

22-5561
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG 23 2022

OFFICE OF THE CLERK

TERRANCE BROOKS — PETITIONER
(Your Name)

vs.

STATE OF ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

APPELLATE COURT OF ILLINOIS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TERRANCE BROOKS

(Your Name)

MENARD IL 62259 P.O. BOX 1000

(Address)

MENARD ILLINOIS 62259

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether The Appellate Court of Illinois rejection of Mr. Brooks assertion of knowing use
of perjured testimony to obtain a conviction had a reasonable likelihood of a different outcome
was consistent with Napue v. Illinois.

LIST OF PARTIES

[4] All parties appear in the caption of the case on the cover page.

[] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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STATUTES AND RULES

725 ILCS 5 / 1122 (f)

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at People v Brooks, 2022IL11.LEXIS 522; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the ILLINOIS APPELLATE COURT appears at Appendix B to the petition and is

reported at PEOPLE V BROOKS 2022 IL App(1st 181670; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

For cases from state courts:

The date on which the highest state court decided my case was may 25, 2022. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

STATEMENT OF THE CASE

The second-stage dismissal of Terrance Brooks's successive post-conviction petition should be reversed where he made a substantial showing that the State knowingly used perjured testimony to obtain his conviction.

The State contends the circuit court properly dismissed Brooks's successive petition because his perjury claim is barred by *res judicata*, and he failed to establish cause and prejudice. The State's arguments have no merits.

A. The perjury claim was included in Brooks's initial successive petition.

As the threshold matter, the State incorrectly asserts that Brooks did not raise the perjury claim in his successive petition but raised it for the first time orally during the hearing on the State's motion to dismiss. (St. Br. 19 n.2, 31.) Brooks's post-conviction counsel, who was representing Brooks on his first petition on remand, initially filed an amended petition that raised the perjury claim in Claim II, but later agreed with the State that the petition should be filed as a successive petition. (C. 363, 370; R. 143.) However, contrary to what the State asserts in its brief, counsel did not withdraw the amended petition; rather, counsel filed a motion for leave to file a successive petition that identified the amended petition as the petition Brooks was seeking to file. (C. 457.) In addition, the motion for leave itself explicitly alleged that Cruthard's affidavit "avers that he did not see who shot him," "avers that he informed the State of this prior to trial," and "demonstrates that the State violated [Brooks's] Due Process

rights when the State knowingly presented false testimony." (C. 457.)

Thus, the perjury claim was raised in Brooks's successive petition.

The State in fact acknowledged in its first written motion to dismiss (which, of course, was filed before the hearing on the motion) that Brooks raised the perjury claim in his successive petition. (C. 1030-31.) Indeed, the State's motion argued that "Brooks cannot use [Cruthard's] affidavit to supplement a perjury claim in Claim II and then claim it supports innocence as well." (C. 1031.)

At the hearing on the State's motion to dismiss, however, the assistant State's Attorney (ASA) apparently became confused and, despite having addressed the issue in her written motion, asserted that the perjury claim was never raised in Brooks's petition. (R. 307.)

Brooks's counsel responded that he believed that the State had addressed the issue. (R. 307.) The ASA continued to maintain that the issue was not raised previously, and asked that Brooks's counsel file a supplemental petition setting forth the claim, which counsel agreed to do. (R. 307-13.) The supplemental successive petition filed by Brooks's counsel largely repeated the perjury claim already raised in the initial successive petition. (C. 1132.) The fact that the ASA got confused at the hearing does not negate the fact that the perjury claim was raised in Brooks's initial successive petition.

B. Cruthard's recantation was not addressed on direct appeal.

The State repeats the circuit court's erroneous contention that Cruthard's recantation was already addressed in Brooks's direct

appeal. (St. Br. 27, 35.) As discussed in Brooks's opening brief, Cruthard's recantation of his trial testimony, and whether the prosecution knew Cruthard's testimony was fabricated, was not before the Illinois Supreme Court on direct appeal. (Def. Br. 20.) Because Cruthard had not yet recanted at the time of the direct appeal, the issue *could not* have been before the court. Cruthard testified at trial that he *did* see who shot him, and claimed that he falsely told the police otherwise immediately after the shooting in order to protect himself and his family. He never repudiated his trial testimony or his identification of Brooks before the direct appeal, nor did he allege that he told the prosecutor that he did not actually see who shot him. Thus, the issue before the supreme court was not whether Cruthard testified falsely and whether the State knew his testimony was false, but was whether his identification of Brooks was tainted by the suggestive identification procedures. *Brooks*, 187 Ill. 2d 91, 97, 128-32 (1999).

