

EXHIBIT 19

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

NOTICE OF FILING AND MOTION

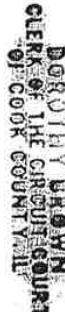
TO: Cook County State's Attorney's Office
Post-Conviction Unit
2650 S. California Ave., 12th Floor
Chicago, IL 60608

You are hereby notified that: On September 18, 2014, I caused to be filed with the Clerk's Office at 2650 S. California Avenue, Chicago, Illinois 60608, the foregoing Petitioner Ben Baker's Motion for Leave to File Successive Amended Post-Conviction Petition and Motion to Recharacterize *Pro Se* Motion for Relief from Judgment as Post-Conviction Petition. Counsel for petitioner will present the motion before Judge Ford in his courtroom at 2650 S. California Ave., Chicago Illinois, 60608 on September 19, 2014 at 10:00am or as soon as the motion may be heard.

One of Petitioner's Attorneys

One of Petitioner's Attorneys

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Tara Thompson
Elizabeth Wang
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Counsel for Petitioner-Defendant Ben Baker



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DO-JOINT 052999

CERTIFICATE OF SERVICE

I, Elizabeth Wang, an attorney, hereby certify that on September 18, 2014, I caused to be served via U.S. Mail the foregoing Petitioner Ben Baker's Notice of Filing on counsel of record for the People of the State of Illinois, as listed below.

Elizabeth Wang

One of Petitioner's Attorneys

Persons served:

Cook County State's Attorney's Office
Post-Conviction Unit
2650 S. California Ave., 12th Floor
Chicago, IL 60608

DOROTHY BROWN COOK
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY

2014 SEP 18 PM 3:14

FILED

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

**PETITIONER'S MOTION FOR LEAVE TO FILE FIRST SUCCESSIVE
AMENDED PETITION FOR POST-CONVICTION RELIEF**

AND

**MOTION TO RECHARACTERIZE *PRO SE* MOTION FOR RELIEF FROM
JUDGMENT FILED FEBRUARY 26, 2014 AS PETITION FOR
POST-CONVICTION RELIEF**

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CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

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Now comes Petitioner, BEN BAKER, by and through his attorneys, The Exoneration Project at the University of Chicago Law School, and hereby respectfully submits this Motion for Leave to File First Successive Amended Petition for Post-Conviction Relief and Motion to Recharacterize his *Pro Se* Motion for Relief from Judgment filed February 26, 2014 as Petition for Post-Conviction Relief. In support of these motions, Petitioner states as follows:

1. Petitioner Ben Baker was convicted of possession of a controlled substance with intent to deliver in June 2006. He is innocent of the charges. At his trial, the only evidence presented against him was the testimony of four police officers. The leader of those officers—Sgt. Ronald Watts—was convicted last year on federal corruption charges very similar to the corruption that Baker testified about at his trial. *See United States v. Watts*, 12 CR 87-1 (see documents attached to Baker's proposed petition, Exhibit 1). This newly discovered evidence shows Baker's innocence.

2. On February 26, 2014, Petitioner filed a *pro se* motion for relief from judgment pursuant to 735 ILCS 5/2-1401. In that motion, Petitioner alleged newly discovered evidence showing his actual innocence relating to Sgt. Watts' recent federal conviction on corruption charges and an ineffective assistance of counsel claim. This *pro se* 2-1401 motion is currently pending. Petitioner seeks in this motion to have his February 26, 2014 *pro se* 2-1401 motion construed as a petition for post-conviction relief and for leave to file his amended first successive petition

for post-conviction relief (attached as Exhibit 1, drafted with assistance of counsel) in its place.

3. On July 31, 2014, undersigned counsel for Petitioner, The Exoneration Project at the University of Chicago Law School, filed an appearance on Petitioner's behalf. *See Exhibit 2 (Appearance for Defendant Ben Baker).* During the status hearing on that date, the court set another status hearing for August 27, 2014.

4. On August 27, 2014, the court indicated for the first time since undersigned counsel's appearance in the case that the court intended to rule on Mr. Baker's *pro se* 2-1401 motion filed in February 2014. The court set September 19, 2014 as a ruling date. Counsel did not have an opportunity to state on the record that counsel would be seeking leave to file an amended pleading on Mr. Baker's behalf.

5. "Generally, when a party asks to amend a [postconviction pleading], leave to do so is freely given." *People v. Cleveland*, 2012 IL App (1st) 101631, ¶ 57 (internal quotation marks omitted). In his *pro se* 2-1401 motion, Baker did not attach the guilty plea and sentencing transcripts from *United States v. Watts* (or *United States v. Mohammed*), because he was and is incarcerated and did not have access to them. Baker was not represented by counsel at that time. It was not until he became represented by the undersigned counsel and counsel filed an appearance on his behalf, that Baker was able to obtain the guilty plea and sentencing transcripts wherein Ronald Watts, a key officer who testified against Baker at his

trial, pled guilty to stealing U.S. government funds and was sentenced to 22 months' imprisonment.

6. Attached as Exhibit 1 is Petitioner Ben Baker's Amended First Successive Petition for Post-Conviction Relief. Attached as Exhibits A-N to that petition is documentary evidence supporting Petitioner's claims.

Grounds for Permitting the Proposed Amended Successive Petition

7. The proposed amended petition, attached as Exhibit 1, alleges that newly discovered evidence in the form of Sgt. Watts' conviction on federal corruption charges, shows that Ben Baker is actually innocent of the charges.

8. As alleged in Baker's petition, the evidence presented against him at his trial consisted exclusively of the testimony of three police officers who claimed that they caught him with controlled substances in at Ida B. Wells housing project. Baker has claimed all along, and he testified at trial, that the officers who arrested him, including Ronald Watts, were corrupt and that they placed a false case on him because he refused to pay Watts \$1,000.

9. In rejecting Baker's motion for a new trial, Judge Toomin indicated that the result may have been different if there had been evidence to corroborate Baker's testimony.

10. Baker now has that evidence, which he could not have discovered any earlier with due diligence, and which would probably change the result on retrial.

11. Baker previously filed one *pro se* post-conviction petition on March 16, 2009. In that *pro se* petition, he raised only issues concerning his sentence. On May 1, 2009, this court dismissed Baker's *pro se* petition.

12. Petitioner's claims as set forth in his proposed petition here (see Exhibit 1) merit consideration under the cause and prejudice test. A successive post-conviction petition is permissible "if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and [that] prejudice results from that failure." 725 ILCS 5/122-1(f). Cause is defined as an objective factor, external to the defense, that impeded the defendant's effort to raise the claim in an earlier proceeding. *People v. Pitsonbarger*, 205 Ill.2d 444, 460 (2002). Prejudice is defined as an error so serious that it affected the entire trial to the extent that the resulting conviction violates due process. *Id.* at 464. Both requirements must be satisfied in order for the defendant to prevail under this test. *Id.*

13. There is manifest cause for Baker's failure to bring his claim in his initial post-conviction petition filed in 2009. At the time of his first, *pro se* petition, Ronald Watts had not yet been indicted (much less convicted) on federal charges stemming from corrupt conduct. This is an objective factor, external to Baker's defense, that prevented Baker from raising this claim earlier. Accordingly, Baker has good cause for not bringing this claim in his first petition for post-conviction relief.

