No. 124318

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

-vs-

CHARLES PALMER,

Defendant-Appellant.

Appeal from the Appellate Court of Illinois, Fourth District No. 4-19-0148
There on Appeal from the Circuit Court of Macon County,
No. 99 CF 139, Hon. Jeffrey Geisler, Judge Presiding

BRIEF *AMICI CURIAE* OF FIRST DEFENSE LEGAL AID AND NINETEEN CRIMINAL DEFENSE LAWYERS IN SUPPORT OF DEFENDANT-APPELLANT

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POINTS AND AUTHORITIES

INTEREST OF *AMICI CURIAE*

Amicus First Defense Legal Aid was founded in 1995 to provide free legal defense to anyone in Chicago police custody. Today, FDLA mobilizes lawyers and overpoliced community members to fill gaps in public defense and to create, protect, and engage replicable alternatives to the criminal system starting with its entry points. FDLA offers a unique perspective on the importance of the presumption of innocence at all stages of the criminal justice system.

Amici Attorneys Molly Armour, Jennifer Blagg, Tom Breen, Tom Durkin, Steven Fine, Richard Friedman, Darryl Goldberg, Steven Greenberg, Chris Grohman, Josh Herman, Michael Leonard, Joseph R Lopez, Andrea Lyon, Ralph E. Meczyk, William Murphy, Tom Needham, Todd Pugh, Stephen L. Richards, and Jed Stone are experienced criminal defense lawyers.[1] Each is well-versed in the application of the presumption of innocence in criminal matters. They routinely represent criminal defendants for whom the presumption of innocence is of overwhelming significance. In addition, they routinely represent persons who may be exonerated, meaning they have a strong interest in the interpretation of the Certificate of Innocence Act.

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[1] A complete list of amici with their professional affiliations and mailing addresses is attached to this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case addresses the evidentiary burden on a petition for Certificate of Innocence under 735 ILCS 5/2-702. A petitioner seeking a Certificate must prove, *inter alia*, innocence of the offense charged by a preponderance of evidence.

Amici file this brief to show that a petitioner meets his initial burden of proving innocence when he satisfies the filing requirements of the Act by showing that the conviction has been vacated and by presenting verified facts showing innocence. The burden then shifts to the State to come forward with evidence to prove that the petitioner is not innocent. This formulation is consistent with the presumption of innocence, the touchstone of American criminal jurisprudence.

Charles Palmer was convicted in 2000 of using a hammer to murder William Helmbacher. Palmer testified at trial and denied any involvement in the murder, stating that he had never been in Helmbacher's apartment and had never seen Helmbacher before the police investigation into the murder. (R394.) Palmer maintained his innocence after conviction, and in 2016, he was exonerated on DNA evidence that the State conceded shows that Palmer did not personally beat Helmbacher. After Palmer's conviction was vacated and the State declined to retry him, Palmer petitioned for a Certificate of Innocence.

The Circuit Court, relying solely on documentary evidence, refused to issue the Certificate. Even though Palmer's conviction had been vacated and DNA evidence showed that Palmer did not beat the victim to death as charged, the trial court ruled that Palmer had not met his burden of showing that he was innocent of the murder under an accountability theory. The Appellate Court reviewed under an abuse of discretion standard and affirmed, holding that Palmer had the "burden of coming forward with evidence reasonably justifying a finding that he did *not* commit felony murder or murder by accountability." *People v. Palmer*, 2019 IL App (4th) 190148, ¶ 171.

Amici show below that the standard of showing innocence applied by the lower courts runs afoul of the presumption of innocence. This fundamental presumption applies with equal force before conviction and after a conviction has been vacated. The United States Supreme Court applied this rule in *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), where it held unconstitutional a state law that allowed the refund of fines and fees paid as a result of wrongful convictions only if the defendants carried the burden of proving their innocence. As the Court explained, once the defendants' convictions were set aside, "the presumption of their innocence was restored." *Id.* at 1255.

Amici build on the well-reasoned view of Justice Pucinski in her dissent to the Rule 23 order in *People v. Fields*, 2017 IL App (1st) 140988-U, ¶ 95, that "*Nelson* casts a shadow on the constitutionality of the Illinois Certificate of Innocence Act."