On the other hand, Cruthard's sworn affidavit avers that he *did not* see the shooter, and that he told as much to the prosecutor. (R. 427.) Moreover, contrary to the State's suggestion, the affidavit does not state merely that Cruthard *initial* said he did not see the shooter (St. Br. 28), it affirmatively asserts, "I did not see who shot me" (R. 427). This is the first time Cruthard's recantation has been before the court. Accordingly, the State's contentions that the claims is barred by *res judicata* fails. (St. Br. 35.)

C. Brooks satisfied cause and prejudice.

Although this appeal involves the second-stage dismissal of Brooks petition, rather than a denial of leave to file the petition, Brooks acknowledges that the State may seek dismissal of his petition on grounds that he failed to prove cause and prejudice. *People v. Bailey*, 2017 IL 121450, ¶ 26. However, the State's arguments fail where Brooks's allegations, taken as true and liberally construed in his favor and in light of the record, make a sufficient showing of cause and prejudice. *People v. Coleman*, 183 Ill. 2d 366, 381–82 (1998) (at the second stage, a petitioner's allegations must be taken as true and liberally construed in favor of the petitioner and in light of the trial record).

The State first wrongly asserts that Brooks was never granted leave to raise the perjury claim where the claim was not included in his initial successive petition. (St. Br. 31.) As already discussed above, the State's contention that the perjury claim was not included in Brooks's initial successive petition is refuted by the record. Further, the circuit court granted Brooks leave to file his entire petition. (R. 211–12.) Thus, Brooks was granted leave to file the perjury claim.

The State next argues that Brooks cannot show cause because (1) he raised a perjury claim in his first post-conviction petition, and therefore, the instant perjury claim is procedurally barred, and (2) there is no indication that Cruthard's affidavit could not have been obtained prior to the filing of Brooks's first post-conviction petition. (St. Br. 31–34.) The State is wrong on both counts.

Preclusion doctrines do not apply because Cruthard's affidavit is newly discovered evidence, and thus, the instant perjury allegation is a new claim. *People v. Ortiz*, 235 Ill. 2d 319, 332–33 (2009) (“Where a defendant presents newly discovered, additional evidence in support of a claim, collateral estoppel is not applicable because it is not the same ‘claim.’”). As argued previously, Cruthard’s recantation was never presented to a court previously. Indeed, when dismissing Brooks’s first post-conviction petition, the circuit court noted that Cruthard had not recanted at that point. (C. 392.) In addition, Brooks explained in his first post-conviction petition that while his investigator spoke with Cruthard, Cruthard was not willing to provide a recantation at that time because he was afraid of being charged with perjury for lying at Brooks’s trial. (App. A-7; Supp. C. Vol. 2. 302.)¹ As such, Cruthard’s affidavit constitutes newly discovered evidence that could not have been presented earlier. See *People v. Edwards*, 2012 IL 111711, ¶ 38 (although petitioner was previously aware of witness, witness’s affidavit constituted newly discovered evidence because no amount of dili-

¹“Supp. C.” refers to the three volume supplemental common law record from the appeal of Brooks’s first petition, appellate court no. 1-09-0104. As appellate counsel noted in Brooks’s opening brief and motion for extension of time to file reply brief, at the time of those filings counsel had not been able to locate the records from Brooks’s direct appeal and first post-conviction proceedings. However, after this Court granted Brooks’s extension motion, the Cook County State’s Attorney’s Office informed the State Appellate Defender’s Office that the State had the records. Appellate counsel is in the process of having the records supplemented to the record in this appeal.

gence could have forced the witness to incriminate himself); *People v. Molstad*, 101 Ill. 2d 128, 135–36 (1984).

This Court's decision in *People v. Harper*, 2013 IL App (1st) 102181, is instructive. There, the petitioner's first post-conviction petition alleged actual innocence based on the confession of a "James Dell." *Id.* ¶ 17. However, the claim was not supported by affidavit or any other documentation. *Id.* The petition was summarily dismissed. *Id.* ¶ 19. Years later, the petitioner filed a third successive petition alleging actual innocence based on a confession by James Bell. *Id.* ¶ 23. The claim was supported by a newly obtained affidavit by Bell and the transcripts of Bell's testimony from a codefendant's post-conviction proceedings in which Bell confessed to the crime for which the petitioner was convicted. *Id.* The State argued that *res judicata* barred the claim because the circuit court had previously rejected the defendant's actual innocence claim based on the confession of "James Dell." *Id.* ¶ 40.

