FOURTH DIVISION
June 29, 2017

No. 1-14-3236

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 84 C 6487
	)	
FRANKLIN BURCHETTE,	)	Honorable
	)	Thomas J. Hennelly,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Dismissal of successive postconviction petition at second stage affirmed. Defendant forfeited claim that State suppressed evidence of police torture to extent that claim relied on evidence of torture available to defendant at the time of his first two postconviction petitions. With respect to evidence that arose after defendant's first two postconviction petitions, State had no obligation to disclose evidence that was not available at defendant's trial.

¶ 2 In 1986, defendant Franklin Burchette was convicted of fatally bludgeoning his sister-in-law's three children. Prior to his jury trial, defendant had moved to suppress his confessions to the murders on the basis that the detectives who questioned him threatened to electrocute him. Defendant was questioned by four police officers at the Area 2 Chicago police station in 1984, during the time period when Lieutenant Jon Burge and other Area 2 officers infamously tortured suspects in order to elicit confessions, including electrocuting them.

¶ 3 This appeal involves defendant's third postconviction petition, which alleged that the prosecution violated his right to due process of law under *Brady v. Maryland*, 373 U.S. 83 (1963), when it failed to disclose evidence of torture at Area 2 to defendant. Defendant argues that the prosecution was well aware of the ongoing torture at Area 2 at the time of his trial, and that the evidence would likely have resulted in a different outcome on his motion to suppress.

¶ 4 Much of the evidence defendant raises to support his claim—particularly the testimony of other victims of abuse at Area 2—was available to defendant when he filed his first two postconviction petitions in 1994 and 2001. Yet defendant failed to raise a *Brady* claim in either of those petitions. Thus, we must hold that defendant forfeited his *Brady* claim with respect to that pre-2001, and in most instances pre-1994, evidence.

¶ 5 With respect to other evidence on which defendant relies, which arose after those other postconviction proceedings, defendant's *Brady* claim fails for two reasons. First, under clear precedent from our supreme court, defendant cannot establish a *Brady* violation because the evidence was not available to the State at the time of defendant's trial. Thus, the State could not have been said to have failed to disclose it. Second, defendant cannot show that that evidence was material, because it does not implicate or even name the officers involved in his interrogation, which significantly reduces its weight, if not rendering the evidence inadmissible altogether. We affirm the dismissal of defendant's petition.

¶ 6 I. BACKGROUND

¶ 7 This court previously detailed the evidence presented at defendant's trial when it resolved his direct appeal in *People v. Burchette*, 257 Ill. App. 3d 641 (1993). Additional facts and procedural history relating to defendant's case may also be found in this court's orders affirming the summary dismissal of defendant's first postconviction petition (*People v. Burchette*, No. 1-

95-0840 (1997) (unpublished order under Supreme Court Rule 23)) and affirming the dismissal of his second postconviction petition (*People v. Burchette*, No. 1-01-1734 (2002) (unpublished order under Supreme Court Rule 23)). We limit our discussion of the background of this case to the extent necessary to understand defendant's claim in this appeal.

¶ 8 Defendant was charged with murdering his sister-in-law's three children by bludgeoning them with a baseball bat in their home. He had recently become estranged from his wife, who had left him and moved in with her sister and her sister's three children.

¶ 9 Prior to trial, defendant filed a motion to suppress the statements he made to police on the basis that he was mentally coerced into confessing. At the hearing on the motion, defendant testified that the detectives who questioned him threatened to shock him with an electric prodder if he did not confess. Specifically, he said that one of the officers—he could not say which—held up a device with two prongs that emitted a "little blue flash" between the prongs and said, " 'I'll stick this damn thing on your balls [and] you'll talk.' "

¶ 10 Sergeant John Manos, Sergeant Rutherford Wilson, and Detective John Solecki each testified that they did not threaten to electrocute defendant. The parties also stipulated that Detective Joseph DiGiacomo would testify that defendant was not threatened with an electric prodder or otherwise threatened during questioning. Solecki testified that he, Manos, Wilson, and DiGiacomo were the only officers who questioned defendant. Assistant State's Attorney (ASA) Dane Cleven testified that Burge called him to the station to take defendant's statement.

¶ 11 The trial court denied defendant's motion to suppress. A jury found defendant guilty of the three murders, and he was sentenced to life imprisonment. This court affirmed his conviction on direct appeal. *Burchette,* 257 Ill. App. 3d at 642.

¶ 12 In 1994, defendant filed a *pro se* postconviction petition that alleged that his trial attorneys were ineffective for failing to present evidence of the systematic torture of suspects at Area 2. Defendant supported his petition with evidence of torture and abuse at Area 2, including:

- Transcripts of sworn testimony and affidavits recounting such abuse suffered by various victims;
- The so-called "Goldston Report," an Office of Police Supervision report on the Burge investigation, from November 1990, which found that abuse at Area 2 was "systematic" over a span of more than a decade, including not only beatings but "psychological techniques and planned torture," and that "[p]articular command members were aware of the systematic abuse and perpetuated it either by actively participating in same or failing to take any action to bring it to an end."
- Reports, charts, and fact sheets prepared by an attorney, listing as many as 58 victims of torture at Area 2, concerning "electroshock" and other forms of torture and beatings dating back to the 1970s and continuing into the early 1990s;
- The police board's findings and decisions regarding Burge, detailing an administrative record that was "the most voluminous in the Police Board's history" and resulting in Burge's discharge; and
- A memorandum opinion for the circuit court upholding Burge's discharge, likewise recounting at length the abuse at Area 2.

