

NO.

22-5268

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 2022

FILED

JUN 15 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Juan M. Cuellar - petitioner

VS.

People of the State of Illinois - RESPONDENTS
ON PETITION FOR A WRIT OF CERTIORARI
TO

Second District Appellate Court of Illinois

PETITION FOR WRIT OF
CERTIORARI

Juan M. Cuellar

M47374

Pontiac Correctional Center

P.O. Box 99

Pontiac, IL 61764

QUESTIONS PRESENTED

1. Whether an Actual Innocence Claim applies to lesser mitigated homicides so that one can be actually innocent of First-degree murder such that he is guilty rather of second degree murder?

2. Whether the evidence presented was so conclusive so that no rational trier of fact would have convicted?

LIST OF PARTIES

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IN THE
SUPREME COURT OF THE
UNITED STATES

TERM, 2022

PETITION FOR WRIT OF CERTIORARI

petitioner respectfully prays that a
writ of certiorari issue to review the judgment
below

OPINIONS BELOW

The Second District Appellate
Court of Illinois (People v. Cuellar, 2022 IL
App(2d) 200074-U (unpublished opinion))

JURISDICTION

The date on which the highest state court denied discretionary review was May 25, 2022. A copy of that denial appears at Appendix

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amend 5, 14 Right to
Due process of law

STATEMENT OF THE CASE

Defendant appears from Second District Illinois Appellate Court ruling wherein he raised an actual innocence claim based on an affidavit from Elva Hernandez.

Cuellar was charged with first degree murder based on the fatal shooting of Joshua Holmes on September 24, 2012 (E. 129-34) Cuellar waived his right to a 12 person jury and a six person jury sat in judgment at his trial. (C.C. 336; R. 81-83)

Emanuel Oliver, a fellow gang member of Holmes, testified that he and Holmes were approached by Cuellar and his younger brother, Christopher Hernandez, at the Lake Terrace Apartment complex on September 6, 2012. (R. 421-24) Oliver heard Cuellar

say, "where is the money?" (R. 425-26) Cuellar pulled out a gun, loaded it, pointed it at Holmes, and asked Christopher, "what are you waiting for?" (R. 426-27, 430-31) Christopher then threw "bricks" at Holmes, who

ran away. (R. 430-32) Christopher told Oliver at school that he had given Holmes \$90 for marijuana but that Holmes never gave him the marijuana. (R. 448-49)

Testifying for the defense, Christopher corroborated that he had given Holmes \$90 for marijuana but, that Holmes never gave him the marijuana. (R. 448-49) (R. 604-53) Christopher and Cuellar confronted Holmes on September 6, 2012 (R. 1059, 1182). Cuellar testified that he brought his Glock pistol because he thought he might get "jumped". (R. 1183) Cuellar told Holmes they just wanted the money back, and Holmes stated that he did not have it. (R. 1184) Cuellar pulled out the gun, loaded it, and pointed it at Holmes, though his finger was not on the trigger. (R. 1059, 1064-66, 1185) Cuellar then put the gun away and ordered Christopher to throw a brick at Holmes, which missed. (R. 1066, 1186) Christopher chased Holmes until Cuellar told him to come back. (R. 1186) The brothers went home, where Cuellar told Christopher that what happened was "stupid" and "to let the money go". (R. 1187) To avoid any further issues, Cuellar moved out of their apartment a couple days later to live with his aunt in Bensenville. (R. 1067-68, 1189)

Christopher pleaded guilty to attempt aggravated battery and unlawful use of a weapon for his conduct during the September 6th incident. (R. 1112) A few days after September 6, a similar to if not the same one Christopher had thrown at Holmes crashed through the main door of the apartment building where Christopher lived with mother. (R 1076-77, 1190) Christopher did not call police but, told Cuellar about it. (R 1078) Cuellar told him not to retaliate, to stay inside, and to call the police "if it got bad." (R 1192) About one week prior to Holmes' death, Christopher was driving to the library with his mother, his younger siblings and his girlfriend. (R. 1078-A) A familiar gray car containing two men followed them from the parking lot, at the apartment. (R 1080) One of the men was Eric, who had been with Holmes when Christopher tried to buy marijuana from Holmes. (R 1082, 1090) At one point the gray car stopped in front of Christopher's car for a few seconds, causing him to stop. (R 1084, 1090-91) This worried Cuellar, and he told his brother not to get into cars with family. (R 1192-93) Tyler Blake, who had juvenile cases pending for disorderly conduct, criminal trespass, and retail theft, testified that he had heard about

the issues between Christopher, Cuellar, and Holmes from other people living in the apartments. (R. 611, 642-43) Holmes was upset about the September 6th confrontation but did not say he was going to retaliate. (R. 645-46)

On September 24, 2012, a little after 5 p.m., Holmes and a group of his friends, including Oliver, Blake, and Andre Fields, went to a McDonald's in a plaza that was just southeast of the apartments. (R. 401-02) On the way they passed Baba's, another restaurant in the plaza (R. 405) Through a window, Oliver saw Christopher working as a cook. (R. 464) Holmes and several others went inside while Oliver waited outside. (R. 460, 476-77, 614) Blake testified that Holmes and Christopher did not speak to each other at Baba's but made eye contact. (R. 653) The group left when someone at Baba's told them Christopher might spit in their food. (R. 614-15) Photos from a surveillance camera in Baba's from 6:13 p.m. that day showed Holmes and others inside Baba's (Defense Ex. Nos. 1-4; R. 462-64, 493-94) Christopher testified that he worked at Baba's on the evening of September 24. (R. 1091) Around 6:13 p.m. some people came in, ordered some food, and then looked at

Christopher and laughed, (CR. 1093) They said, "oh he works here," and left. (R. 1093) A bit later, Holmes came to Baba's with friends. (R. 1094) Addressing Christopher, Holmes said, "so you have something for me, right?" (R. 1099) Christopher did not answer him and Holmes said, "well I got something for you," and pulled his pants up with his right hand. (R. 1099) Christopher felt threatened, explaining that he believed Holmes had a weapon, though he did not see one. (R. 1100) Holmes smiled and left Baba's with his friends. (R. 1100) Christopher told his manager that he was being bullied and used the restaurant phone to call his girlfriend, Cassandra. (R. 1100-01) Cassandra and his mother came to Baba's and ordered some food. (R. 1103) Christopher told them what had happened and told them they should hurry up and leave before eating, but they ate first and then left. (R. 1134) After eating at McDonald's, Holmes and his friends walked north through the plaza and then west on Haysuckle Rose Lane until they reached a "circle on Lilac Lane." (R. 404-06) There were about "a few plus" of them walking at the time. (R. 478) Fields and Blake saw a white car pass them, turn south on Hyacinth. (R. 409, 495) Oliver and the others continued walking towards Hyacinth but the group started to break up. (R. 410-11)

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Fields testified that Holmes walked towards the car without saying anything or making any gestures. (R. 599) Oliver and Young tried unsuccessfully to stop Holmes from going towards Hyacinth. (R. 409, 495) Oliver and the others continued walking towards Hyacinth but the group started to break up. (R. 410-11) Fields testified that Holmes walked towards the car without saying anything or making any gestures. (R. 599) Oliver and Young tried unsuccessfully to stop Holmes from going towards Cuellar, who was now parked on the corner of Hyacinth and Honey Suckle. (R. 411) According to Blake, Holmes was ready to fight after he saw the driver make a signal and he walked quickly towards the car. (R. 621-22) Blake took off his sweater in case they were all going to fight. (R. 622) Holmes arrived at the corner near the car first, with the others about ten yards behind. (R. 623) Blake testified that, when someone told Holmes not to approach the car, Holmes responded that he was "going to get this guy" and "kick his ass". (R. 661, 666) Oliver, on the other hand, heard Holmes say, "This is not out west." (R. 480) Antoine Massie was also present, and heard Holmes say, "This is not out west." (R. 480)

And the Massie was also present, and heard Holmes say that he was going to "beat them up" and started walking faster. (R. 1314-15) The group told Holmes not to approach the car by himself and warned him there might be a gun involved. (R. 1317) Massie heard Holmes say, "This is not the city, this the suburbs. He is not about that life." (R. 1318) Holmes handed his hat to Young and continued towards the car. (R. 481) Holmes was wearing a hoodie that had a pouch. Oliver did not know if anything was in the pouch but never saw Holmes with a gun. (R. 481-84) Holmes walked to the driver's side window, leaned into the car, and had a conversation with Cuellar for four or five seconds before five or six gunshots erupted. (R. 415, 623) Oliver could not understand what they said to each other and did not know what either of them may have done just prior to the shooting. (R. 484-85) Blake saw Holmes raising hands from his waist to above his shoulders when he was talking to Cuellar but did not see Holmes grab his belt area. (R. 668-65) Massie saw Holmes pull his pants up with both hands three times as if he were telling the driver to fight. (R. 1316-17) Blake was looking at Holmes when the first shot rang out and the whole group scattered. (R. 624-25)