This Court rejected the State's argument, holding that Bell's affidavit was newly discovered where the petitioner did not know him and had no contact with him, and therefore, even if "James Dell" and James Bell were the same person, the petitioner was not precluded from raising his claim because it constituted a new claim based on newly discovered evidence. *Id.* ¶ 43; see also *People v. Weathers*, 2015 IL App (1st) 133264, ¶¶ 35–36 (holding that, although defendant previously filed, but subsequently withdrew, a motion to suppress

statements alleging he was physically coerced into confessing, defendant established cause for raising the coercion claim again in a successive petition where it was supported by a report from the Illinois Torture Inquiry and Relief Commission that was not available at the time he filed his first petition); *People v. Nicholas*, 2013 IL App (1st) 103202, ¶ 42 (although claim that petitioner's confession was coerced was previously raised in his first post-conviction petition, he established cause to re-raise the claim in his successive petition were he presented new supporting evidence that added "a significant detail"—the identity of one of the officers involved).

What is more, Brooks did not "just assert[] that Cruthard's evidence was 'newly discovered'" as the State claims. (St. Br. 32.) As mentioned above, Brooks explained in his first post-conviction petition that Cruthard was not willing to provide an affidavit at that time in fear of incriminating himself. Brooks also asserted in his response to the State's motion to dismiss the instant successive petition that he satisfied cause because he could not control when Cruthard would agree to supply an affidavit. (C. 1118.) Thus, the record shows an objective, external factor that impeded Brooks's ability to present Cruthard's recantation earlier. The State's attempt to analogize this case to *People v. Wideman*, 2016 IL App (1st) 123092, therefore fails. (St. Br. 33.)

And so, because Cruthard's recantation is newly discovered evidence that could not have been presented in Brooks's initial post-

conviction petition, Brooks has satisfied cause and *res judicata* does not apply.

The State further argues that Brooks did not demonstrate prejudice because Cruthard's affidavit is duplicative of what was previously litigated. (St. Br. 35.) However, as already discussed above and in Brooks's opening brief, Cruthard's affidavit recanting his identification of Brooks is newly discovered evidence that has never been previously addressed.

The State next asserts that there is no reasonable likelihood that Cruthard's recantation would change the outcome of a trial where he was one of four eyewitness. (St. Br. 36.) However, the State ignores that *every* eyewitness that implicated Brooks has now recanted, and thus, would not identify Brooks at a new trial. (Def. Br. 21-22.) Evidence that Cruthard falsely identified Brooks would also corroborate the other witness's claims that they were pressured to finger Brooks. The State also fails to address the inconsistencies in the other witnesses' trial testimony. (Def. Br. 21-22.) Thus, the State attempt to distinguish *People v. Olinger*, 176 Ill. 2d 326 (1997), fails. (St. Br. 36.)

The State's attempt to distinguish *People v. Mitchell*, 2012 IL App (1st) 100907, also fails. (St. Br. 36.) The State argues that, unlike the petitioner in *Mitchell*, Brooks did not provide any new evidence. (St. Br. 36-37.) However, as discussed above, the State's contention that Cruthard's affidavit is not new evidence is erroneous.

The State's reliance on *People v. Lucas*, 203 Ill. 2d 410 (2002), is misplaced as the case is readily distinguished. Unlike Cruthard, the witness in *Lucas* was not critical because he "did not offer direct identification evidence against the defendant." *Id.* at 424. In addition, the subject matter of the perjured testimony in *Lucas* was simply the promises made to the witness in return for his testimony. *Id.* at 419–21. Cruthard, in contrast, testified falsely about the most critical point at issue—the identity of the shooter.

Finally, the State does not dispute that Javan Deloney's and Ivan Smith's torture allegations against the detectives in this case lend credibility to Cruthard's, Jerome Taylor's, and Allen Epton's claims. (Def. Br. 23.)

In sum, the State's arguments that the perjury claim is barred by *res judicata*, and that Brooks did not satisfy cause and prejudice, are all without merit. Because Brooks's petition, taken as true, made a substantial showing that the State knowingly used perjured testimony to obtain his conviction, this Court should reverse the dismissal of Brooks's successive petition and remand the cause for a third-stage evidentiary hearing.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**U.S CONSTITUTION 14th AMENDMENT: VIOLATION
OF DUE PROCESS**

REASONS FOR GRANTING THE PETITION

THIS COURT SHOULD GRANT PETITION
WHERE CHICAGO POLICE USE OF FORCE
TO COMPEL STATEMENTS LATER RECANTED
AND IDENTIFIED AS PERJURY RESULTED
IN DUE PROCESS VIOLATION IGNORED BY
STATE COURTS, THIS COURT SHOULD GRANT
PETITION.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

TERRANCE BROOKS

Terrance Brook

8/23/2022

Date: