

**EXCERPTS FROM THE PETITION FOR EXECUTIVE CLEMENCY
ON BEHALF OF JOHNNIE L. SAVORY CURRENTLY PENDING
BEFORE GOVERNOR ROD BLAGOJEVICH**

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INTRODUCTION

Johnnie Savory [was imprisoned in] 1977 when, at the age of 14, he was arrested for two murders in which he has steadfastly denied involvement for almost 27 years. He was subsequently tried twice for these murders, with one conviction reversed because of heavy-handed police interrogation tactics. His second conviction was secured on evidence that even prosecutors have admitted is thin, and that cannot be viewed as compelling if examined objectively.

Yet [Johnnie remained imprisoned until he was paroled on December 19, 2006] because of the willingness of prosecutors to use suspect testimony to secure a conviction in a sensational murder case that was splashed across the headlines of Peoria newspapers and the inexcusable failure of Johnnie's counsel to adequately bring this fact to the jury's attention during trial. The jury, to whom deference might ordinarily be due in a case such as this, was never presented with sufficient evidence to make an informed decision. This error has been compounded over the years by the failure of the courts to examine *all* of the evidence presented against Johnnie and discover how a combination of errors led the jury to return a demonstrably wrong verdict.

Indeed, as demonstrated in this clemency petition, the evidence police and prosecutors have assembled to keep Johnnie locked in a prison cell is demonstrably insufficient:

- Prosecutors relied on the testimony of three witnesses who were not called to testify at the first trial because they lacked credibility, and who have also have consistently contradicted their testimony at Johnnie's second trial.
- Police and prosecutors relied on physical evidence that was inconclusive even at the time of trial and to this day refuse to subject this evidence to modern testing methods.
- Other evidence that suggests Johnnie's innocence has been ignored.

[Details of Crime]

On January 25, 1977, a week after the murders, the police investigation turned its focus to Johnnie Savory — a friend of James Robinson who had coincidentally been at the Robinson

house the day before the murders. After locating Johnnie in the late afternoon at the junior high school he was attending, the police proceeded to interrogate him almost continuously for the next day and a half — not stopping until Johnnie allegedly confessed to the crime, but soon after he refused to affirm the alleged confession.

The nearly continuous questioning of then 14-year-old Johnnie began at 3:30 p.m. at his school, at which time Johnnie gave the police an account of his activities on January 18. Johnnie was then transferred to the police station and interrogated for another eight hours, during which he steadfastly denied any involvement in the deaths of James Robinson or Connie Cooper. During this period, Johnnie was interrogated first by the police and then later, at approximately 10:00 p.m., by a polygraph examiner. It was not until the end of this session that Johnnie's father or his legal guardian were informed that Johnnie was being questioned by the police. After the polygraph examination, Johnnie was placed under arrest and read his *Miranda* warnings for the first time. At that point, Johnnie indicated that he did not wish to continue speaking with the police.

The following morning, the police resumed their interrogation at 10:30 a.m. and continued that session until 8:00 p.m. that night. It was at the end of this session that 14-year-old Johnnie — after being continuously badgered by the police and given a second polygraph examination — allegedly confessed. Soon after, Johnnie refused to reaffirm his alleged confession, again explaining to police that he was not involved in the murders — a position he has maintained to this day.

Johnnie was tried for the murders in June of 1977 before a Peoria County jury. The prosecution's case rested largely on his alleged confession, which the court had refused to suppress, and a limited amount of physical evidence. After a two day trial, Johnnie was convicted and sentenced to two concurrent terms of 50 to 100 years.

