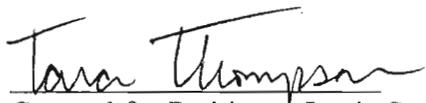
(Amended Post-Conviction Petition, Exs. 12 & 18; Mot. to Supplement, Ex. 1.) Mr. Snow has also presented a detailed affidavit from investigator Larry Biela that Steven Scheel told Mr. Biela that his trial testimony was false. (Amended Post-Conviction Petition, Ex. 15.) These affidavits, as recantations, are newly-discovered evidence which is non-cumulative material, would have changed the result at trial, and which is deserving of an evidentiary hearing to resolve. *See, e.g., People v. Barnslater*, 373 Ill.App.3d 512, 524, 869 N.E.2d 293, 304, (1st Dist. 2007.) This is in addition to all of the other evidence presented demonstrating that witnesses received deals and that other impeaching evidence discredits their testimony. Finally, Mr. Snow has presented evidence of a pattern of misconduct by McLean County police and prosecutors that would be relevant and admissible at retrial to undercut the State's purported evidence of Mr. Snow's guilt.

### **Conclusion**

There is simply no state involvement requirement for actual innocence claims - that is what the courts mean when they describe these claims as "free standing." The State can provide no authority that would contradict the clear meaning of People v. Washington on this point. As Mr. Snow argued at oral argument and in his written pleadings, his free-standing actual innocence claim is compelling. The State emphasized at oral argument that actual innocence claims, particularly those based on recantation evidence, are rarely granted. While that is true,

this is the case for the application of the actual innocence doctrine. Mr. Snow's case is an unusual case, both because of the amount of new evidence Mr. Snow has compiled and because of the unusual strength of that evidence in his case, particularly when compared to the weak evidence offered against him at trial. This is the rare case that should compel this Court to order both a hearing and, ultimately, a new trial for Mr. Snow. Mr. Snow therefore respectfully requests that this Court deny the State's motion and grant him an evidentiary hearing on his claims.

Respectfully submitted,

  
Counsel for Petitioner Jamie Snow

Jon Loevy (ARDC Number 6218254)  
Russell Ainsworth (ARDC Number 6280777)  
Gayle Horn (ARDC Number 6286427)  
Tara Thompson (ARDC Number 6279922)  
Elizabeth Wang (ARDC Number 6287634)  
THE EXONERATION PROJECT  
at the University of Chicago Law School  
6020 S. University Avenue  
Chicago, Illinois 60637  
(312) 243-5900 (tel)  
(312) 243-5902 (fax)

Counsel for Petitioner