14. Prejudice is likewise readily apparent because Baker's claim is that his conviction relied exclusively on the testimony of the officers, including Sgt. Watts, who was the leader and supervisor of the officers involved in arresting Baker. The newly discovered evidence presented in Baker's amended petition demonstrates that he is actually innocent. Baker's story was that Watts put a false drug case on him because he refused to pay Watts a bribe. In July 2013, Watts pleaded guilty to stealing money from a person he thought was a courier for drug dealers but who was actually a confidential source for the FBI. The government alleged that Watts' misconduct went back to at least 2007 and that he had likely done this on other occasions. It also specifically alleged that he had threatened to falsely arrest people who did not cooperate with him and pay him bribes. If Watts' pattern and practice of misconduct had been known at the time of Baker's trial, the result may have been different. In finding Baker guilty, Judge Toomin noted that there was no evidence corroborating Baker's testimony and that it might have been different if there had been.

15. Separately, the bar against multiple petitions may be relaxed "when fundamental fairness so requires." *Pitsonbarger*, 205 Ill.2d at 458. "In order to demonstrate a miscarriage of justice to excuse the application of the procedural bar, a petitioner must show actual innocence." *People v. Edwards*, 2012 IL 111711, ¶ 23 (citing *Pitsonbarger*, 205 Ill.2d at 459). When a defendant claims actual innocence, the question is whether his motion for leave to file a successive petition and

supporting documentation set forth a colorable claim of actual innocence. *People v. Adams*, 2013 IL App (1st) 111081, ¶ 30.

16. Newly discovered evidence requires a new trial when: (1) it has been discovered since the trial; (2) it is of such a character that it could not have been discovered prior to the trial by the exercise of due diligence; (3) it is material to the issue but not merely cumulative; and (4) it is of such a conclusive character that it will probably change the result on retrial. *People v. Molstad*, 101 Ill.2d 128, 134 (1984); *People v. Coleman*, 2013 IL 113307, ¶ 96 (2013); *People v. Ortiz*, 235 Ill.2d 319, 333 (2009). When defendant raises a claim of actual innocence, he is excused from satisfying cause and prejudice in order to obtain leave to file his successive post-conviction petition. *Edwards*, 2012 IL 111711, ¶ 24.

17. Baker has satisfied these requirements here. New “means the evidence was discovered after trial and could not have been discovered earlier through the exercise of due diligence.” *Coleman*, 2013 IL 113307, ¶ 96. Material evidence is anything “relevant and probative of the petitioner’s innocence” and noncumulative means that the evidence “adds to what the jury heard.” *Id.* To be conclusive, “evidence need not be completely dispositive of an issue to be likely to change the result upon retrial.” *Id.* ¶¶ 96-97. Instead, the appropriate measure is whether the new evidence, when considered together with the trial evidence, “would probably lead to a different result.” *Id.*

18. The evidence of Watts’ (and his partner Mohammed’s) conviction in federal court on corruption charges is new: Watts was convicted on July 19, 2013

and sentenced in October 2013. Clearly, Petitioner did not have this evidence available to him at the time of his trial in 2006. Nor did he have this evidence available to him at the time of his *pro se* post-conviction petition filed in 2009.

19. This evidence is also material: it is relevant and probative of Baker's innocence. It tends to support his version of events that he testified to at his trial—that the officers—led by Watts—planted drugs on him because he refused to pay Watts a bribe. The only evidence presented against Baker at his trial was the testimony of Officers Nichols, Gonzalez, Jones, and Watts. The only evidence that Judge Toomin had to weigh was the credibility of the officers versus the credibility of Baker. The evidence that Watts had committed this kind of misconduct on other occasions tends to corroborate Baker's testimony. Even though the conduct that Watts pleaded guilty to in 2013 stemmed from an FBI sting that occurred in 2011, the government noted in a pleading that Watts' misconduct went back to "at least" 2007, which is very close in time to Baker's conviction in 2006.

20. In addition, this evidence is noncumulative: there was no evidence of Watts' corruption presented at Baker's trial, and this evidence of Watts' federal conviction is noncumulative.

21. And finally, this evidence would probably lead to a different result on retrial: as Judge Toomin indicated, if there had been any evidence to corroborate Baker's testimony that Watts and the other cops involved in arresting him were corrupt, there might have been a different result. Petitioner alleges that this evidence would probably lead to a different result on retrial. *See People v.*

Patterson, 192 Ill.2d 93, 139-45 (2000) (finding evidence of a pattern and practice of police conduct new, material and noncumulative evidence that would probably change the result on retrial, where that evidence did not exist until after defendant's trial). A jury could reasonably infer that Watts' misconduct took place over many years and did not simply begin in 2007.

CONCLUSION

WHEREFORE, Petitioner Ben Baker respectfully requests that this Court:

- (1) recharacterize his *pro se* motion for relief from judgment pursuant to 2-1401 filed on February 26, 2014 as a petition for post-conviction relief, and
- (2) grant leave to file his first successive amended petition for post-conviction relief, attached hereto as Exhibit 1.

Respectfully submitted,



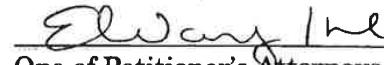
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Counsel for Petitioner-Defendant Ben Baker

CERTIFICATE OF SERVICE

I, Elizabeth Wang, an attorney, hereby certify that on September 18, 2014, I caused to be served via U.S. Mail the foregoing Petitioner Ben Baker's Motion for Leave to File Successive Amended Post-Conviction Petition and Motion to Recharacterize *Pro Se* Motion for Relief from Judgment as Post-Conviction Petition, on counsel of record for the People of the State of Illinois, as listed below.



One of Petitioner's Attorneys

Persons served:

Cook County State's Attorney's Office
Post-Conviction Unit
2650 S. California Ave., 12th Floor
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IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

AMENDED FIRST SUCCESSIVE PETITION FOR
POST-CONVICTION RELIEF OF BEN BAKER

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Counsel for Petitioner-Defendant Ben Baker

Now comes Petitioner, BEN BAKER, by and through his attorneys, The Exoneration Project at the University of Chicago Law School, and respectfully submits this amended first successive petition for post-conviction relief pursuant to the Post Conviction Hearing Act, 725 ILCS § 5/122-1 *et seq.* Petitioner alleges and states the following:

INTRODUCTION

1. Petitioner Ben Baker was convicted of possession of a controlled substance with intent to deliver in June 2006. He is innocent of the charges. At his trial, the only evidence presented against him was the testimony of four police officers. The leader of those officers—Sgt. Ronald Watts—was convicted last year on federal corruption charges very similar to the corruption that Baker testified about at his trial. This newly discovered evidence shows Baker's innocence.
2. On March 23, 2005, Ben Baker was arrested at the Ida B. Wells public housing complex by a team of Chicago Housing Authority (CHA) police officers working under the direction of Sergeant Ronald Watts. ROP U9-U10, U20-21.¹ Following his arrest, Baker was charged by indictment on April 13, 2005, with one count of possession of heroin with intent to deliver and three counts of possession of cocaine with intent to deliver. S.C. 1-5.

¹ For purposes of this petition, the record (from the record on Baker's direct appeal, No. 06-3352) is referenced as follows: C. __: the one-volume common law record; S.C.I __: the one-volume supplemental common law record containing the indictment; S.C.II __: the one-volume supplemental common law record containing, *inter alia*, the documents inspected *in camera* by Judge Toomin; ROP __: the two-volume report of proceedings; S.R.I. __: the 8-page supplemental report of proceedings of July 7, 2005; and S.R.II. __: the 33-page supplemental report of proceedings of June 5, 2006. The ROP and S.R.II are attached for the court's convenience as Exhibits A-1 (ROP vol. 1), A-2 (ROP vol. 2), and B, respectively.

3. The case was assigned to Judge Michael Toomin. C. 3; ROP B3. Baker took a bench trial, and his defense at trial was that he was falsely accused of the offenses after he refused to pay a bribe solicited by Sgt. Watts and that Watts and officers working with him routinely demanded bribes from persons he thought to be drug dealers at Ida B. Wells. *See* ROP U6-7. The evidence at trial consisted of Baker's testimony versus the testimony of Watts and three other police officers. In finding Baker guilty, Judge Toomin found the officers to be credible, and in denying a motion for new trial, he stated that if there had been corroboration of Baker's testimony, the result may have been different. ROP Y8.

4. There now exists newly discovered evidence corroborates Baker's testimony of being framed by corrupt police officers. In May 2012, Sgt. Watts was charged in federal court with stealing money belonging to the United States government. Exhibit C (Information filed in *United States v. Watts*, 12 CR 87-1); Exhibit D (Criminal Complaint filed in *United States v. Watts*, 12 CR 87-1). On July 19, 2013, Watts pleaded guilty to that charge. *See* Exhibit E (Plea Hearing Transcript in *United States v. Watts*, 12 CR 87-1). Specifically, Watts pleaded guilty to taking money from an individual he believed was a courier for drug dealers and giving that courier a kickback in exchange for allowing him to steal the money he thought belonged to drug dealers. *Id.* at 16-19. The courier turned out to be a confidential informant for the FBI. *Id.* at 16-18. Sgt. Watts pleaded guilty as charged. *Id.* at 19. Judge Sharon Johnson Coleman sentenced Watts to 22 months in federal prison, one year mandatory supervised release after completion of that

sentence, \$5,200 in restitution and a \$100 special assessment. Exhibit F
(Sentencing Hearing Transcript in *United States v. Watts*, 12 CR 87-1) at 26.

Pretrial Proceedings

5. On September 28, 2005, at defense counsel's request, the court signed an order directing the Chicago Police Department's Internal Affairs Division (IAD) to deliver its "entire files, notes, complaints and any and all other information" on Chicago police sergeant Ronald Watts and officers Alvin Jones, Robert Gonzalez, and Douglas Nichols to Judge Toomin for an *in camera* inspection. C. 38.

6. On the next court date three weeks later, defense counsel represented that, after requesting IAD's files on these officers, Baker, who was on bond, had been arrested again at the direction of the same officers. ROP I3-4, *see also* C. 59. Counsel stated that the circumstances of the arrest were "highly unusual" and that a police lieutenant had asked Baker to prepare and sign a statement regarding the officers' conduct. ROP I4. Assistant State's Attorney David Navarro, who appeared for the prosecution, had no objection to Baker remaining free on an I-bond, and Judge Toomin agreed. ROP L4.

7. When Baker was arrested again in December 2005 by one of the officers whose IAD files Baker had requested (Alvin Jones), Navarro, who was "very involved" in Baker's situation, again had no objection to another I-bond, and again Judge Toomin agreed. ROP N3-N6, P4-5; C. 58. For some reason not apparent from the record, the amount of Baker's bond was increased, and the State began objecting to I-bonds. ROP P5. At defense counsel's request, Judge Toomin reduced

Baker's bail to \$30,000 with the expectation that Baker would be able to make bond.

ROP P6.

8. At a status hearing in April 2006, after representations by the prosecutor that Navarro was no longer involved in the case, defense counsel requested that the material previously sent to the court from IAD be released to the defense. ROP S3-S4. Judge Toomin indicated that he had not released the IAD files earlier because there was an ongoing investigation. ROP S4. The prosecutor then represented that she would contact Navarro to ascertain his position on Baker's case. *Id.* The court informed defense counsel that, if it turned out that the investigation was over, it would provide defense counsel with the subpoenaed IAD documents. *Id.* A short status date was set.

9. A week later, on April 28, 2006, defense counsel informed the court that he had been in contact with ASA Navarro, that they were at an "impasse" with respect to negotiations, and that the case should be set for trial. ROP T3. When defense counsel again brought up the subject of the material from IAD, Judge Toomin indicated he wanted to discuss the matter in chambers with ASA Navarro, who was not present, before distributing them. *Id.*

10. The documents to which Judge Toomin referred included a nine-page report generated by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), dated April 14, 2005, as well as several IAD reports. S.C.II, 27-35. The ATF report concerned a federal investigation of the Gangster Disciples street gang at the Ida B. Wells housing project and described an interview with an individual named Wilbert Moore, a drug dealer at the project. S.C.II, 27.

11. Moore was interviewed by federal agents on April 7, 2005, at a Chicago Police Department facility. S.C.II, 27, ¶ 1. Moore was informed that his cooperation would be brought to the attention of the United States Attorney's Office. S.C.II, 27, ¶ 2.

12. Moore stated that he and his associates sold heroin and cocaine in the Wells project. S.C.II, 27, ¶ 1. In paragraphs 53 through 58, the report summarized Moore's dealings with Sgt. Ronald Watts and members of Watts' team including Officer Alvin Jones. S.C.II, 34. According to Moore, he had personally paid Watts \$7,000, had given him firearms, and had been present when his associate, Roy Bennett (aka "Shock"), paid Watts \$10,000. S.C.II, 34, ¶¶ 53-54. Moore explained that he would pay Watts when Watts had caught Moore or one of his workers in possession of either firearms or narcotics. S.C.II, 34, ¶ 54.

13. Moore reported that a rival drug dealer, [REDACTED] was also paying Watts money. S.C.II, 34, ¶ 56. According to Moore, approximately two years previously, [REDACTED] decided that he was not going to continue to pay Watts, at which point Watts shot at [REDACTED]. *Id.*

14. At the same time he released the ATF report, Judge Toomin turned over several Chicago Police IAD reports. In one dated September 17, 2004 (approximately six months prior to Mr. Baker's arrest), IAD reported that a "Cooperating Individual" had informed IAD that officers assigned to the Public Housing Unit were demanding and receiving payment from drug dealers in exchange for allowing them to sell drugs. S.C.II, 41. The "cooperating individual" reported that one of the officers had shot at him in 2003. *Id.*

15. In a report dated three days later, IAD reported that members of the Chicago Police Department had met with members of the United States Attorney's Office; the Federal Bureau of Investigation; the Drug Enforcement Administration; and the Bureau of Alcohol, Tobacco, Firearms and Explosives. S.C.II, 45. At the meeting, it was determined that there would be a federal investigation and that the "cooperating individual" would be prosecuted in federal court. *Id.*

16. In a report dated March 9, 2005 (two weeks prior to Mr. Baker's arrest), IAD reported that Sgt. Watts had been accused of taking money from drug dealers in exchange for allowing them to remain in business. S.C.II, 67. Watts was also accused of arresting those drug dealers who refused to pay. *Id.*

17. A report dated June 28, 2005, detailed IAD's meeting with Ben Baker the previous month, during which Baker informed IAD and Assistant State's Attorney David Navarro that (1) Sgt. Watts had requested money from him in exchange for allowing him to stay in business; (2) Baker had refused; and (3) Sgt. Watts had then fabricated a case against him as a result of the refusal. S.C.II, 70. Baker also alleged that Sgt. Watts had shot at [REDACTED] when he refused to pay the drug "tax." *Id.* Further, the report stated, "Baker's allegations against Sergeant Watts are essentially the same as those told by two other known drug dealers at the Ida B. Wells Housing Projects, [REDACTED] and Wilbert Moore. These three men had no knowledge the other was talking to a [sic] Law Enforcement Agents." *Id.* Finally, the report indicated that [REDACTED] who was then in federal custody and "working off a case," was brought to IAD by a federal drug enforcement

program ("HIDTA" or High Intensity Drug Trafficking Areas) and was made available to other sections of the Chicago police. *Id.*

Trial and Sentencing

18. Baker's bench trial began on May 23, 2006. ROP T3-4. Following Baker's jury waiver, the State presented, as its case-in-chief, the live testimony of a single witness and a stipulation. ROP U4-U5.