The conviction was reversed by the Third District Illinois Appellate Court, which determined that the alleged confession was involuntary and that the Peoria police improperly failed to “scrupulously honor” Johnnie's statement that he did not want to talk to police in violation of the *Miranda* rule. *People v. Savory*, 82 Ill.App.3d 767 (3rd Dist. 1980). The court determined that the failure of the police to observe *Miranda* and the length of time Johnnie was questioned necessitated a conclusion that Johnnie's alleged confession was involuntary. *Id.* at 774. Noting that special care is required in cases involving suspects as young as Johnnie, the Court stated:

We do have a period of approximately eight hours, interrupted by a meal, of questioning on January 25 and then an additional period of questioning, interrupted by meals, commencing at about 10:30 in the morning of January 26 and continuing until about 8 p.m. when the inculpatory statements were made. We also observe that thereafter the defendant did not reaffirm his inculpatory statements but in fact recanted them shortly after they were made. Without deciding that the length of the questioning would of itself justify suppression of the statements as not voluntary, we do believe that the cumulative effect of all of the circumstances does compel the conclusion the prosecution did not sustain its burden of establishing the voluntariness of the statements. We believe the error in admitting the statements requires a new trial because we can not say beyond a reasonable doubt that it did not contribute to the verdict of the jury under the

authority of *Chapman v. California* (1967), 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d. 705.

Given that the alleged confession was inadmissible because of the impropriety of the interrogation, it appeared that Johnnie would not stand trial a second time. The prosecution, however, turned to three witnesses — not called to testify in the first trial because of questions of reliability — who testified that Johnnie allegedly made incriminating statements to them regarding the crime. Based in part on this testimony, Johnnie was convicted a second time and sentenced to two concurrent sentences of 40 to 80 years.

Johnnie Savory is Innocent

Johnnie should be granted executive clemency [because the evidence of his] involvement in this crime is close to non-existent. In short, Johnnie was convicted based on the testimony of three witnesses who prosecutors thought were not credible enough to testify at Johnnie's first trial, two of whom have since recanted their testimony. The physical evidence is similarly thin and would be further undermined by DNA testing that Johnnie has sought and has been unjustly denied. When combined with other evidence of his innocence and the incompetence of his trial counsel, the inescapable conclusion is that the jury in this case was not given the facts to enable it to make an informed decision regarding Johnnie's guilt or innocence. Johnnie therefore asks the Governor and the Prisoner Review Board to take a fresh look at *all* of the evidence in this case and asks the Governor exercise his power of executive clemency to set Johnnie free.

The sole issue at both of Johnnie's trials was identity — was Johnnie Savory involved in the murders of James Robinson and Connie Cooper or [was the crime committed by] some other individual whom the police failed to identify and arrest. The prosecution's evidence that Johnnie involved was extremely thin. There were no known witnesses to the crime who could provide evidence and the prosecution's entire case linking Johnnie to Robinson home on January 18, 1977 consisted of: (1) the testimony of three of Johnnie's friends — Frank, Tina, and Ella Ivy — that Johnnie allegedly made inculpatory statements to them; (2) evidence that during his interrogation Johnnie exercised his right to remain silent; (3) evidence that hair found at the scene was "similar" to Johnnie's hair; (4) evidence that Johnnie or his father may have owned a pocket knife that may have had trace amounts of blood; and (5) evidence that a pair of blue pants allegedly worn by Johnnie had a small bloodstain of the same blood type as the female victim.

Yet at the time of his conviction and today none of this evidence is sufficient to connect Johnnie Savory to this crime. The Ivys were not credible when their testimony was given at Johnnie's 1981 trial and their testimony has been repeatedly contradicted by other statements. The physical evidence has limited value and Johnnie has been unjustly denied access to DNA testing which would further undermine this evidence. For all of these reasons, the evidence presented against Johnnie is insufficient to support any inference of involvement in this crime.

[Testimony of Ivys has been Contradicted by their Later Statements And was Contradicted By he Evidence Presented at the Second Trial]

The centerpiece of the prosecution's second case against Johnnie was the testimony of three witnesses — Frank, Tina, and Ella Ivy — who testified that Johnnie made incriminating admissions to them the day of the crime. The Ivys, who were apparently interviewed by police

only once in the month after the crime and who did not testify at the first trial, surfaced again less than a month prior to the second trial as prosecutors desperately searched for new evidence to present at the retrial.

After Johnnie's first conviction was overturned it had appeared that, given the alleged confession was inadmissible because of police improprieties, Johnnie would not stand trial a second time. Indeed, soon after the convictions were overturned, John Barra, then the Peoria County State's Attorney, was quoted in a *Peoria Journal Star* news article stating that it was likely that Johnnie would not be retried because the alleged confession was the only "substantial evidence to tie Savory to the crime or the scene of the crime." Barra continued, "I don't know how it would be possible to try him without it." Michael Mihm — the State's Attorney at the time of the first trial — agreed, stating that that it would be nearly impossible to prosecute Johnnie without his alleged confession.

The Ivys were not called to testify during the first trial and police reports indicate that the Ivys did not even make statements consistent with their eventual testimony at trial until early April of 1981 — less than a month prior to the second trial. Indeed, the sole police report reflecting a police interview of the Ivys close to the time of the crime, dated February 7, 1977, does not reflect any of the alleged admissions the Ivys testified to at trial. Instead, the police report reflects only that the Ivys claimed Johnnie knew about the crime. Surely a fact as important as an alleged admission of involvement in the crime would have warranted a police report. The Ivys were also not interviewed until nearly a month after the crime, long after their observations were tainted by media coverage of the crime and street rumors.

Reports of the police investigation following reversal of the first conviction reveal that police and prosecutors spent the months leading up to the second trial searching in vain for individuals who could testify that Johnnie made incriminating statements. Indeed, close to the time of the trial, James Ivy, brother of Frank, Ella and Tina, wrote a letter to Johnnie's attorney in which he states that he was offered a deal to testify against Johnnie. Incredibly, it was not until a few weeks before the second trial that police again contacted the Ivys.

The decision to call the Ivys to testify at the second trial reversed a decision made at the time of the first trial that they were not credible witnesses. Assistant State's Attorney Joseph Gibson, one of the prosecutors at the first trial, later testified that the Ivys were not called to testify at the first trial because they were thought to be less than credible witnesses. At a hearing on a motion for a new trial, Gibson testified that prosecutors thought the Ivys' testimony was influenced by descriptions of the case in the media, uncertain as to the time Johnnie allegedly made certain statements, and "too shaky" to present a trial.

The United States Court of Appeals for the Seventh Circuit has also noted that the Ivys' testimony is less than credible. Taking issue with an Illinois Appellate Court decision upholding Johnnie's conviction based on the Ivys' testimony, the Seventh Circuit stated:

In sum, the record does not support the assertion that defendant admitted to three witnesses that he had stabbed the victims and they were dead before the bodies had been discovered, or that he gave detailed descriptions of the wounds before that discovery. Neither do they support the statement that he admitted his presence and complicity in the killings. The testimony of the Ivys thus had significantly less probative force than the Appellate Court's summary suggests. Accordingly, we cannot accord a presumption of correctness to that court's findings.

Beyond these general concerns, however, the testimony of Frank, Tina and Ella Ivy at the second trial: (1) is contradicted by a number of statements by the Ivys recanting their testimony; (2) is not consistent with statements made to police close to the time of the crime; (3) is contradicted by later statements; (4) is contradicted by other evidence in the possession of the police and prosecution at the time of the second trial; and (5) lacks sufficient detail to be credible.

Frank Ivy

The testimony of Frank Ivy, in particular, was on its face pure conjecture. The testimony is further contradicted by Frank Ivy's statements to police in 1977 and statements he has made following the trial recanting his testimony. Finally, Frank Ivy's testimony is contradicted by other evidence in the case — Johnnie Savory simply could not have been at the Ivy household on January 18th at all of the times that Frank Ivy testified he was there.

In his testimony, Frank Ivy testified that Johnnie first came to his house at 5:30 p.m. on January 18, 2003. Frank further testified that Johnnie left the house but returned again later that evening after 8:00 p.m. Frank Ivy testified that it was at that time Johnnie allegedly made incriminating statements:

Q: Did you have occasion to have a conversation with him concerning the incident concerning Scopie later that evening?

A. Yes.

Q. Where did that take place?

A. In my room.

Q: Your bedroom?

A. Yes.

Q: Who was present?

A. Nobody but me and him.

Q. What did he say?

A. "We was practicing Karate."

A. Who was practicing Karate?

A. Scopie and him. And he accidentally stabbed him.

Q. Did he say anything concerning Scopie's sister at all?

A. She came in the room and he stabbed her, *I guess*.

MR. VIELEY: I am going to object to that and move to strike that. That is guess and conjecture.

THE COURT: Overruled. It goes to the weight, not the admissibility. Did the Jury hear that answer? Go ahead. I think you are hearing the answers a little bit better than I am over here. Go ahead, Mr. Gaubas.

MR. GAUBAS: Thank you, your Honor.

Q. Frank, do you recall any other particulars of the conversation at that time?

A. No.

On its face, this testimony of Frank Ivy was nothing more than a “guess.” At trial, Frank Ivy posited only that he “guessed” that Johnnie accidentally stabbed Scopie and his sister. Frank Ivy’s statement does not recount the exact words allegedly used by Johnnie and fails to credibly establish that Johnnie admitted his culpability.

There is more, however. A string of evidence contradicts Frank Ivy’s trial testimony. The most important of which is that Frank Ivy himself says his testimony at trial was incorrect, and has done so on at least three separate occasions:

- Less than one week *before* the second trial, Frank Ivy told investigator Charles Peters that he was not sure who had made the statements he attributed to Johnnie and that it may have been someone else. During this conversation with Peters, which was recorded on tape and transcribed for the record during the second trial,¹ Frank Ivy stated:

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Q. O. K. Did Johnnie make any remarks that you can recall concerning that, the two kids that got killed?

A. No, he didn’t say anything. He said ‘huh’, something like that.

Q. Who else was present, do you recall, watching that TV program?

A. The whole family.

Q: Do you recall him making any reference to having been over to Scopie’s house?

¹ As discussed below, Johnnie’s attorney failed to lay the necessary foundation to play this tape for the jury or call investigator Charles Peters to testify even after being given an opportunity to do so by the court. Because of this inexcusable error, the jury *never learned* that Frank Ivy has contradicted his sworn trial testimony in a statement made less than a week prior to his testimony at trial.

A. No.

Q: You don't recall that?

A. No.

Q. Do you recall his mentioning anything about doing Karate?

A. Yes.

Q. Or anything like that?

A. Yes, uh huh.

Q. What was that about?

A. They was playing, doing Karate. And he had—after they picked up the knife.

Q. Pardon?

A. After they had picked up the knife. That's about all he had told me.

Q. What was that again?

A. They picked up the knife while they were doing Karate.

Q. Prior to this recorded interview I had a little chat with you for a while?

A. Uh huh.

Q: And you indicated that you thought that somebody else said that they may have been playing around with the knife.

A. Something like that, yeah.

Q. And you indicated to me that you didn't remember actually hearing Johnnie say that?

A. No.

A. Is that correct?

A. That's correct.

Q. O.K. So what is the story on it, then?

A. As I said, somebody said that. He could have said it. I really don't remember. ...

Q. You say that you don't remember any other conversations with Johnnie concerning this?

A. Huh uh[.]

- Two years later, Frank Ivy signed a statement stating that his statements to police and trial testimony were "wrong." In the statement, Frank Ivy stated that his testimony was based on information he had heard on the street and that he felt pressured into making the statement by Detective Cannon of the Peoria Police Department.
- More recently, in May 2003, Frank Ivy again affirmed that Johnnie never told him that he had stabbed James Robinson and Connie Cooper.

