STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, **Respondent – Plaintiff,**	)	
v.	)	**Nos. 92CR 07247** **95CR 23405**
JAMES HARDEN **ROBERT TAYLOR** **JONATHAN BARR** **Petitioners – Defendants.**	)	

PEOPLE'S RESPONSE TO JOINT PETITION FOR RELIEF FROM JUDGEMENT

Now come the PEOPLE OF THE STATE OF ILLINOIS, by their attorney, ANITA ALVAREZ, State's Attorney of Cook County, Illinois, and her Assistant, Mark A. Ertler, and reply to the Joint Petition for Relief from Judgment, Immediate Vacation of Convictions, and Release of Petitioners on their Own Recognizance filed pursuant to 735 ILCS 5/2-1401, as follows:

I. PROCEDURAL HISTORY

1. Petitioners, along with co-defendants Robert Veal and Shainne Sharp, were charged with first degree murder and related counts stemming from the sexual assault and fatal shooting of fourteen year old Cateresa Matthews in 1991. Petitioner James Harden was convicted after a bench trial before the Honorable Paul Nealis in May, 1995 and sentenced to a total of 120 years in the Illinois Department of Corrections. Petitioners Jonathan Barr and Robert Taylor were convicted by a jury in January 1997

and sentenced to 80 and 85 years, respectively. [1] Taylor was also sentenced to 10 years for Violation of Bail Bond under case number 97CR-7896 after jumping bail during his trial.

2. Robert Veal and Shainne Sharp each entered negotiated pleas of guilt and each testified at the trials of Harden, Barr and Taylor.

3. The Appellate Court consolidated appeals by all three defendants and affirmed the convictions, but remanded Harden's case for re-sentencing, after which his sentence was reduced to a total of 80 years, 60years for first degree murder to be served consecutive to 20 years for aggravated criminal sexual assault and concurrent with 30 years for armed robbery. *People v. Harden, et al.*, Nos. 1-95-3905, 1-97-0762, 1-97-1091 (1st Dist. Sept. 30, 1998).[2] Harden's sentence was further reduced to a total of 60 years by the holding in *People v. Harden*, 318 Ill. App. 3d 425, 741 N.E.2d 1063 (1st Dist. 2000).[3] That ruling was later modified and the murder and sexual assault sentences were permitted to run consecutively. *People v. Harden*, No. 1-99-3006 (1st Dist. Aug. 16, 2001).[4]

4. Harden pursued post-conviction relief, but was denied. The trial court was affirmed in its final judgment on those matters. *People v. Harden*, No. 1-01-4011 (1st Dist. July 23, 2003)[5]; *People v. Harden*, No. 1-05-3507 (1st Dist. May 15, 2007)[6]. Barr and Taylor were likewise denied post-conviction relief. *People v. Barr & Taylor*, Nos. 1-05-3505 & 1-05-3699 consolidated (1st Dist. Aug. 28, 2007).[7]

---

[1] The evidence introduced at petitioners' trials is summarized in the order entered on direct appeal, a copy of which is attached as Exhibit A.
[2] Attached as Exhibit A.
[3] Attached as Exhibit B.
[4] Attached as Exhibit C.
[5] Attached as Exhibit D.
[6] Attached as Exhibit E.
[7] Attached as Exhibit F.

5. On October 8, 2010, this Honorable Court entered an order by agreement of the parties for post-conviction DNA testing. A supplemental order for testing was entered on April 5, 2011.

6. On April 15, 2011, this Court denied the petitioners' request for release on bail as well as their request for the immediate vacation of their convictions.

7. The instant Reply addresses the remaining motion that seeks relief under section 2-1401.

II. INTRODUCTION

8. A section 2-1401 petition is to correct all errors of fact occurring in the prosecution of a cause, unknown at the time a judgment was entered, which, if then known, would have prevented its rendition. *People v. Berland*, 74 Ill 2d 286, 313-14, 385 N.E. 2d 649 (1978). A section 2-1401 petition, however is "not designed to provide a general review of all errors nor to substitute for direct appeal." *Berland*, 74 Ill 2d at 314. Points previously raised at trial and other collateral proceedings cannot form the basis of a section 2-1401 petition for relief. *Berland*, at 314-15.