19. Chicago police officer Douglas Nichols testified that on March 23, 2005, he was working as a CHA police officer and was assigned to the Ida B. Wells complex. ROP U9. At 3:45 p.m., he and his partner, Manuel Leano, under the direction of their supervisor Sgt. Ronald Watts, went to the Wells project to check for narcotics activity. ROP U10-11, U21. The building they were searching, 527 E. Browning, had two stairwells. ROP U10, U12. According to Nichols, he and Leano began their search by ascending the rear stairway. ROP U12. He claimed that when the two officers arrived on the third floor, they observed Ben Baker standing in the hallway approximately five feet away with two other individuals. ROP U12-14. Baker was reportedly holding a clear plastic Ziploc sandwich bag, containing numerous smaller baggies of a white powder, which Nichols suspected to be narcotics. ROP U14.

20. Nichols further testified that, when the officers announced they were police, Baker fled down the stairs. ROP U11-14. According to Nichols, both he and Leano pursued Baker and, as they did so, Nichols radioed other officers that they were engaged in a foot chase. ROP U15. Nichols followed approximately three feet behind Baker and lost sight of him only momentarily as he rounded the bend in the

stairway. *Id.* When Nichols arrived in the lobby, Baker was being detained by another police unit. *Id.* Nichols acknowledged that Baker stopped for the officers in the lobby without resisting or trying to flee. ROP U24-25. Baker was still holding the clear plastic bag which contained 110 clear plastic bags of suspected heroin. ROP U15-16. Nichols then performed a custodial search and reportedly recovered another clear plastic bag containing 68 smaller bags of suspected crack cocaine and \$819 in cash from Baker's pants pockets. ROP U16. Nichols did not specify the denominations of the cash.

21. Baker was transported to the Second District police headquarters. ROP U16-17. According to Nichols, Baker was then Mirandized and, in response to questioning stated, "Them blows are mine but those rocks ain't." ROP U17. "Blows" is a street term for heroin while "rocks" refers to crack cocaine. ROP U18-19. Nichols turned over the suspected narcotics to his partner, Officer Leano. ROP U19. The parties later stipulated that Leano would testify that he received and inventoried two Ziploc bags matching the description of those reportedly recovered by Nichols from Baker. ROP U28. The parties further stipulated that a forensic chemist analyzed the contents of the bags and determined that one of the bags contained at least 15.3 grams of heroin and that the other contained at least 5.3 grams of cocaine. ROP U29-30.

22. On cross-examination, Nichols stated that, although directed to the building at 527 Browning by Sgt. Watts, Watts had not told the officers to look for anyone in particular. ROP U20. Nichols stated that he worked for Sgt. Watts since November 2004, ROP U20, U26, and that as his supervisor, Watts wrote his

performance reviews, ROP U21. Nichols denied ever seeing Watts engage in criminal activities. ROP U26.

23. Baker's trial counsel called Baker to testify as the only witness for the defense. Baker recounted the interactions he had had with Sgt. Watts and his team in the months and years preceding his arrest on the present charges. Baker stated that he had lived at the Wells housing complex with his wife and three sons since 1997. ROP U33. Baker had known Watts as a Chicago police sergeant for approximately three or four years and had had conversations with Watts about narcotics activity in his apartment building on 20 or more occasions. ROP U33, U35.

24. In mid-June 2004, Baker received a call from a friend, who informed Baker that Watts and his officers were at Baker's building, had recovered heroin from a mailbox, and were threatening to "put it on" Baker when they saw him to ensure that he went to jail. ROP I37-38.

25. Shortly thereafter, on June 20, 2004, Baker had a conversation with a fellow resident of the Wells housing project named Charles Lawrence. ROP U38. Lawrence informed Baker that Sgt. Watts wanted to talk to him (Baker). ROP U39. Baker drove Lawrence to a pay phone approximately one and one-half miles from the project. ROP U39-40. There Lawrence placed a call and told the party on the other end that he was with "Little Benny" (Ben Baker), who was "ready to work it out." ROP U41. Lawrence informed Baker that Sgt. Watts said it would cost \$1,000. ROP U42. Baker understood this to mean that, if he (Baker) paid Watts \$1,000, he would not be arrested or charged in connection with the narcotics recovered from the mailbox earlier that month. ROP U42-43. Baker then spoke personally to Watts

on the phone to ascertain whether he and Watts would be "cool" if Baker gave Lawrence the \$1,000 requested by Watts. ROP U44. Watts told Baker that Baker would still have to fight the mailbox case but that Baker would prevail. *Id.* Baker hadn't even been arrested for the mailbox case yet. ROP U44-45. Baker responded that he felt he should not have to fight the case at all if he paid Watts \$1,000. ROP U45. Baker then told Watts he wouldn't pay him a bribe, hung up the phone, and left. ROP U45-46.

26. Three weeks later, in mid-July 2004, Watts and three of his men knocked at the door of the Bakers' apartment. ROP U46, U93. Baker's wife answered the door and the police officers entered the apartment with their guns drawn. ROP U46. Watts and the officers began searching the apartment. ROP U47. When Baker asked why, Watts stated it was because Baker had just been in the hallway "serving" (selling drugs), which was untrue. *Id.* Watts further stated that, if the officers found any contraband in the apartment, everyone there would be arrested; if they did not find anything illegal, Baker would be arrested and charged with possessing the narcotics from the mailbox. ROP U48. When the officers did not find anything illicit in the Baker apartment, Watts arrested and charged Baker with possessing the mailbox drugs. *Id.*

27. Baker was incarcerated for over four months in connection with that case, but eventually the State dismissed the charges following a hearing on a motion. ROP U49, U94-95. One week after Baker's release from custody, he encountered one of Watts's men, Officer Alvin Jones, whom Baker had known for three or four years. ROP U49-50. Sgt. Watts and Officer Jones frequently rode

together in the same car, and Baker had seen them together over 50 times. ROP U51-52. When Baker told Jones that the previously dismissed mailbox case had been "BS," Jones replied that it was "part of the game[:] you win some, you lose some." ROP U52. Jones explained that Baker had successfully defended against the mailbox case because Jones's partner, Kenneth Young, had "fucked up on his testimony" against Baker. *Id.* Jones assured Baker that, the next time they gave Baker a case, the officers would make it stick. ROP U53. Baker understood Jones to mean that the officers were planning to "put a case" on him. ROP U54.

28. Baker then testified regarding the circumstances of his arrest for the case for which he was on trial. On March 23, 2005, Baker was walking down the stairwell of his apartment building when he encountered two individuals, Gregory Young ("BayBay") and someone known to him only as Twanie, engaged in a drug transaction on the third floor landing. ROP U54-56, U77. Twanie was holding bags of cocaine. ROP U57. At this point, Officer Nichols came from the hallway into the stairwell with his gun drawn. ROP U56. Nichols was alone and not with his partner. *Id.* Nichols ordered the three men into the hallway and directed them to put their hands against the wall. ROP U57. The three men initially complied, but then Young fled down the closest stairwell. *Id.* Baker also fled, following Young down the stairs, because Officer Jones had previously indicated the officers were planning to give Baker another case and Baker knew that Nichols was a member of Watts' team. ROP U57-58, U81. Nichols did not follow the two men down the stairs. ROP U81.

29. When Young and Baker reached the first floor, Young turned toward the rear of the building while Baker went toward the front. ROP U90-91. As Baker arrived at the front door, he was stopped by Nichols' partner, Manny Leano, who put his hands on Baker's chest. ROP U58. Leano placed Baker in handcuffs, searched his pockets, and placed him in the back seat of a police car. ROP U59. Baker was searched by Leano, not Nichols, and he did not have narcotics or plastic bags in his hands or pockets prior to his arrest. ROP U58-60. Baker next saw Nichols when Nichols exited the apartment building, holding two bags. ROP U59-60. Nichols gave the bags to Leano who was still standing outside his vehicle. ROP U60.

30. Once Nichols and Leano were in the car with Baker, Nichols placed a call on his cell phone. ROP U61-62. Within 90 seconds, Baker saw Watts and Jones pull up in their car. ROP U63. Nichols exited his car and had a conversation with Watts. *Id.* Jones exited his vehicle, approached Baker, and stated "I told you we were going to get you" to which Baker responded that, if the officers were going to arrest him, they should do so fairly. ROP U63-64.

31. Once at the station, Baker had a conversation with Watts. At some point, Watts learned that Baker had a familial connection with another police officer known as "Bat." ROP U64. Watts explained to Baker that, if he had known that Baker was kin to Bat, he (Watts) would not have charged Baker with the case. ROP U65. Later Watts informed Baker that, while it was too late for him not to charge Baker with the case, Watts could arrange for some of the money that the officers had recovered from Baker to be placed in Baker's commissary account at the

jail. ROP U66-67, U85-87. Baker refused the money. ROP U67. Baker also denied making any admissions to the possession of narcotics. ROP U67-68.

32. On cross-examination, Baker admitted that, prior to May 2004, he had supported himself by selling narcotics but stated that he had stopped when Watts threatened him that month. ROP U72. Baker also acknowledged that he had seen Watts and members of his team on several occasions during the months preceding his arrest on the current charges but agreed that they had not arrested him on those occasions. ROP U72-77, U82.

33. In rebuttal, the State called as witnesses, Chicago police officers Robert Gonzalez, Alvin Jones, and Sgt. Watts. The State did not call Officer Manny Leano who Nichols claimed was with him when he observed Baker selling narcotics in the hallway of the housing project and who Baker stated detained him in the lobby. ROP U12-15, U58.

34. Alvin Jones stated that he had worked with Sgt. Watts for four and one-half years, and they had ridden together. ROP U100-01, U106. Jones acknowledged that he and Watts had had conversations with Baker prior to his arrest but was unsure how many and did not remember how long he had known Baker. ROP U103-04, U106. Jones denied the July 19, 2004, conversation to which Baker testified and in which Jones had reportedly said, "The next time I put a case on you it will stick: Kenny wouldn't fuck up his testimony." ROP U99-100.

35. Officer Jones testified that on the day of Baker's arrest, he went to 527 E. Browning of the Ida B. Wells project in response to a radio transmission regarding a chase. ROP U97-98. When he arrived 60 to 90 seconds later, he

observed Ben Baker in the police car under arrest. ROP U99, U109. Jones denied telling Baker at the time of his arrest, "I told you we would get you." ROP U100. Jones was not present when Baker was *Mirandized* and did not recall hearing him say anything or making the admissions ascribed to him. ROP U107.

36. On cross-examination, Jones admitted knowing an individual named "Shock" but denied knowing where he lived, denied taking drug payments from him, and denied ever witnessing Watts taking payments from drug dealers. ROP U104-106.

37. Officer Gonzalez testified that Sgt. Watts had been his supervisor for five years, ROP U118. On March 23, 2005, he and his partner, Officer Bolton, went to the Wells project to conduct a premises check. ROP U111-12. While they were in the lobby, Gonzalez heard a radio call from another officer regarding a foot chase. ROP U112. Gonzalez then observed Ben Baker exit a stairwell. *Id.* Baker stopped when he saw that the officers were in front of him. ROP U115-16. Baker made no effort to flee. ROP U116. Officer Nichols then arrived, and, along with Officer Leano, took Baker into custody. ROP U115. Gonzalez initially did not see anything in Baker's hands, but then saw Nichols recover a plastic sandwich bag from Baker's hand. ROP U113, U119. Gonzalez saw Watts and Jones arrive at the scene of the arrest but could not recall the timing of their arrival. ROP U116-17, U118-19. Gonzalez denied seeing Officer Jones engage in a conversation with Baker at the scene. ROP U116-18.

38. In response to questioning by the court, Gonzalez further testified that, following Baker's arrest, a custodial search was performed at the scene and crack cocaine was recovered from Baker's pants pocket. ROP U119-20.

39. Over defense objection, the case was continued for approximately two weeks to allow the State to bring in Sgt. Watts. ROP U121-22. On the next court date, June 5, 2006, Sgt. Watts testified in rebuttal.

40. Ronald Watts testified that, in his capacity as a police officer, he had known Ben Baker since 2003. Exhibit B, S.R.II, A10. On March 23, 2005, Watts was responsible for an eight-member tactical team, including Nichols, Leano, Bolton, Gonzalez, and Jones, and he had deployed them to the Ida B. Wells housing project to suppress gang and narcotics activity. S.R.II, A7-8. Watts denied telling any member of his team to look for anyone in particular that day. S.R.II, A8. Watts arrived at the scene with Officer Jones following Baker's arrest but denied that anyone called him on his cell phone to say they had Baker in custody. S.R.II, A8-9. Watts did not recall seeing Jones have a conversation with Baker. S.R.II, A14-15. Watts denied telling Baker either that he would not be charged because he was related to "Bat" or that Watts would give him money for his commissary account in jail. S.R.II, A9.

41. On cross-examination, Watts denied keeping large sums of cash around his house but then admitted that, in August 2004, he kept \$12,400 in cash at his home. S.R.II, A13.

42. Watts denied knowing anyone named Charles Lawrence and denied ever having had a telephone conversation with Ben Baker. S.R.II, A15-16. Watts

denied ever asking Baker for money. S.R.II, A16. Watts denied accepting any money from an individual named Patrick Noonan. S.R.II, A17. Defense counsel then asked Watts whether he knew an individual named [REDACTED]¹ S.R.II, A18. When the prosecution's objection to this question as "beyond the scope" was sustained, defense counsel asked no further questions and both sides rested. *Id.*

43. During closing arguments, defense counsel pointed out that the case involved the credibility of the officers and the defendant. S.R.II, A20-21. Defense counsel maintained that the officers' testimony regarding the circumstances of Baker's arrest and his alleged admissions was not believable. S.R.II, A24-26.

44. Defense counsel contended that Baker's testimony was credible because it was against his penal interest in that he admitted to selling drugs in the past. S.R.II A21, A26. Defense counsel also pointed out that a portion of Baker's testimony was corroborated. Specifically, Baker testified that Jones had threatened to put another case on him after the mailbox case had been dismissed because of Officer Kenny Young's testimony. S.R.II, A27-28. Defense counsel reminded Judge Toomin that he had been the judge who tried the mailbox case and that Judge Toomin had dismissed that case mid-trial following Young's testimony, just as Baker had said. *Id.* Finally, defense counsel argued that the defense had no obligation to prove that Officer Jones and Sgt. Watts were corrupt, although it was Defendant's contention that these officers were. S.R.II, A28.

¹ The transcript phonetically spells the name as " [REDACTED]" but the reports from the Internal Affairs Division and from ATF indicate the correct spelling is [REDACTED] S.C.II, 34-35, 70, 110.

45. In response, the State argued that Watts was not on trial and that, while Baker had made numerous allegations against him, not one of those allegations had been proven. S.R. A29. Following arguments, the court took the matter under advisement. S.R. A31-32.

46. On June 9, 2006, Judge Toomin found Ben Baker guilty. In announcing its decision, the court noted that the State had presented a number of officers who gave credible testimony while Ben Baker's case was "based solely upon his testimony, his self-serving testimony, which is not corroborated in any manner." ROP W7. The judge found that Baker's testimony was "contradicted by credible evidence presented by a number of police officers—Officers Nichols, Officer Gonzalez, Officer Jones, Sergeant Watts." *Id.* Judge Toomin entered findings of guilty to Counts 1 (PCS with intent to deliver 15-100 grams of heroin), 2 (PCS with intent to deliver 1-15 grams of cocaine at CHA-managed housing), and 4 (PCS), and not guilty on Count 3 (PCS with intent to deliver 1-15 grams within 1,000 feet of a school).

47. On July 7, 2006, Baker's defense counsel filed a motion for a new trial, arguing that Baker's version of events was credible and that the State did not prove him guilty beyond a reasonable doubt. ROP X4. In response, the State argued that the officers who testified, including Sgt. Watts, were credible. ROP X4-5. Judge Toomin denied the motion, stating:

Mr. Baker told his side of the story, going back into a period of time many months of dealing with these officers, making accusations against them. They were involved in shaking him down, putting cases on him, things of that nature, which was totally uncorroborated. There was nothing to buttress that claim at all. And I believe that the police officers told a [sic]

credible testimony here as to the initial observations in the CHA building, in the chase involving defendant, in the recovery of the controlled substance that followed in the lobby of the building, and additional substance recovered from his pockets as well.

I think certainly those findings are within the purview of the judges and jurors day in and day out—they weigh credibility and they assess credibility they make decisions. I wasn't there, you weren't there, you don't know what the truth is. All I can go by is what I hear in the way of evidence and how I evaluate that evidence.

ROP X6.

48. The case proceeded immediately to sentencing. In allocution, Baker stated that he had had three weeks and one day left on his probation (presumably in case number 02 CR 5992) when he was charged with this case. ROP X11. He stated that he had done everything that had been asked of him while on probation and that he had stopped dealing drugs and refused to pay the officers. *Id.* Baker stated that every case he had been charged with since 2004 had been initiated by the same team of police officers. *Id.*; C. 58-60 (04 CR 19000; 05 CR 8982; 05 CR 25580; 06 CR 810). In addition, Baker's counsel argued that these police officers were corrupt and that corrupt police officers:

facilitate drug dealing because those drug dealers who do pay the police can now rest assured that the stick the case put on them is not going to happen and the care and protection is still out there for them. I believe that carrot is unwittingly provided. That carrot stick is unwittingly provided by the court system, and this is just one more example of that.

ROP X9. Judge Toomin sentenced Baker to two concurrent terms of 18 years' imprisonment. ROP X13.

49. The defense filed a motion to reconsider sentence. In ruling on the motion, Judge Toomin stated:

The defense simply had no merit to it. All this business about a frame, accusations made against police officers which fell on its face. Held no water at all. *If there had been some corroboration, there might have been a different story.*

ROP Y8 (emphasis added). The judge, however, did reduce the sentence from 18 to 14 years' imprisonment. *Id.*; *see also* C. 85 (Corrected Mittimus).

Post-Trial Proceedings

50. Baker appealed. The appellate court affirmed Baker's conviction on direct appeal. *People v. Ben Baker*, No. 1-06-3352, unpublished Rule 23 order dated December 31, 2008 (1st District, Third Division).

51. On March 16, 2009, Baker filed a *pro se* petition for post-conviction relief. In that *pro se* petition, he raised issues concerning his sentence. On May 1, 2009, this court dismissed Baker's *pro se* petition.

52. On February 26, 2014, Baker filed a *pro se* motion for relief from judgment under 735 ILCS 5/2-1401. In this motion, he argued that based upon newly discovered evidence of Sgt. Watts' corruption, he is actually innocent, and that he had received ineffective assistance of counsel. This motion is pending. Petitioner has contemporaneously filed a motion to recharacterize his pending 2-1401 motion as a petition for post-conviction relief and a motion for leave to amend it with this petition.

Newly Discovered Evidence of Sgt. Ronald Watts' Corruption

53. On July 19, 2013, Ronald Watts pleaded guilty in federal court to taking money from an individual he believed was a courier for drug dealers and giving that courier a kickback in exchange for allowing him to steal the money he

thought belonged to drug dealers. *See Exhibit C (Plea Hearing Transcript in United States v. Watts, 12 CR 87-1)* at 16-19. The courier turned out to be a confidential informant for the FBI. *Id.* at 16-18. Sgt. Watts pleaded guilty as charged. *Id.* at 19. Specifically, the factual basis for the plea as agreed to by Watts was that:

- On or about November 21, 2011, Sgt. Watts and his co-defendant Kallatt Mohammed stole for their own use approximately \$5,200 belonging to the United States which they were not entitled to receive, in violation of 18 U.S.C. Sections 641 and 2.
- In early September 2011, a cooperating witness (“CS”) told Watts that he would be transporting money for drug dealers. Watts told the CS that he wanted to know when he would be transporting money so that Watts could steal the money from the CS in exchange for a payment to the CS.
- On November 18, 2011, Watts was contacted by the CS to let him know that the CS would be transporting money for drug dealers in the near future. Watts told the CS to be sure to call him when he had more details. On November 21, 2011, the CS called Watts and told him that he would be transporting money for drug dealers that day, and he also gave Watts the details of when and where. Watts told the CS that he would be there.
- Watts contacted Mohammed and asked him to help with taking the money from the CS. Watts told Mohammed to meet the CS and take the bag, and Mohammed agreed to do so. Mohammed approached the CS and took the bag containing \$5,200 from the CS. A short time later, Watts and Mohammed met in the area of 5700 South Princeton Avenue in Chicago, where Watts took a portion of the money from the bag.
- After Mohammed took the bag from the CS, the CS called Watts to arrange to meet so that CS could be paid a portion of the money that had been taken. Watts later met with the CS in the parking lot of a Walgreens near 22nd Street and Canal Street in Chicago, and he gave the CS \$400 in case, which was a portion of the \$5,200 taken from the CS earlier that day.

Id. at 16-18; *see also Exhibit G (Government’s Proposed Statement of the Case in United States v. Watts, 12 CR 87-1).*

54. Watts filed a sentencing memorandum, and the government filed a response. *See Exhibit H (Government's Response to Defendant Ronald Watts' Sentencing Memorandum dated October 2, 2013).* As the government explained, when Watts gave the CS money from the funds he had stolen, the CS said to Watts, "About time ... Man, I thought you was fittin' to mess over me, man." *Id.* at 5. Watts said, "No, never doubt, brother a'ight? Who always takes care of you?" *Id.* The CS replied, "You do, Watts." *Id.* Then Watts said "There's five large, brother," and handed the CS \$400. *Id.* at 5-6.

55. The government argued that "[f]or years," "the defendant used his badge and his position as a sergeant with the Chicago Police Department to shield his own criminal activity from law enforcement scrutiny. He recruited another CPD officer into his crimes, stealing drug money and extorting protection payments from the drug dealers who terrorized the community that he, the defendant, had sworn to protect." *Id.* at 1. Furthermore, the government stated that, "As set forth in the government's version of the offense and admitted by co-defendant Kallatt Mohammed, beginning no later than December 11, 2007 through at least May 22, 2008, the defendant and Watts [sic] covered the Ida B. Wells public housing complex as part of the duties with the Chicago Police Department." *Id.* at 2. Instead of protecting the residents, however, "they protected the heroin and crack cocaine dealers, extorting protection payments from them in exchange for agreeing not to arrest them. Mohammed estimated that he picked up between \$20,000 and \$25,000 in these protection payments for the defendant and at the defendant's direction." *Id.*; *see also Exhibit F at 10-11.*

56. According to the government's cooperating source (CS), the CS first met Watts in 2007 or 2008, when Watts and Mohammed approached him in a building at Ida B. Wells and tried to get the CS to give them information about drug-dealing activities in the complex. Exhibit H at 2-3. Watts "wanted to seize drugs in the complex to either sell or use to pay off other individuals who were giving him information about drug activities in the complex." *Id.* at 3. "At times, the defendant [Watts] threatened to plant drugs on the CS and then arrest him for them. At one point, the defendant had other officers falsely arrest the CS on drug charges." *Id.*; Exhibit F at 11 (government stating that Watts "did other things such as putting a false case on the confidential source that was involved in our investigation. Had him arrested on drug charges.").

57. The government also detailed an undercover operation that occurred in March 2010 similar to the one that occurred in November 2011. In March 2010, the CS and Watts discussed when and where CS would carry purported drug proceeds for drug dealers. Exhibit H at 3-4. On March 31, 2010, the FBI equipped the CS with a bag containing \$11,650 in federal law enforcement funds (the purported drug proceeds). *Id.* at 4. Watts later pretended to arrest the CS, took the bag containing the money, and then handed the CS a stack of cash from the bag (\$770) and let him go. *Id.*

58. As the government argued at Watts' sentencing hearing, "When he [Watts] was approached by someone that he believed to be a courier for drug dealers, he jumped right on the idea of stealing what he believed to be drug proceeds from the courier and then kicking back a portion to the courier. He did this

twice with apparently no second thoughts from what we see on the recordings, and which leads you to wonder how many times he might have done something similar when the government was not involved." Exhibit F at 10.

59. On October 9, 2013, Judge Sharon Johnson Coleman sentenced Ronald Watts to 22 months' imprisonment. *Id.* at 26; *see also* Exhibit I (Judgment Order in *United States v. Watts*, 12 CR 87-1, entered October 18, 2013). The judge stated to Watts, "Your actions, sir, were a betrayal to your oath as a police officer. You betrayed your community, both your law enforcement community, the African-American community, that south side community. Your actions were a betrayal. It is a serious offense." Exhibit F at 24-25.

60. Officer Kallatt Mohammed earlier pleaded guilty and been sentenced to 18 months' imprisonment. *See* Exhibit J (Plea Hearing Transcript in *United States v. Mohammed*, 12 CR 87-2, dated August 17, 2012) at 13-15; Exhibit K (Sentencing Hearing Transcript in *United States v. Mohammed*, 12 CR 87-2, dated October 26, 2012) at 20; Exhibit L (Plea Agreement in *United States v. Mohammed*, 12 CR 87-2, filed August 17, 2012); Exhibit M (Judgment Order in *United States v. Mohammed*, 12 CR 87-2, entered October 26, 2012).

CLAIMS FOR RELIEF

CLAIM I: ACTUAL INNOCENCE

BEN BAKER'S CONVICTION AND CONTINUED DETENTION VIOLATE HIS RIGHT TO DUE PROCESS OF LAW BECAUSE NEWLY DISCOVERED EVIDENCE PROVES HIS INNOCENCE

61. Petitioner re-alleges every paragraph of this petition and expressly incorporates them as if they were fully set forth herein.

62. Ben Baker is innocent of the crime for which he was convicted. The documents attached to this petition make Baker's innocence demonstrably clear.

63. As Judge Toomin stated when he denied Petitioner's motion for a new trial, if there had been evidence corroborating his testimony that the officers who testified against him were lying, then the result (at the bench trial) may have been different.

64. There is now such evidence: Sgt. Ronald Watts pleaded guilty in federal court to a charge of stealing money from someone he thought was a drug courier and then paying that courier (who turned out to be a CS for the government) a kickback in exchange. As explained in the pleadings filed in federal court discussed above, Watts had a pattern and practice of extorting protection payments from drug dealers and persons he thought to be drug dealers at Ida B. Wells. Watts also had a pattern and practice of putting and threatening to put false cases on people who did not cooperate with him.

65. It is well-established that Illinois has no interest in wrongfully incarcerating innocent persons. Indeed, to do so would be "fundamentally unfair" as a matter of procedure and, as a matter of substance, would be "so conscience shocking as to trigger the operation of substantive due process." *People v. Washington*, 171 Ill.2d 475, 487-88 (1996); *see also* U.S. CONST. AMEND. V, XIV.

66. Accordingly, an actually innocent defendant may bring a free-standing claim of actual innocence, seeking reversal of his conviction. To prevail, the petitioner "must present new, material, noncumulative evidence that is so

conclusive it would probably change the result on retrial.” *People v. Coleman*, 2013 IL 113307, ¶ 96 (2013) (citing *Washington*, 171 Ill.2d at 489).

67. New “means the evidence was discovered after trial and could not have been discovered earlier through the exercise of due diligence.” *Id.* Material evidence is anything “relevant and probative of the petitioner’s innocence” and noncumulative means that the evidence “adds to what the jury heard.” *Id.* To be conclusive, “evidence need not be completely dispositive of an issue to be likely to change the result upon retrial.” *Id.* ¶¶ 96-97. Instead, the appropriate measure is whether the new evidence, when considered together with the trial evidence, “would probably lead to a different result.” *Id.* Baker has satisfied each of these requirements.

68. The evidence of Watts’ (and his partner Mohammed’s) conviction in federal court on corruption charges is new: Watts was convicted on July 19, 2013 and sentenced in October 2013. Clearly, Petitioner did not have this evidence available to him at the time of his trial in 2006. Nor did he have this evidence available to him at the time of his *pro se* post-conviction petition filed in 2009.

69. This evidence is also material: it is relevant and probative of Baker’s innocence. It tends to support his version of events that he testified to at his trial—that the officers—led by Watts—planted drugs on him because he refused to pay Watts a bribe. The only evidence presented against Baker at his trial was the testimony of Officers Nichols, Gonzalez, Jones, and Watts. The only evidence that Judge Toomin had to weigh was the credibility of the officers versus the credibility of Baker. The evidence that Watts had committed this kind of misconduct on other

occasions tends to corroborate Baker's testimony. Even though the conduct that Watts pleaded guilty to in 2013 stemmed from an FBI sting that occurred in 2011, the government noted in a pleading that Watts' misconduct went back to "at least" 2007, which is very close in time to Baker's conviction in 2006.