What's more, Frank Ivy's statements to police close to the time of the crime in 1977 contained no mention of the alleged admission about which Frank Ivy later testified about in 1981. In particular, the sole police report recounting police interviews of the Ivy family in 1977 does not mention any statement by any of the Ivys that Johnnie admitted stabbing James Robinson or Connie Cooper. Rather, the police report recounts only that the Ivys claimed Johnnie had made statements that reflected that Connie Cooper and James Robinson had been murdered. It was not until prosecutors were seeking to retry Johnnie a second time in 1981 that a police reports reflect Johnnie's alleged admission to Frank. If Frank had in fact stated that Johnnie admitted involvement, surely this would have been recorded in police reports filed in 1977. This report indicated that the police did not re-interview Frank Ivy until early April, one month before trial and almost two months after the case was remanded by the Illinois Appellate Court.

Finally, Frank Ivy's trial testimony regarding when Johnnie was present at the Ivys' home is further contradicted by Peoria police themselves and Frank Ivy's father Willie Ivy. Indeed, Peoria police officer Glenn Perkins testified that he saw Johnnie in a crowd of people outside of the Robinson residence between 5 and 6 p.m. on January 18th. Perkins recorded this recollection in police report he filed on January 27, 1977. Another report filed by police officer Marcella Brown indicates that a film crew for the local news filmed Johnnie at the scene at 6:20 p.m., and that a cameraman had observed Savory board a bus and leave the scene at 7:00 p.m. Yet another report by Officer Brown indicates that TV reporter Jerry Geisler had a conversation with Savory at the scene at 6:20 p.m. Johnnie simply could not have been at the Ivy home at 5:30 p.m., as Frank Ivy testified, and at the crime scene at the same time. Frank Ivy's assertion that Johnnie was at the Ivys' home at 8:00 p.m. was also contradicted by his father, Willie Ivy, who stated that Johnnie did not return to the house until 10:30 p.m. In light of this evidence and the other statements by Frank Ivy it cannot be said that there is any credible evidence that Johnnie

confessed to Frank Ivy. Joe Gibson and the Seventh Circuit are correct — Frank Ivy’s testimony was simply not credible.

Tina Ivy

Tina Ivy’s testimony is unreliable for similar reasons. At trial, Tina Ivy testified that she had seen Johnnie Savory at quarter or ten till 7:00 p.m. on January 18th at the Ivys’ house. Tina testified that it was at that time that Johnnie Savory allegedly made incriminating statements:

Q. What, if anything, was said at that time?

A. That two kids had got killed

Q. What, if anything, else did he tell you?

A. That him and Scopie had been together earlier that day doing Karate. And that he had accidentally cut Scopie.

Yet, Tina’s testimony is no more reliable than that of Frank Ivy. Like her brother, Tina Ivy has recanted her testimony on several occasions:

- In 1983, Tina Ivy signed two statements stating that Johnnie did not tell her that he had stabbed James Robinson and Connie Cooper as she has testified and that she had not seen Johnnie Savory at 7:00 p.m. on January 18, 2003. Tina Ivy stated that her testimony was based on rumors she had heard in the street.
- At a post-conviction hearing two years after the trial, Tina Ivy testified that Johnnie had never admitted he killed James Robinson and his sister. Tina Ivy testified that she had pending criminal charges on her mind at the time she testified in 1981. At the time she testified at the second trial, Tina Ivy was on probation for a forgery charge and had been enrolled in a drug rehabilitation program.
- More recently, in May 2003, Tina Ivy again signed an affidavit confirming that her testimony at Johnnie’s second trial was not accurate.

Like the testimony of her brother, Tina Ivy’s testimony is also not consistent with what she told the police in her initial interview in February of 1977. The police report of that interview contains no mention of any admission by Johnnie that he had committed by the crimes. Indeed, the police report does not even reflect that Tina spoke with Johnnie around 7:00 p.m. on January 18th.

Tina Ivy’s testimony is also contrary to the testimony and statements of other witnesses. As noted above, the police and other witnesses have claimed that they saw Johnnie Savory outside of the crime scene between 5:00 p.m. and 7:00 p.m. Johnnie could not possibly have been at the Ivys’ house making incriminating statements to Tina Ivy at the same time he was also at the crime scene. This is further confirmed by the 1977 statement of Willie Ivy, Tina Ivy’s father, who stated that Savory did not return to the Ivys’ house until 10:30 p.m. As Tina Ivy’s

later statements confirm, the only time she saw Johnnie on January 18th was earlier in the day, when they road the bus to school together around 3:00 p.m.

In light of her later statements, and the other evidence contradicting her statement, Tina Ivy's testimony cannot continue to be viable reason to hold Johnnie Savory in prison.

Ella Ivy

Finally, the testimony of Ella Ivy is also not reliable evidence that should be used to uphold Johnnie's second conviction. Ella testified that she saw Johnnie Savory sometime before 3:00 p.m. and again around 4:00 p.m. at the Ivy's house. Ella testified:

Q. Approximately what time was it that you saw Johnnie Savory, if you can recall?

A. It was before three.

Q. Did you have a conversation with Johnnie Savory at that time?

A. Yes.

Q. Who was present at that time?

A. No one but me and Johnnie.

Q. O. K. Where did the conversation take place at?

A. 1103 First Street in the livingroom.

Q. What, if anything, was said at that time?

A. He was telling me that he had went over to his friend, Scopie's house.

Q. What, if anything, else did he tell you?

A. That they was doing Karate or playing Karate or something, and that he accidentally cut him or something, by accident. But he was all right when he left.

....
Q. Did you see Johnnie Savory again that afternoon?

A. Later, before four.

...
Q. What, if anything, was said at that time?

A. He asked me did I remember him telling me about his friend, Scopie. And I said yes.

Q. What, if anything, else did he tell you then?

A. He told me that they was dead, Scopie and his sister.

Yet, like the testimony of her siblings, Ella Ivy's testimony is at odds with the evidence of Johnnie Savory's movements on January 18. In particular, Ella testified that her conversations with Johnnie Savory occurred around 3:00 p.m. and again around 4:00 p.m., *after* her sister Tina and Johnnie left to catch the bus to school. Yet, as Tina Ivy testified at trial, she and Johnnie left the Ivy home around 2:30 p.m. to catch a bus to go to their late afternoon school. Johnnie's movements after he boarded the bus with Tina are accounted for. Johnnie's probation officer Percy Baker testified at the first trial that he saw Johnnie in his office from 3:00 p.m. until 3:30 p.m. on the afternoon of the 18th. The principal at the late afternoon school Johnnie was attending told police in 1981 that Johnnie arrived at the school around 4:00 p.m. and stayed until almost 5:00 p.m. As discussed above, Johnnie was next seen at the crime scene by police and reporters. Further, Ella's brother, Frank Ivy testified that that he arrived at home from school around 3:45 p.m. and Johnnie was not at the residence when he got home. Johnnie could not have been at the Ivy home making incriminating statements to Ella Ivy at the same time he was at school.

Like her two siblings, the sole police report recounting an interview with Ella Ivy close to the time of the crime in 1977 contains no mention that Ella stated that Johnnie had made the admissions reflected in her trial testimony. (Indeed, on cross examination at the second trial, Ella Ivy had initially told police that she "wasn't for sure" she remembered anything about the case and that she discussed her testimony with Officer Cannon and prosecutors no fewer than four of five times before her testimony at trial.

The Physical Evidence

In addition to the Ivys' testimony, the prosecution presented a limited amount of physical evidence alleged to connect Johnnie to the crime. In particular, the prosecution claimed that (1) a bloodstain on a pair of blue pants linked Johnnie to the crime scene, (2) hair found at the scene was "similar" to Johnnie's hair, and (3) Johnnie or his father owned a knife that "might" have had trace amounts of blood. As demonstrated below, even at the time of trial, none of this evidence has the probative value which the prosecution attributed to it, and courts have denied Johnnie access to modern testing methods which would further undermine this evidence.

The Blue Pants

At both trials, the prosecution claimed that Connie Cooper's blood was found on a pair of pants Johnnie allegedly wore while committing the crime. However, substantial evidence exists that, not only did the pants not belong to Johnnie, but the blood found on the pants was not from Connie Cooper.

In the first instance, the pants did not even belong to Johnnie Savory. Rather, as Johnnie's father, Y.T. Savory, testified at both trials, the pants belonged to him and not Johnnie. Indeed, contrary to the later claims of prosecutors, the officers initially investigating the case thought it improbable that Johnnie wore the pair of blue pants while committing the crime. As a January 27, 1977 police report filed by Officer John Fiers states, "In the opinion of these officers, it is not probable that Johnnie would be wearing his father's pants due to the considerable size

difference.” Officers Fiers and Jatowski both testified that the size of the pants were for a full grown man and not a 14 year old boy.

Regardless of who the pants belong to, there is also substantial doubt about the source of the blood stain. As Johnnie’s father told police at the time they collected the pants at his house, the source of the blood on the pants was a cut on his leg that Johnnie’s father had sustained two weeks earlier. At both trials, Y.T. Savory testified that that injury had been the source of the bloodstain on the blue pants. Records from St. Francis Hospital confirm that Y.T. Savory was treated for a deep wound on his leg on January 11, 1977.

Testing conducted at the time of trial to determine who’s blood was on the pants was inconclusive. Both Y.T. Savory and Connie Cooper had Type A blood. Likewise, the blood on the pants was identified as Type A blood. At a recent deposition, the criminalist who performed the original analysis in this case, Robert Gonsowski, testified that the testing he conducted on the bloodstain would include *both* Y.T. Savory and Connie Cooper as potential sources of the blood but could not exclude either as the source. At the first trial, Gonsowski testified that he did not conduct further testing in an attempt to identify the subgroup of the blood on the pants. At his deposition, Gonsowski expanded on this testimony stating that in 1977 there was no reliable test he was trained to perform to eliminate either Johnnie’s father or Connie Cooper as the source of the stain. As Gonsowski testified at his deposition, DNA technology developed since that time could help make this type of determination. As discussed below, however, prosecutors have refused to conduct this testing and the Illinois Supreme Court has unjustifiably denied Johnnie’s right to DNA testing.

Hair Samples

The second item of physical evidence which the prosecution claimed linked Johnnie to the crime scene were hairs found in the sink and bathtub at the Robinson home. As Robert Gonsowski testified, the extent of his examination of these hairs in 1977 would have been a side by side microscopic comparison of the samples found at the scene and samples taken from Johnnie Savory. These tests allowed Gonsowski to make a visual comparison and determine only that the hair samples were “similar” but could not definitively testify that they could have only come from Johnnie or that the hairs were “identical” to Johnnie. As Gonsowski testified at his recent deposition, DNA testing on these items could yield more definitive results.

The Pocket Knife

The prosecution also paraded a pocket knife obtained from Y.T. Savory around the courtroom claiming that it was the murder weapon. Yet, the tests performed on the knife indicated only the possibility that that it had trace amounts of blood, and could not definitively determine that blood was actually on the knife. No testing could be performed to determine with certainty that that it actually was blood, that it was human blood, or to determine the blood type. Furthermore, Johnnie’s father, Y.T. Savory, testified that he had used that very knife to cut the stitches he received for his leg wound.

The Prosecution Improperly Introduced Other Alleged Inconsistent Statements and Claimed Johnnie's Exercise of His Right to Silence was Evidence of Guilt

The final evidence of Johnnie's guilt offered by prosecutors were statements Johnnie made to the police which prosecutors claimed were inconsistent with other information known to police as well as claims that Johnnie's refusal to talk to police at various points during his interrogation were in and of themselves evidence of guilt. Regardless of the content of the allegedly inconsistent statements made by Johnnie, the Second District Appellate Court ruled that such statements were introduced in violation of *Miranda v. Arizona*. The Illinois Appellate court also ruled that use of Johnnie's exercise of his right to remain silent as evidence of his guilt was also improper.

Despite this prosecutorial misconduct, the Illinois Appellate Court ruled that the errors were harmless given the testimony of the three Ivys. Therefore, the court did not reverse the conviction. This decision was later revisited by the United States Court of Appeals for the Seventh Circuit, which also agreed that admission of the allegedly inconsistent statements was improper and that prosecutors had acted improperly by arguing that Johnnie's refusal to talk to police was evidence of guilt. As noted above, the Seventh Circuit disagreed that the Ivys were credible witnesses and that their testimony alone made the error harmless finding that "The testimony of the Ivys thus had significantly less probative force than the Appellate Court's summary suggests. Accordingly, we cannot accord a presumption of correctness to that court's findings." Yet, the Seventh Circuit also found the error harmless largely relying on the physical evidence (which the court characterizes as "damning") to bolster the testimony of the Ivys. Ironically, as discussed below, the Illinois Supreme Court has since issued a ruling which, relying on the Ivys' testimony, stated that the physical evidence was so unimportant to the conviction that Johnnie should not be allowed to request DNA testing.

[Denial of DNA Testing]

Executive clemency is also necessary to correct the fundamental injustice which has resulted from the refusal of the Peoria County State's Attorney and Illinois Courts to perform the DNA testing needed to show that the physical evidence did not establish Johnnie's guilt.

In 1998, Johnnie filed a petition requesting DNA testing on the bloodstained pants and the fingernail scrapings collected at the time of the crime under the state's new DNA testing statute. The trial court and Illinois Appellate Court denied the petition for testing, reading the statute as requiring a petitioner to demonstrate that the test would establish "actual innocence." The Illinois Supreme Court rejected the Third District's overly restrictive reading of the statute finding that the evidence must only be materially relevant. However, the Supreme Court denied testing stating that the blood stained pants were a relatively insignificant part of the prosecution's case compared to the alleged admissions made to the Ivys.

The Illinois Supreme Court's ruling on DNA testing leaves the various appellate decisions reviewing Johnnie's conviction hopelessly at odds. With its decision, the Illinois Supreme Court has effectively stated that it was the Ivys' testimony that was the basis for the conviction, rendering the physical evidence relatively meaningless. Yet, as noted above, the United States Court of Appeals for the Seventh Circuit has previously denied habeas corpus relief finding, not only were the Ivys less than credible, but also finding that it was the physical evidence that justified the conviction. As noted above, the Seventh Circuit refused to grant Habeas Corpus relief because it found the physical evidence "damning."

These characterizations of this case are simply incompatible. It is simply not possible for the physical evidence to be at same time “damning” and also not materially relevant. It is simply not possible for the Ivys to be less than credible but at the same time serve as a basis for denying DNA testing. None of the evidence presented in this case was so compelling that the results from testing the physical evidence in this would not be material to the question of Johnnie’s guilt or innocence. To ignore the fact that the jury was presented with both the Ivys testimony and the physical evidence is to bury one’s head in the sand. The injustice that has been dealt to Johnnie Savory is exacerbated by the fact that Frank and Tina Ivy have repeatedly stated that they were mistaken in their testimony. Johnnie’s case could be “Exhibit A” that the flaws in Illinois’s capital punishment regime that have so recently been the focus critical examination are not confined to capital cases. Johnnie’s case presents all of the problems that have plagued capital cases: coerced confessions, incompetent defense counsel, recanting witnesses, and the lack of adequate testing of physical evidence.

Johnnie Savory again calls on the Peoria County State’s Attorney to permit DNA testing on all of the physical evidence gathered by police in this case.

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