9. Petitioner has the burden of alleging and proving a sufficient basis for vacating a final order and where the petition fails to state a cause of action or shows on its face that the petitioner is not entitled to the relief sought, it should be dismissed. *McKnelly v. McKnelly*, 38 Ill. App. 3d 637, 348 N.E. 2d 500 (5th Dist. 1976). In order to be entitled to relief, a petitioner must set forth specific factual allegations establishing each of the following elements: (1) existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the trial court in the original action; and (3) due diligence in filing the petition under this section. *Margaretten & Co. v. Martinez*, 193 Ill. App. 3d 223, 550 N.E. 2d 8 (2nd Dist. 1991). These are the prerequisites of the

statute for a cognizable petition. These elements must, at a minimum, be sufficiently pled to warrant any further consideration. 735 ILCS 5/2-1401 (2002). A convicted petitioner may file a section 2-1401 petition to present errors of fact, ***unknown*** to the petitioner or the court at the time of trial that would have caused the court to render a different decision. *People v. Mahaffey*, 194 Ill. 2d 154, 742 N.E2d 251 (2000) (Emphasis added).

10. To raise a claim based on actual innocence, these defendants must present new, noncumulative evidence that could not have been obtained with due diligence during their trials. *People v. Dodds*, 344 Ill. App. 3d 513, 519, 801 N.E.2d 63, 69 (1st Dist. 2003).[8] To merit a new trial, these defendants must show that the new evidence is so conclusive that it would probably change the result on retrial. *People v. Johnson*, 205 Ill. 2d 381, 392, 793 N.E.2d 591, 598 (2002).

11. That which the petitioners characterize as newly discovered evidence is essentially the following: (1) the identity of the contributor of a DNA profile recovered from samples collected from the victim; (2) the alleged recantation of Robert Veal; and (3) alleged statements made by an individual named Keno Barnes that purport to contradict statements Barnes made to police during the original investigation of the murder. Although the petitioners discuss the credibility of the evidence introduced at trial at great length in their motion, this Court's review should be limited to the determination of whether there is, in fact, new evidence and, if so, what effect it should have in light of the trial evidence.

12. The *Dodds* case addresses situations where post-conviction forensic testing is neither truly exculpatory nor inculpatory. *Dodds*, 344 Ill. App. 3d at 519. *Dodds* contemplates the filing of a post-conviction petition asserting a claim of actual

[8] Attached as Exhibit G.

innocence based on newly discovered evidence. *Id.* In the instant case the petitioners have chosen to pursue a different procedural path, namely a motion to vacate judgment filed pursuant to 735 ILCS 5/2-1401. Nevertheless, the People will address the petitioners' claims in light of *Dodds,* particularly since the petitioners also rely on *Dodds* in their motion.[9] If this Court determines that an evidentiary hearing is warranted, then this Court should consider the trial evidence in light of the new DNA results to determine whether those DNA results are so conclusive to warrant a new trial. *Dodds*, 344 Ill. App. 3d at 523. Given the facts and circumstances of this case, new trials are not warranted in light of the new DNA information.

III. THE DNA DATABASE IDENTIFICATION OF THE DONOR OF A PROFILE KNOWN TO EXIST AT TIME OF TRIAL IS NOT SUFFICIENT TO WARRANT NEW TRIALS.

13. DNA testing on evidence related to this case was conducted prior to trial. All five of the defendants were excluded as the source of a DNA profile found on vaginal and rectal swabs collected from the victim's body at the Office of the Medical Examiner. This exclusion was clearly presented at the trial of Barr and Taylor. While this information was not fully presented at Harden's bench trial, it should be noted that the Appellate Court on direct appeal rejected Harden's claim that his counsel was ineffective and found that Harden was not substantially prejudiced.

14. The method of DNA analysis employed in 1994, when testing was originally conducted, did not yield a profile suitable for use in current databases. The post-conviction testing ordered by this Court generated a profile that was ultimately

---

[9] Petitioners' motion (Par. 35) incorrectly states that the Appellate Court found that a 2-1401 petitioner was entitled to relief. The *Dodds* court actually remanded the case for a third stage hearing under the Post-Conviction Hearing Act. On remand, the defendant's petition was denied and his conviction upheld. That ruling was affirmed in an unpublished order. *People v. Dodds*, No. 1-07-1244 (1st Dist. Sept. 29, 2009), attached as Exhibit H.

uploaded into the CODIS database. As a result, an association to the known profile of a convicted felon was detected. In order to avoid impeding the full review of this association, and in order to maintain compliance with this Court's order sealing the petitioners' motion, the People will simply refer to this individual as Person A.

15. The only new information not possessed by the original triers of fact is the actual **identity** of Person A. The **existence** of Person A has been known since 1994. Petitioners' motion relies on the notion that it is the criminal history of Person A, and not the fact that his DNA was found in the victim, that makes Person A significant. Petitioners now argue that the criminal history of Person A should be considered as evidence of his guilt as the actual killer of the victim. This argument assumes that the criminal history of Person A would be admitted into evidence at the hypothetical retrial of the petitioners. Petitioners offer no legal support for this assumption and it is far from a foregone conclusion that it would be admissible.

16. The probative value of a DNA match in this case was assessed by the Appellate Court in reviewing the trial court's denial of Barr and Taylor's requests for a database comparison in 2005. The court concluded that the comparison of the DNA profile recovered from the evidence to the DNA database was not materially relevant to their claims of actual innocence. *Barr & Taylor*, Nos. 1-05-3505 & 1-05-3699 at p. 16. The court stated:

> "We have carefully reviewed the evidence presented at the defendants' respective trials which resulted in the convictions they now challenge. Based on our examination of the record, we have found the evidence against the defendants to be overwhelming. Moreover, the defendants have previously been excluded as possible donors of the DNA sample recovered from Cateresa's body. **Even if additional DNA comparison analysis resulted in a match, that evidence would not significantly advance the defendants' claims.** The juries that convicted the defendants were well aware that the defendants' DNA did not match the sample recovered from Cateresa's body. The juries also heard and

> considered evidence that (1) none of the assailants had ejaculated during the sexual assaults, (2) Cateresa had been sexually active in November 1991, and (3) it is possible for semen to remain present for up to 72 hours after intercourse. Upon consideration of all of the evidence presented at trial and the nature of the testing requested by the defendants, we find that further DNA comparison analysis would not lead to evidence that is materially relevant to the defendants' claims of actual innocence." *Id.* [Emphasis added]

17. The mere existence of a DNA profile other than those of the original five defendants on the vaginal and rectal swabs collected from the victim is more significant than the name of the donor of that profile under the circumstances of this case. The existence of that profile was not significant enough in the eyes of the jurors who heard the Barr and Taylor trials to prevent them from rendering guilty verdicts. The existence of that profile was not significant enough to stop Robert Veal and Shainne Sharp from pleading guilty and testifying under oath that all five defendants were responsible for rape and murder. The existence of that profile was not significant enough in the eyes of the Appellate Court to merit a new trial for any of the defendants. The fact that a name is now associated with that profile is not significant enough to warrant new trials today.

IV. THE ALLEGED RECANTATION OF ROBERT VEAL IS NOT CREDIBLE AND IS NOT SIGNIFICANT ENOUGH TO WARRANT NEW TRIALS.

18. Petitioners also urge this Court to consider what amounts to an alleged recantation of his trial testimony by Robert Veal. Veal confessed to his involvement in the rape and murder to police and was charged along with the other defendants. With the representation of counsel he later entered into an agreement with the prosecution wherein the People would agree to recommend a sentence of 20 years for first degree murder in exchange for Veal's plea of guilt and his truthful testimony. Veal did in fact plead guilty on June 22, 1995 and he did testify at the trials of Harden, Barr and Taylor. He then served his sentence in the Illinois Department of Corrections. Veal purportedly recanted

his testimony on July 6, 2010 to attorneys representing the petitioners. To date Veal has never sought to withdraw his guilty plea.