Oliver and Tony ran across the street and hid behind cars while Blake ran behind a building. (R. 416, 625) After the gunfire, Holmes turned and tried to run and then drop to the ground. (R. 417, 554, 600) Oliver described the shots to the police as being one right after another, but testified there was some hesitation on a couple of them. (R. 485) After the white car pulled up a little, Cuellar got out, walked over to Holmes, leaned over, and then got back in the car and drove away. (R. 417-18) Fields testified that Cuellar kicked at Holmes' body, pointed the gun at Holmes, and tried to keep shooting but the gun did not fire. (R. 556) After Cuellar was out of sight, Oliver, Fields, and Blake did not see anyone take anything from Holmes and did not see a gun at the scene. (R. 421, 558, 624-25) Oliver had never seen Holmes with a gun. (R. 466-67)

Around 6:20 pm on September 24, 2012, Cuellar received a call from Christopher's girlfriend, Cassandra. (R. 1198) Cassandra said a group of "African Americans" had threatened Christopher at Baba's and "were probably coming back." (R. 1198) Cuellar was scheduled to work, but Cassandra sounded "shaken" and Cuellar was scared for his brother, so he headed to Baba's in his white Toyota Corolla. (R. 1198) Cuellar was scheduled to work, but Cassandra sounded "shaken" and Cuellar was scared for his brother, so he headed to Baba's in his white Toyota Corolla. (R. 1198) While driving, Cuellar received a call from his mother, who told him to go to her apartment and call her when he arrived. (R. 1200) Cuellar called his

mother three or four times when he was in the area but she did not pick up. (R. 1202) He was worried something had happened to her. (R. 1202) Cuellar was driving east on Honey Suckle Rose Lane when he saw 10 black males wearing dark colored jackets and hoodies. (R. 1203-04) Cuellar drove past them but, turned around because he wanted to know if Holmes was among the group so that he could tell Holmes to leave Christopher alone. (R. 1206) Cuellar believed these men were the men who threatened his brother. He also believed they may have been going to his mother's apartment. (R. 1234-36) Cuellar drove by the men again and recognized Holmes. (R. 1207) Cuellar and Holmes made eye contact, Holmes pointed at Cuellar, and the group of men started chasing Cuellar's car. (R. 1209) Cuellar turned south on Hyacinth, drove about 30 feet, and then parked. (R. 1209-10) He got out of his car, took his gun out of the trunk, loaded it, and drove back to the corner where he saw Holmes standing. (R. 1210-11) Holmes appeared to wave his friends away and then waved Cuellar over. (R. 1212) A few of Holmes' friends ran behind some cars. (R. 1215) Cuellar stopped at the corner, with Holmes about eight feet away. (R. 1212) Cuellar rolled his window down as Holmes approached the car with his hands on his waist. (R. 1213-14) Cuellar "was scared of the possibility that he had a firearm on him." (R. 1215) Though he acknowledged that he acknowledged that he did not see a gun, Cuellar believed that

that Holmes had a gun because Holmes walked up to him so arrogantly" despite knowing Cuellar was armed, and because Holmes had warned his friends away from the area. (R. 1214-15, 1225-27) In a "challenging manner," Holmes asked Cuellar, "Man, what's up?" (R. 1216) Cuellar took this as a direct challenge. (R. 1217) Holmes then reached for his waistline, pulled his hoodie up two or three inches with his left hand, and reached towards his waistline underneath the hoodie with his right hand. (R. 1217-18) Cuellar "just reacted and I fired at him" because he was scared and thought Holmes was pulling a gun. (R. 1218-19) Cuellar did not shoot Holmes because of the \$90 he owed Christopher. (R. 1225) Holmes ran, fell to one knee, and then fell on his back. (R. 1219) Cuellar pulled his car up a bit, parked, got out with his gun, and walked to Holmes. (R. 1219-20) He did not try to shoot Holmes again and only had his gun because he was still concerned that Holmes' friends might attack him. (R. 1220) Cuellar was going to call the police, but Holmes was convulsing and Cuellar did not know what to do. (R. 1216-17) Cuellar got back in his car and drove to his aunt's house. (R. 1217-18) Once the police arrived at the scene, Fields, Oliver, Blake and others went to Babal's to look for Christopher because they knew he was Cuellar's brother. (R. 433, 484, R. 556-57, 670-71) They were angry and wanted to confront Christopher. (R. 570) The person at the counter in Babal's told them Christopher was not there and asked them to leave. (R. 566, 627) People's Exhibit no. 85, a video,