The Court should remove this shadow and hold that in proceedings on a Certificate of Innocence, once a petitioner meets the filing requirements of the Act by showing that the conviction has been vacated, 735 ILCS 5/2-702(c)(2) and by presenting verified "facts in sufficient detail to permit the court to find that the petitioner is likely to succeed at trial in proving that the petitioner is innocent of the offenses charged in the indictment or information," 735 ILCS 5/2-702(d), the burden of coming forward with evidence to show that the petitioner is not innocent shifts to the State. This interpretation of the statute is consistent with the procedure that applies to a suppression hearing under 725 ILCS 5/114-12, which, like the Certificate of Innocence Act, places the ultimate burden of proof on the defendant. *People v. Gipson*, 203 Ill. 2d 298, 306–07 (2003).

Amici also discuss the standard of review. In this case, the Appellate Court recognized that all of the evidence was documentary but reviewed the decision of the Circuit Court for abuse of discretion. *People v. Palmer*, 2019

IL App (4th) 190148, ¶ 173. *Amici* show that a *de novo* standard of review is appropriate.

ARGUMENT

I. The Presumption of Innocence is a Bedrock Principle of State and Federal Law

The presumption of innocence is "the touchstone of American criminal jurisprudence." *Illinois Pattern Jury Instructions, Criminal*, No. 2.03 Committee Note. Our State is not alone in venerating the presumption of innocence: in *Coffin v. United States*, 156 U.S. 432, 453 (1895), the United States Supreme Court recognized that the presumption "is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."

The Court's opinion in *Coffin* traced the history of the presumption, beginning with Deuteronomy and the laws of Sparta and Athens. *Coffin*, 156 U.S. at 453. The discussion included an apt anecdote about Emperor Julian:

> Numerius, the governor of Narbonensis, was on trial before the emperor, and, contrary to the usage in criminal cases, the trial was public. Numerius contented himself with denying his guilt, and there was not sufficient proof against him. His adversary, Delphidius, "a passionate man," seeing that the failure of the accusation was inevitable, could not restrain himself, and exclaimed, "Oh, illustrious Caesar! If it is sufficient to deny, what hereafter will become of the guilty?" to which Julian replied, "If it suffices to accuse, what will become of the innocent?"

Id. at 455. The Court concluded its discussion by explaining that the presumption had become a part of the common law of the United States. *Id.* at 456. The Supreme Court later held in *Taylor v. Kentucky*, 436 U.S. 478, 490 (1978) that the presumption of innocence is required by the Due Process Clause of the Fourteenth Amendment.

This Court has repeatedly recognized the importance of the presumption of innocence. The Court held in *People v. Weinstein*, 35 Ill. 2d 467, 469–70 (1966): "It is a fundamental doctrine of our system of criminal jurisprudence that the law presumes the innocence of an accused until he is proved guilty beyond a reasonable doubt." Even for the most serious crimes, "[n]o defendant is required to prove his innocence." *People v. Smith*, 185 Ill. 2d 532, 545 (1999). In *People v. Watts*, 181 Ill. 2d 133, 147 (1998), the Court held that the presumption of innocence is required by the Due Process Clause of Article I, Section 2 of the Illinois Constitution. The legislature has also recognized the presumption of innocence by expressly including it in 720 ILCS 5/2-21.

II. The Illinois Constitution Embodies a Stronger Interest in Innocence than the Federal Constitution

The Due Process Clause of the Illinois Constitution does not move in lockstep with federal precedent. *People v. Washington*, 171 Ill. 2d 475, 485 (1996) (citing *People v. McCauley*, 163 Ill. 2d 414 (1994)). This Court broke

with federal precedent in *Washington* when it applied the Illinois Constitution to hold that a free-standing claim of innocence was cognizable in a post-conviction petition. *Washington*, 171 Ill. 2d at 487.

The question in *Washington* was whether a claim of newly discovered evidence could be raised under the Post-Conviction Hearing Act. *Washington*, 171 Ill. 2d at 479. As this Court explained, such a claim could be raised only if a federal or state constitutional right was implicated in the claim. *Id.* at 480. The United States Supreme Court had held that a claim of innocence was not cognizable under the Eighth or Fourteenth Amendments in *Herrera v. Collins*, 506 U.S. 390 (1993).