19. First, it is important to note that recantation evidence is generally regarded as unreliable. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999); *People v. Steidl*, 177 Ill. 2d 239, 260 (1997); *People v. Deloney*, 341 Ill. App. 3d 621, 632 (2003). It has long been held that recantations are inherently unreliable. *People v. Burrows*, 148 Ill.2d 196, 592 N.E.2d 997 (1992) citing *People v. Steidl*, 142 Ill.2d 204, 568 N.E.2d 837 (1991). Robert Veal's supposed recantation should be viewed with a great deal of suspicion. Veal was the first of the five defendants to be interviewed by the police in October, 1992. It is Veal who provided the details of the crime to the police, not *vice versa.* Veal chose to plead guilty with the full benefit of counsel. Despite having every opportunity to say otherwise, Veal swore under oath on May 25, 1995 and again on January 10, 1997 that he along with the other defendants committed the rape and murder of Cateresa Matthews. Veal then spent the better part of a decade incarcerated for these crimes and never came forward with what he now says is "the truth."

20. Robert Veal has, in fact, never come forward. It was the police who came to him originally. After completing his sentence Veal chose to do absolutely nothing about what he now claims is an injustice. It was in 2010 that attorneys for the petitioners found him and talked to him. Only then did Veal decide to be truthful, according to his statement. One could speculate at great length regarding Veal's current motivation to disavow the version of events that he has maintained for nearly 20 years. The reality is that Veal's alleged recantation, when viewed in light of the entire history of this case, is neither significant enough nor credible enough to warrant new trials and should be discounted in its entirety.

V. KENO BARNES DID NOT TESTIFY AT PETITIONERS' TRIALS SO HIS PURPORTED RECANTATION OF STATEMENTS MADE TO POLICE IS NOT RELEVANT.

21. Finally, the petitioners ask this Court to consider a statement from one Keno Barnes, also known as Keono Barnes, purportedly made to attorneys for the petitioners on June 23, 2010. In that statement, Barnes claims to have never made certain statements attributed to him by police on October 20, 1992. Essentially, Barnes had informed officers investigating the Matthews murder that on October 19, 1992 he heard Jonathan Barr make statements about seeing the victim get into a car with Robert Veal and Robert Taylor on an unspecified date.

22. Barnes was not called as a witness in any of the trials. His statement from 2010 cannot truly be considered a recantation since there is no trial testimony to recant. The 2010 statement is entirely insignificant in the current proceedings. Since Barnes did not testify in the original trials and therefore had no impact on the outcome of those trials, the contents of his 2010 statement do not constitute new evidence under the meaning of the applicable case law and are irrelevant.

VI. CONCLUSION

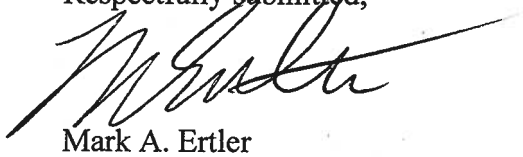
23. This Honorable Court may as a matter of law determine that the petitioners have not met their burden under section 2-1401 and dismiss the matter without further proceedings. The record of the case makes it apparent that even had the original triers of fact known the name of the donor of the DNA profile recovered from the victim's body, it would not have prevented the rendition of the judgments in question. As the Appellate Court found in ruling on separate appeals of the denial of post-conviction relief for these defendants, the evidence against the defendants was overwhelming. *Harden*, No. 1-05-3507 at p. 7; *Barr & Taylor*, Nos. 1-05-3505 & 1-05-

3699 at p. 12. The CODIS association to Person A does not represent an error of fact, but rather simply constitutes an additional piece of information that would not likely have changed the original result.

24. If this Court determines that an evidentiary hearing based upon the holding in *Dodds* is necessary, then this Court should determine that the results of the DNA database search are not so conclusive as to warrant new trials.

WHEREFORE, the People respectfully ask that this Honorable Court deny the Joint Petition for Relief from Judgment.

Respectfully submitted,



Mark A. Ertler
Assistant State's Attorney

Office of the Cook County State's Attorney
2650 S. California Ave., Room 11C39
Chicago, IL 60608
773-674-5832