70. In addition, this evidence is noncumulative: there was no evidence of Watts' corruption presented at Baker's trial, and this evidence of Watts' federal conviction is noncumulative.

71. And finally, this evidence would probably lead to a different result on retrial: as Judge Toomin indicated, if there had been any evidence to corroborate Baker's testimony that Watts and the other cops involved in arresting him were corrupt, there might have been a different result. Petitioner alleges that this evidence would probably lead to a different result on retrial. *See People v. Patterson*, 192 Ill.2d 93, 139-45 (2000) (finding evidence of a pattern and practice of police conduct new, material and noncumulative evidence that would probably change the result on retrial, where that evidence did not exist until after defendant's trial). A jury could reasonably infer that Watts' misconduct took place over many years and did not simply begin in 2007.

CLAIM II: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

BAKER WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

72. Petitioner re-alleges every paragraph of this petition and expressly incorporates them as if they were fully set forth herein.

73. The Sixth and Fourteenth Amendments to the U.S. Constitution guarantee a person accused of a crime the right to counsel, as does Article I, Section 8 of the Illinois Constitution of 1970. U.S. CONST. AMEND. VI & XIV; Ill. Const. 1970, art. I, sec. 8. This right to counsel is a fundamental right aimed at protecting the right to a fair trial, and it includes the right to effective representation. *Strickland v. Washington*, 466 U.S. 688 (1984); *People v. Perez*, 148 Ill.2d 168 (1992).

74. To show ineffective assistance of counsel, a defendant must demonstrate that the result of the proceedings would have been different absent counsel's errors. *Strickland*, 466 U.S. at 687. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

75. Here, counsel's performance fell far below the constitutional standard outlined in *Strickland*. Specifically, Petitioner believes that trial counsel was ineffective for his failure to investigate, interview, and present witnesses who would have testified at Baker's trial to corroborate his version of events and/or that Watts was corrupt, including Gregory Young, Twanie, Roy Bennett, Charles Lawrence, Wilbert Moore, and [REDACTED]² The Illinois Supreme Court has repeatedly made clear that "[t]he failure to interview witnesses may indicate actual incompetence, particularly when the witnesses are known to trial counsel and their testimony may be exonerating." *People v. Steidl*, 177 Ill.2d 239, 256 (1997); *see also Hinton v.*

² Given that undersigned counsel for Petitioner first entered their appearance for Petitioner on July 31, 2014, and that the court first indicated on August 27, 2014 that it would rule on Petitioner's *pro se* 2-1401 motion on September 19, 2014, the undersigned counsel has not had sufficient time to gather affidavits from these individuals that would likely support Petitioner's ineffective assistance of counsel claim. If the court would allow additional time for Petitioner's counsel to investigate prior to ruling, counsel could attempt to gather relevant affidavits in support of this claim and supplement this petition accordingly.

Alabama, 134 S. Ct. 1081 (2014). The failure to conduct such investigation and present such witnesses could not be attributed to trial strategy, and Petitioner was prejudiced at trial as a result.

CLAIM III: INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
TO THE EXTENT THAT ANY OF THE CLAIMS ASSERTED HEREIN OR IN BAKER'S PRIOR *PRO SE* POST-CONVICTION PETITION ARE DEEMED WAIVED FOR FAILURE TO PRESENT THEM PREVIOUSLY, BAKER RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AND FUNDAMENTAL FAIRNESS REQUIRES THEIR REVIEW

76. Petitioner re-alleges every paragraph of this petition and expressly incorporates them as if they were fully set forth herein.

77. To the extent that any of the claims asserted herein are deemed waived for failure to present them on direct appeal, Baker received ineffective assistance of appellate counsel. The *Strickland* standard for ineffectiveness of trial counsel applies equally to claims of ineffective assistance of appellate counsel. *See, e.g., People v. Makiel*, 358 Ill. App. 3d 102, 112 (1st Dist. 2005).

78. Additionally, fundamental fairness requires that this court review any claims that counsel may have, ineffectively failed to raise previously. *See People v. Pitsonbarger*, 205 Ill.2d 444, 458 (2002).

CLAIM IV: CUMULATIVE ERROR
CONCERNS OF FUNDAMENTAL FAIRNESS AND CUMULATIVE ERROR DEMAND THAT BAKER BE GRANTED A NEW TRIAL

79. Petitioner re-alleges every paragraph of this petition and expressly incorporates them as if they were fully set forth herein.

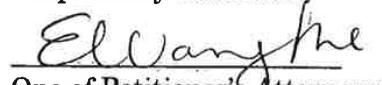
80. Even if individually the errors and other matters alleged here are not found to be sufficiently prejudicial to grant Baker post-conviction relief, the cumulative effect of all the matters alleged in this petition deprived Baker of his fundamental due process right to a fair trial. *See People v. Jackson*, 205 Ill.2d 247, 283 (2001) (“individual errors may have the cumulative effect of denying a defendant a fair hearing.”). Accordingly, where, as here, cumulative error is present, the Illinois Supreme Court “has reversed convictions and sentences when it was clear that the cumulative effect of the errors deprived the defendant of due process.”

Id.

CONCLUSION

WHEREFORE, Petitioner Ben Baker, by and through his attorneys, move this court to consider the prejudicial impact of each of the above-stated deprivations of his constitutional rights singly, or in combination with one another. Accordingly, Petitioner respectfully requests the following:

- (1) An evidentiary hearing in which proof may be presented concerning the allegations contained in his petition; and
- (2) Vacation of his conviction followed by the grant of a new trial; or
- (3) Reversal of his conviction.

Respectfully submitted,

One of Petitioner's Attorneys

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List of Exhibits to

Petitioner's First Successive Amended Petition for Post-Conviction Relief

Exhibit A-1: Report of Proceedings, volume 1, *People v. Baker*, Appeal No. 06-3352

Exhibit A-2: Report of Proceedings, volume 2, *People v. Baker*, Appeal No. 06-3352

Exhibit B: Supplemental Report of Proceedings (hearing dated June 5, 2006),
People v. Baker, Appeal No. 06-3352

Exhibit C: Information filed in *United States v. Watts*, 12 CR 87-1

Exhibit D: Criminal complaint filed in *United States v. Watts*, 12 CR 87-1

Exhibit E: Plea hearing transcript in *United States v. Watts*, 12 CR 87-1

Exhibit F: Sentencing hearing transcript in *United States v. Watts*, 12 CR 87-1

Exhibit G: Government's Proposed Statement of the Case in *United States v. Watts*, 12 CR 87-1

Exhibit H: Government's Response to Defendant Ronald Watts' Sentencing Memorandum *United States v. Watts*, 12 CR 87-1

Exhibit I: Judgment Order in *United States v. Watts*, 12 CR 87-1

Exhibit J: Plea Hearing Transcript in *United States v. Mohammed*, 12 CR 87-2

Exhibit K: Sentencing Hearing Transcript in *United States v. Mohammed*, 12 CR 87-2

Exhibit L: Plea Agreement in *United States v. Mohammed*, 12 CR 87-2

Exhibit M: Judgment Order in *United States v. Mohammed*, 12 CR 87-2

Exhibit N: Affidavit of Ben Baker