Accordingly, this Court considered whether a claim of innocence implicated a state constitutional right. The Court held without reservation that the guarantee of due process of law in the Illinois Constitution demanded a remedy for a convicted person who is actually innocent. *Washington*, 171 Ill. 2d at 487. As a matter of procedural due process, the Court held that "to ignore such a claim would be fundamentally unfair." *Id.* Next, the Court explained that imprisonment of the innocent is so "conscience shocking as to trigger operation of substantive due process." *Id.* at 487-88. The Court stated simply, "We believe that no person convicted of a crime should be deprived of life or liberty given compelling evidence of

actual innocence." *Id.* at 489. The Court's pathbreaking holding in *Washington* demonstrates the significance of protecting innocence under Illinois's constitution.

III. The Presumption of Innocence Is Restored after a Conviction Has Been Vacated

The usual formulation of the presumption of innocence is that it remains with the defendant "throughout every stage of the trial" and "is not overcome unless" the jury is "convinced beyond a reasonable doubt" of the defendant's guilt. *Illinois Pattern Jury Instructions*, *Criminal*, No. 2.03. Moreover, it is well established that a defendant who lost the presumption of innocence upon conviction regains the presumption if the conviction is overturned. *E.g.*, *Johnson v. Mississippi*, 486 U.S. 578, 585 (1988); *People v. Thompson*, 75 Ill. App. 3d 901, 906 (1979).

The United States Supreme Court applied this principle in *Johnson* where an aggravating circumstance supporting a death sentence was a prior conviction that was later overturned. *Johnson*, 486 U.S. at 581. The only evidence presented in the sentencing hearing of the prior conviction was a document establishing the conviction. *Id.* at 585. The Supreme Court held, "Since that conviction has been reversed, unless and until petitioner should be retried, he must be presumed innocent of that charge." *Id.* Accordingly,

the Court held that the defendant was entitled to resentencing without consideration of the overturned conviction. *Id.* at 589.

The Appellate Court applied the same rule in *People v. Thompson*, 75 Ill. App. 3d 901 (1979) where it reversed a criminal conviction because of a prejudicial evidentiary error. The Court emphasized that it was not making any finding on the ultimate question of guilt or innocence and that on remand, "defendant is entitled to her presumption of innocence." *Id.* at 906; *see also People v. Prather*, 138 Ill. App. 3d 32, 40 (1985) (same).

The restoration of the presumption of innocence after a conviction is vacated was explained centuries ago by Blackstone:

> But when judgment, pronounced upon conviction, is falsified or reversed, all former proceedings are absolutely set aside, and the party stands as if he had never been at all accused; restored in his credit, his capacity, his blood, and his estates.

4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 386 (1769).

This principle—that the presumption of innocence is restored after a conviction is vacated—animated the recent opinion of the United States Supreme Court in *Nelson v. Colorado*, 137 S. Ct. 1249 (2017). In *Nelson*, the Court considered a Colorado law under which a defendant whose conviction was overturned could recoup fines and fees paid because of the wrongful conviction. *Id.* at 1254. The statute allowed recovery only if the defendant

carried the burden of showing, by clear and convincing evidence, her actual innocence. *Id.*

The Supreme Court held that Colorado's procedure violated due process because it ran afoul of the presumption of innocence. *Nelson*, 137 S. Ct. at 1257-58. In response to the state's argument that the funds belonged to the state because the convictions were in place when the funds were taken, the Court explained, "once those convictions were erased, the presumption of innocence was restored." *Id.* at 1255. The fact of a conviction did not justify keeping the funds because, "Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions." *Id.*

Nelson makes plain that due process bars placing the burden of proof on an exoneree seeking to recover fines and fees. Because defendants regain the presumption of innocence when a conviction is vacated, "to get their money back, defendants should not be saddled with any proof burden." *Nelson*, 137 S. Ct. at 1256. Thus, the Court held that Colorado's law for recovery of fines and fees after a conviction is vacated violated due process. *Id.* at 1257-58. This Court has long followed the rule of *Nelson* that fines and fees paid because of a void conviction must be refunded. *People v. Meyerowitz*, 61 Ill. 2d 200, 211 (1975).

Amici show below how the bedrock presumption of innocence, which applies before conviction and after a conviction is vacated, is inconsistent with the interpretation of the Certificate of Innocence Act by the Appellate Court in this case.

IV. The Appellate Court's Construction of the Certificate of Innocence Act Raises Serious Constitutional Questions

Justice Pucinski flagged the important question of interpreting the Certificate of Innocence Act consistently with the presumption of innocence in her dissent in the unpublished Rule 23 order in *People v. Fields*, 2017 IL App (1st) 140988-U. In compliance with Illinois Supreme Court Rule 23, *Amici* do not "cite" any part of the dissent as "precedent," but rather invite the Court to consider the dissent's persuasive reasoning. That use is the most that *amici* could request for a dissenting opinion, whether published or not. In an appropriate case, the Court should disavow the absolute bar on citing unpublished Rule 23 orders as precedent because, among other criticisms, the practice is outdated, unevenly applied, and may suffer from constitutional infirmities. *See generally*, David R. Cleveland, *Overturning the Last Stone: The Final Step in Returning Precedential Status to All Opinions*, 10 J. APP. PRAC. & PROCESS 61 (2009).

Justice Pucinski began by considering the decision of the United States Supreme Court *Nelson v. Colorado*, 137 S. Ct. 1249 (2017) that

rejected placing the burden on the defendant whose conviction had been vacated, holding that "absent a conviction of a crime, one is presumed innocent." *Id.* at 1252. As Justice Pucinski noted, under both the Colorado law at issue in *Nelson* and the Certificate of Innocence Act "it is up to the petitioner to prove innocence after having his conviction reversed or vacated or being found not guilty in a retrial with no chance the state will file the case again." *Fields*, 2017 IL App (1st) 140988-U ¶ 90.

Relying on the emphatic rejection by the *Nelson* court of placing the burden on exonerated defendants, Justice Pucinski wrote that "*Nelson* casts a shadow on the constitutionality of the Illinois Certificate of Innocence Act." *Fields*, 2017 IL App (1st) 140988-U ¶ 95. As Justice Pucinski explained, because the petitioner had been acquitted before he sought the Certificate of Innocence, he was entitled to the presumption of innocence. *Id.* ¶ 96.

Different interests may be at stake in the statute considered in *Nelson* and the Certificate of Innocence Act. The petitioners in *Nelson* sought the return of funds that they had paid to the state; the Supreme Court held that they had "an obvious interest in regaining" those funds. *Nelson*, 137 S. Ct. at 1255. Similarly, a petitioner who receives a Certificate of Innocence is entitled, *inter alia*, to financial compensation, 705 ILCS

505/8, but any such payment is a remedy for a harm; it is not identical to the return of funds that the state no longer has a right to retain. *Nelson*, 137 S. Ct. at 1256. The *Nelson* Court noted this distinction, explaining that the petitioners "seek restoration of funds they paid to the State, not compensation for temporary deprivation of those funds." *Id.* at 1257.

Amici acknowledge this distinction and do not contend that *Nelson* requires that the Court hold the Certificate of Innocence Act to be unconstitutional. Whether the Court should ground an entitlement to state compensation for wrongful imprisonment in the right to due process can be decided in the appropriate case. *See Nelson*, 137 S. Ct. at 1260-61 (Alito, J., concurring in the judgment) (suggesting that one consequence of majority opinion was that an exoneree must be "compensated for all the adverse economic consequences of the wrongful conviction").

The serious constitutional question noted by Justice Pucinski can be avoided by construing the Certificate of Innocence statute to shift to the prosecution the burden of coming forward with evidence to overcome an initial showing of innocence. Such an approach is consistent with the well-established ruled that "cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort." *In re E.H.*, 224 Ill. 2d 172, 178 (2006).

The Appellate Court in this case held that the burden would shift to the State, but only after Palmer had come forward with evidence beyond DNA exoneration and his sworn averments of innocence. *People v. Palmer*, 2019 IL App (4th) 190148, ¶ 171. The Appellate Court required Palmer to carry the "burden of coming forward with evidence reasonably justifying a finding that he did *not* commit felony murder or murder by accountability." *Id.* *Amici* show below that the appropriate initial burden is already encompassed in the filing requirements for a Petition for Certificate of Innocence. The petition must present evidence that the conviction has been vacated and present verified facts showing innocence.

V. A Petition that Satisfies the Filing Requirements of the Certificate of Innocence Act Meets the Petitioner's Initial Burden of Showing Innocence

The Appellate Court in this case recognized the well-established rule for proving a negative: the party with the burden of proof must make an initial showing; the burden then shifts to the opposing party to come forward with evidence overcoming that initial showing. *People v. Palmer*, 2019 IL App (4th) 190148, ¶ 171. The Appellate Court relied on an earlier Appellate Court opinion, *Upper Salt Fork Drainage District v. DiNovo*, 385 Ill. App. 3d 1083, 1097 (2008), which quoted an 1849 opinion from this Court:

> A party is not required to make plenary proof of a negative averment. It is enough that he introduces such evidence as, in the absence of all counter testimony, will afford reasonable

> ground for presuming that the allegation is true; and when this is done, the *onus probandi* will be thrown on his adversary.

Graves v. Bruen, 11 Ill. 431, 441 (1849) (citing 1 GREENLEAF'S EVIDENCE § 78). That is, the party must provide "some evidence" of the negative averment to shift the burden to the other side. *Id.* at 442.

The Appellate Court did not apply a "some evidence" standard in this case; it required petitioner to present evidence "reasonably justifying a finding" of the negative averment. *People v. Palmer*, 2019 IL App (4th) 190148, ¶ 171. This is equivalent to the complete proof that *Graves* and other cases reject. *Graves*, 11 Ill. at 441; *see also Schmisseur v. Beatrie*, 147 Ill. 210, 218 (1893); *Vigus v. O'Bannon*, 118 Ill. 334, 349, 8 N.E. 778, 783 (1886). As this Court has explained:

> Full and conclusive proof, however, where a party has the burden of proving a negative, is not required, but even vague proof, or such as renders the existence of the negative probable, is in some cases sufficient to change the burden to the other party.

City of Beardstown v. City of Virginia, 76 Ill. 34, 44 (1875).

In addition, the standard applied by the court below is inconsistent with the presumption of innocence. The Court should follow *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), and reject a rule that requires an exoneree to prove innocence under the Appellate Court's heightened evidentiary

standard. Such a rule violates the federal Due Process Clause and our state's more-protective Due Process Clause.

The proper approach is the "some evidence" standard discussed above. This standard is no different than the standard that applies in a suppression hearing under 725 ILCS 5/114-12. There, "the burden of proving that the search and seizure were unlawful shall be on the defendant." 725 ILCS 5/114-12(b). This provision is equivalent to the requirement of the Certificate of Innocence Act that the petitioner bears the burden of proving innocence. 735 ILCS 5/2-702(g)(3).

The procedure that the Court has adopted for motions to suppress under 725 ILCS 5/114-12 is that the defendants must first make a *prima facie* case, after which "the State has the burden of going forward with evidence to counter the defendant's *prima facie* case." *People v. Gipson*, 203 Ill. 2d 298, 306–07 (2003). The *prima facie* case is not onerous; for example, a defendant claiming an illegal arrest need only present evidence that he had been arrested without a warrant and was doing nothing unusual when arrested. *People v. Moncrief*, 131 Ill. App. 2d 770, 773 (1971).

In the Certificate of Innocence context, the requirements for presenting a claim for a Certificate are sufficient to make out the *prima facie* case. Among other requirements, the petition must have attached to it

documentation demonstrating that the petitioner's conviction was reversed or vacated; the statute also requires that the petition be verified and set out facts showing innocence. 735 ILCS 5/2-702(c)(2), (d). There can be no dispute that Palmer's conviction was vacated. Nor can there be any dispute that by verifying the petition for a certificate of innocence in compliance with 735 ILCS 5/2-702(d), Palmer submitted sufficient evidence of his innocence. Indeed, Palmer's trial testimony was more than sufficient to satisfy the initial burden. Palmer testified as follows:

> Q. Did you ever go down to Mr. Helmbacher's apartment, Apartment Number 1, that afternoon or evening?
> A. I have never been in Mr. Helmbacher's -- to Mr. Helmbacher's apartment. I have never seen the man until they showed me the picture.
>
> Q. Did you kill William Helmbacher?
> A. No, sir.
>
> Q. Did you ever strike him in the head with a hammer?
> A. No, sir.
>
> Q. Did you ever strike him with any object?
> A. No, sir.

(R394.)

Accordingly, Palmer made out a *prima facie* case and, as in a suppression hearing, the burden then shifted to the State to rebut Palmer's evidence. The State did not meet this burden. As the lower court explained, "the State offered no proof that a robbery or burglary was committed on

August 27, 1998, or that Palmer elicited Helmbacher's murder or aided or abetted its commission." *People v. Palmer*, 2019 IL App (4th) 190148, ¶ 170.

For all these reasons, the Court should vindicate the presumption of innocence, as protected by the federal Due Process Clause and our state's more-protective Due Process Clause, and hold that satisfying the Certificate of Innocence Act's filing requirements is sufficient to meet a petitioner's initial burden to show innocence. The burden then shifts to the State to rebut that *prima facie* case with evidence of its own. Because the State did not rebut Palmer's *prima facie* case, Palmer must be granted a Certificate of Innocence.

VI. Where A Decision Is Based Solely on Documentary Evidence, Appellate Review Is *De Novo*

All of the evidence considered by the Circuit Court was documentary. The Appellate Court aptly described the proceeding as "essentially, a bench trial on paper, which normally would call for a *de novo* standard of review." *People v. Palmer*, 2019 IL App (4th) 190148, ¶ 173. Nonetheless, the court below reviewed the trial court decision for abuse of discretion. *Id.* The court below based its ruling on the parties' agreement that abuse of discretion review was proper, *id.*, but this Court is not bound by a party's concession. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

This Court has yet to rule on the appropriate standard for review of an order denying a Certificate of Innocence. *Amici* have located just one Appellate Court opinion considering the question in detail. *People v. Pollock*, 2014 IL App (3d) 120773, ¶ 27. In *Pollock*, the Appellate Court held that abuse of discretion review was appropriate because the Certificate of Innocence Act states that the trial court shall exercise "its discretion as permitted by law regarding the weight and admissibility of evidence." 735 ILCS 5/2–702(a). The opinion in *Pollock* does not explain why abuse of discretion review should be applied beyond the discretionary questions of the weight and admissibility of evidence. Such an application ignores the use by the Act of the mandatory "shall" for the ultimate decision to grant or deny a Certificate: "If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence." 735 ILCS 5/2–702(h).

De novo review is appropriate in this case for another reason: the trial court's decision was based solely on documentary evidence. As this Court has explained, the usual deference given to a trial court's factual finding "'is grounded in the reality that the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony.'" *People v. Radojcic*, 2013 IL 114197, ¶ 34 (quoting *People v. Richardson*, 234 Ill.2d 233, 251

(2009)). Where, as here, there was no live testimony, "the trial court did not occupy a position superior to the appellate court or this court in evaluating the evidence." *Id.* This Court applied this reasoning in *Radojcic* to give *de novo* review to a finding that the crime-fraud exception did not apply where the only evidence presented by the State was transcripts of grand jury testimony. *Id.*

Similarly, in *Addison Ins. Co. v. Fay*, 232 Ill. 2d 446 (2009), the only evidence used to construe an insurance policy was the transcripts of depositions. *Id.* at 453. The Court explained, "where the evidence before a trial court consists of depositions, transcripts, or evidence otherwise documentary in nature, a reviewing court is not bound by the trial court's findings and may review the record *de novo*." *Id.*

The rule of *Radojcic* and *Addison Insurance* applies here because all the evidence considered by the Circuit Court was documentary. This Court should review the record *de novo*.

CONCLUSION

For the reasons above stated, the Court should apply *de novo* review, vacate the judgments below, and remand for issuance of a Certificate of Innocence.

Respectfully submitted,

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RULE 341 CERTIFICATE

I certify that this brief conforms to the requirements of Illinois Supreme Court Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the attachment, and the certificate of service, is 21 pages.

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