showed the group in Baba's after the shooting. Defense Exhibit Nos. 5 and 6 were still photos from Baba's surveillance camera taken at 6:59 p.m. on the night of the shooting. (R. 168-73)

Rishu Handa was a cashier at Baba's on September 24, 2012 (R. 1268-69) she did not recall Holmes saying anything or making any threats to Christopher, but she could have missed it. (R. 1273-74, 1280) she remembered Christopher left early due to a family emergency. (R. 1274-75) He never told Handa that he had been threatened. (R. 1276-81) Christopher's mother and sisters came to Baba's and did not seem alarmed or frightened. (R. 1282-83) Around 7 p.m. some angry, "tall, black guys" came in looking for Christopher. (R. 1276) They banged on the counter and asked for Christopher, but he was already gone. (R. 1277) Handa was scared and closed the restaurant early after they left. (R. 1277-78) Kara Collins, the mother of Cuellar's son, had been granted immunity in exchange for her testimony. (R. 800-01) On September 24, 2012, Cuellar called her around 7 p.m. and asked her to meet him in Bensenville at his Aunt Olivia's house. (R. 803-04) Collins met Cuellar, who told her that he had received a call earlier in the evening from either Christopher's girlfriend or his mom. (R. 805, 807) During that call, Cuellar was told that he should come to Baba's because Christopher was having issues with some people at work. (R. 807) Cuellar said he drove towards Baba's, saw "some people outside [Christopher's] work, and squealed his tires to scare

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them. (R. 807) Most of them ran away, but Holmes approached Cuellar's car. (R. 807) Cuellar said, "Do you have a problem?" or "Hey, what's up?" (R. 807) Holmes replied, "Yo, what's up," grabbed his pants, and stood there. (R. 807) Cuellar said he then shot Holmes through the window of his car. (R. 807) According to Collins, Cuellar did not say that he saw a gun, but they talked about whether maybe Holmes did, maybe he didn't possess a gun at the time of the shooting. (R. 808, 853) Cuellar, on the other hand, testified that he told Collins several times that he thought Holmes had a gun. (R. 1219, 1223-24, 1253) Cuellar told Collins that he then got out of his car and pointed his gun at Holmes, but that he did not shoot because Holmes was cowering and almost dead. (R. 808) Cuellar told Collins that he drove away after asking Holmes, "Have you had enough?" (R. 808) Cuellar and Collins then went to Collins's mother's house in Allen Elgin. (R. 810) Her mom's boyfriend, Derek Van Baler, filed the serial number off Cuellar's gun, and Cuellar wiped the bullets down with alcohol. (R. 812, 907-08) Collins drove Cuellar, his mother, Christopher, and Cassandra to the Fox River in St. Charles. (R. 817) Cuellar threw a white plastic bag into the river. (R. 817-19, 1221-22) The group then drove to another spot, where Cuellar threw the gun case with a dumbbell taped to it into the river. (R. 816-820) The next stop was Pan Fish Park, where Cuellar threw the bullets in a sewer. (R. 822-23) Cuellar later

Called Collins from his father's house and told her that he was going to get an attorney the next day. (R. 828) Cuellar never told Van Buren that the person he shot had been armed, though he did not give a detailed account of the shooting. (R. 916) Collins said she knew of the incidents between Christopher and Holmes. (R. 851) Cuellar was concerned for Christopher but never told Collins that he wanted to "get this kid" or "go back and find him." (R. 851) Cuellar admitted to disposing of the gun and the bullets. (R. 1217-18) He testified that he was arrested one day before he was going to get an attorney and surrender to police. (R. 1224-25)

Dupage County Sheriff's Deputy Phil Marotta testified that he was working patrol on September 24, 2012 when he was called to the Hinsdale Lake Terrace Apartment Complex in Willowbrook at 6:46 p.m. (R. 370-72) He arrived at the intersection of Honesuckle Rose and Hyacinth in about three minutes. (R. 374) There were 50 to 100 people in the street and Holmes was lying on the ground. (R. 376-78) Marotta secured the scene before paramedics arrived and took Holmes to the hospital. (R. 376, 380-81) There was no gun found on or around Holmes. (R. 381, 545) Jonathan Pugsley, a forensic detective with the Dupage County Sheriff's Department, testified that there were six cartridge casings from a firearm found at the scene of the shooting. (R. 729) Gary Lind, an expert in firearm and tool marks

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Identification, determined that the six casings found at the scene of the shooting. (R. 729) Gary Lind determined they were fired from the same unknown Glock firearm. (R. 793)

The day after the shooting, the St. Charles Police Department contacted Pugsley after finding a gun case with a dumbbell taped to it in the Fox River. (R. 739) The gun case contained a Glock pistol frame, a speed loader, and a pistol magazine. (R. 743-44) Pugsley went to St. Charles and received these items. (R. 742) There was a hole in the Glock pistol frame where a metal serial number plate would typically be. (R. 747) Detective Brian Mowrer of the DuPage Sheriff's Department testified that the manufacturer's number on the Glock pistol frame was associated with a serial number on a Glock pistol sold to Cuellar on June 21, 2011. (R. 760-68) A box of .40 caliber bullets was recovered from the sewer in Pan Fish Park on October 15, 2012. (R. 863) Jeff Harkley, an expert in forensic pathology, performed the autopsy on Holmes. (R. 930) Holmes' body had five gunshot entry wounds and five exit wounds, and those gunshots proved fatal. (R. 933, 962, 967) The bullets struck Holmes in the arm, buttocks, and back. (R. 934-40) Harkley testified that the trajectory of the bullets was consistent with Holmes being shot from behind, though he could not say whether Holmes was facing the gun when he was shot in the arm because of the various ways a person can move and hold his arm. (R. 862, 967)

The trial court instructed the jury on self-defense and second-degree murder based on an unreasonable belief in the need for self-defense. (C. 405, 413-15, 418, 421-25) The jury found Cuellar guilty of first-degree murder and also found that he personally discharged a firearm that proximately caused Holmes' death. (C. 458-54; R. 1554) Cuellar was sentenced to 55 years in prison. (C. 513, 519) on direct appeal, Cuellar raised a single claim: that the jury unreasonably rejected his claim that he acted under an unreasonable belief in the need for self-defense, such that the offense ought to have been mitigated down to second-degree murder. *People v. Cuellar*, 2016 ZLT App(2d) 140-855-U, 9/11/2, 42; (C. 564, 574) This Court disagreed, finding that a rational trier of fact could have found that Cuellar had not proven the mitigating factor of unreasonable belief in the need for self-defense by the preponderance of the evidence. *Cuellar*, 2016 ZLT App(2d) 140-855-U, 19/46-48; (C. 576-77) Cuellar represented by Richard Dvorak, filed a post-conviction petition on February 22, 2018. (C. 647-63) Cuellar asserted, inter alia, a claim of actual innocence based on the affidavit of his mother, Elva Hernandez. (C. 658) The contents of this affidavit would have "directly contradicted" Kara Collins' testimony that Cuellar never said he saw a gun or weapon on Holmes at the time of the shooting. (R. 658) Cuellar explained that Elva's testimony was

C. unavailable at the time of trial because Ms. Hernandez was not willing to testify, on advice of her counsel. However, she is now able and willing to do so, now that she is off of parole for her (related obstruction charge)." (C. 658) In her affidavit, Elva stated that she did not receive a subpoena to testify at trial. (C. 660) At the time of trial, Elva was represented by Jeffrey Fawell, who advised her to assert her Fifth Amendment privilege if called, since she was charged in a related case. (C. 660) She was still on parole for that charge at the time of trial, but at the time of her affidavit was off parole and "free to testify." (C. 660) Elva swore that, "if called to testify, I would state, under oath, that I was present during the conversation, Juan had with Kara Collins, Christopher Hernandez as well as myself and Cassandra Ojeda." (C. 660) "During that conversation, Juan Cuellar, told us what happened between him and 'Savage' [Holmes], and during that conversation, Juan did tell us that he saw an object that he believed to be a gun, and that he was in fear of his life when he shot 'Savage.'" (C. 661) On May 21, 2018, Cuellar moved to voluntarily dismiss his post-conviction petition without prejudice and refile within a year, which was granted. (C. 677-79; R. 669-1700) On July 5, 2018, Cuellar refiled his petition, then filed an amended petition on September 11, 2018, which was identical in substance to the refiled petition. (C. 680-97, 718-34; R. 1708) On January 24, 2019, the state filed a motion to

To dismiss Cuellar's amended petition, (C.749-63) with respect to Cuellar's actual innocence claim, the state argued, "the purported testimony of Defendant's mother is suspect in nature and of little or no evidentiary value, falling far short of the necessary level of conclusive character that would change the result on retrial." (C.762) The state highlighted that Cuellar implicated Elva in his attempt to cover up his role in the shooting; that he claimed during his testimony that he thought Holmes might have a gun but, admitted to never seeing a gun; and no one ever saw a gun in Holmes' possession or on his body. (C.762) On January 23, 2020, the circuit court granted the state's motion to dismiss Cuellar's amended petition. (R.1750) In a written order, the court concluded that Cuellar had failed to make a substantial showing a constitutional violation based on any of the three issues asserted in his amended petition. (C.795) In regard to Cuellar's actual innocence claim, the circuit court first found that Cuellar "failed to bring forth newly discovered evidence" because Elva "failed to testify at petitioner's trial due to her assertion of her Fifth Amendment right" and her "statements were already known to the defendant at or prior to trial because the petitioner allegedly made the statements to his mother." (C.799) Next, the court noted that Cuellar at trial testified that he believed the victim had a gun based on his walk and

and actions prior to the shooting... Clearly, Elva Hernandez's offered testimony would have been cumulative to the petitioner's own trial testimony as it added no new information to what the jury already considered."

(C.794) The Court concluded Elva's affidavit would not likely change the result on retrial because the jury already heard the substance of it in Cuellar's own testimony, and it still found him guilty. (C.795) Accordingly, the court granted the state's motion to dismiss Cuellar's petition.

(C.795) Cuellar Appealed. (C.803-04). On Appeal Cuellar argued that this new evidence would have not only contradicted Kara Collin's testimony but, also corroborated defendant's subjective belief that it was conspired newly-discovered because no amount of due diligence could have compelled Elva Hernandez to testify. Lastly, that an actual innocence claim could also result in being guilty of second degree murder. The Appellate held that they were reticent to accept the evidence was newly discovered, that it was cumulative and oddly enough also positively rebutted by Cuellar's testimony and it was not conclusive enough for a acquittal or reduction of degree of murder even if cognizable.

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This order was filed February 17, 2022. On March 1, 2022 petition for leave to appeal to the Illinois Supreme Court was filed timely. On May 25, 2022 The Supreme Court denied the petition. This writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

Defendant argues that the evidence presented was conclusive as to show no rational trier of fact could have convicted. *Schlup v. Delo*, 513 U.S. 298, 327 [44 S. Ct. 418, 130 L. Ed. 2d 808] ultimately, the issue was what did Cuellar believe when he shot Savage? Did he reasonably believe he was justified in using the force that he did? This issue at the very least demanded an evidentiary hearing to test the evidence and make credibility determinations. To allow Appellate Courts throughout the country make such illogical determinations as that evidence can be both corroborative and positively rebutted by that same testimony undermines confidence in the justice system.

Also, even if the evidence could not totally exonerate defendant, the court should have found that it was enough to reduce the convictions to second degree murder. To allow state legislatures intent to allow for mitigated homicides simply because prosecutors feel it lets defendants off the hook is an injustice perpetrated nation wide. We need the Supreme Court to rule on actual innocence claims involving lesser mitigated offenses, for one can be actually innocent of the mens rea for first degree murder but still fall short of being justified. This is akin to being found actually innocent of an aggravating factor or sentence enhancements. Please take up this question that will impact self-defense cases to come from many states throughout the years. It is an injustice when one believes albeit unreasonably, that he needs to resort to self defense and is then sentenced the same as those who had no such mental state. The difference is drastic. In Illinois first degree murder carries 20 to 60 years to be done at 100% with a gun enhancement that adds

25 to life whereas second degree murder
carries only a 4 to 20 at 50% sentence. You
do 2 to 10 years at actual time versus 45 to life for
first degree murder plus the firearm enhancements.

Thank you for your consideration.

CONCLUSION

The petition for a writ of certiorari, should be granted.

Respectfully submitted,

Samman

6-11-22