¶ 13 The initial postconviction petition was summarily dismissed, and this court affirmed the dismissal, finding that counsel could not have been ineffective in failing to present evidence that had only come to light after trial. *Burchette*, No. 1-95-0840 (1997). The court also noted, not

insignificantly, that none of the officers who questioned defendant were implicated in the evidence of police torture at Area 2.

¶ 14 In 2001, defendant filed a second *pro se* postconviction petition, arguing that his sentence violated the holding of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Defendant's petition was dismissed, and this court affirmed the dismissal. *Burchette*, No. 1-01-1734 (2002).

¶ 15 On June 4, 2008, defendant filed a third postconviction petition—the one presently before us—alleging that the prosecution had violated its duty to disclose favorable evidence to defendant under *Brady* when it failed to produce evidence of the routine torture of suspects at Area 2. The court appointed counsel to represent defendant.

¶ 16 Defendant's postconviction counsel subpoenaed the Office of Professional Standards (OPS) for any records relating to complaints of excessive force or intimidation by Sergeant Manos, Sergeant Wilson, Detective DiGiacomo, and Detective John Solecki. The subpoena did not uncover any records of such abuse against any of these officers.

¶ 17 On May 17, 2013, counsel filed a supplemental postconviction petition on defendant's behalf. Defendant alleged that the State violated its duty under *Brady* by failing "to disclose *** that the officers at Area 2[ ] had been accused by other suspects of the use of torture and abuse to extract confessions[,] had falsified police reports[,] and had committed perjury to cover-up their misconduct." He further alleged that the State knew of over 70 cases of torture "that occurred at Area 2 before and after his interrogation." And he claimed that the torture evidence would have been favorable to him, as it would have "tended to negate his guilt, corroborate[d] his testimony at the suppression hearing, *** and provide[d] impeachment against the officers." Defendant summarized the methods of torture inflicted on Sylvester Green, Darrell Cannon, James Cody,

Leonard Hinton, and Leroy Orange between 1981 and 1985. (Again, none of those individuals, in their claims of abuse, implicated any of the officers who interrogated defendant here.)

¶ 18 Defendant attached his affidavit to the supplemental petition, which said that his "access to materials regarding the scandal at Area 2 *** has been limited to the press coverage and what [he had] learned from the factual accounts in the case law available in [the prison] law library." Defendant added that he had no access to "any court records or transcripts aside from the record in [his] own case."

¶ 19 Defendant also once again attached the OPS report on the Burge investigation—the Goldston Report—which was dated November 2, 1990. Again, that report concluded that the physical beatings and torture, and psychological abuse at Area 2 was "systematic" and "methodical" and spanned over a decade. The report also found that, in light of the number of incidents of abuse, "command members were aware of the systematic abuse." The report did not mention Manos, Wilson, DiGiacomo, or Solecki in relation to any specific allegations, although some of the perpetrators were not identified.

¶ 20 Defendant also included the following copies of reported opinions and orders by various courts relating to Area 2 abuse claims:

1. *Jones v. Burge*, No. 11-CV-4143, 2012 WL 2192272 (N.D. Ill. 2012), which dismissed plaintiff Melvin Jones's federal civil complaint against Burge, John Byrne, Michael Bosco, Robert Flood, Dennis McGuire, and Richard Brzeczek;

2. *United States v. Wilson*, 120 F.3d 681, 685 (7th Cir. 1997), which held that Andrew Wilson could bring the city of Chicago back into his federal lawsuit against Burge in order to collect his damages from the city;

3. *People v. Green*, 136 Ill. App. 3d 361, 363 (1985), a case in which the defendant alleged that Burge "put a plastic bag over [his] head, choking him, and hit him in the stomach" in order to extract a confession (although the voluntariness of the defendant's confession was not at issue on appeal);

4. *Cannon v. Burge*, No. 05 C 2192, 2011 WL 4361529, at *4 (N.D. Ill. 2011), in which the district court granted the defendants summary judgment on the plaintiff's lawsuit against Burge and Officers Jon Byrne, Peter Dignan, and Charles Grunhard because a prior settlement barred the lawsuit;

5. *People v. Hinton*, No. 1-09-0101 (2010) (unpublished order under Supreme Court Rule 23), an order from this court remanding for an evidentiary hearing on the defendant's postconviction claims of torture and abuse by Burge and Detectives Thomas Kripple, Leonard Bajenski, and Patrick Mokry; and

6. *Orange v. Burge*, No. 04 C 0168, 2008 WL 4443280, at *3 (N.D. Ill. 2008), which largely denied ASA Dennis Dernbach's motion for summary judgment on the plaintiff's complaint that he was abused—including by being electrocuted on his genitals and in his anus—by Burge and "detectives McGuire, Flood, Bajenski, and others."

Along with the above-listed cases, defendant attached two cases that did not deal with Area 2 abuse:

1. *Houston v. Partee*, 978 F.2d 362 (7th Cir. 1992), which held that three prosecutors—not ASA Cleven—were not immune from civil liability for failing to disclose exculpatory evidence; and

2. *Richardson v. Briley*, No. 00 C 6425, 2004 WL 419902, at *34 (N.D. Ill. 2004), *rev'd*, 401 F.3d 794 (7th Cir. 2005), a *habeas corpus* case in which the district court

found that the prosecution tricked the defendant into declining to call a material witness and that Solecki, who testified at an evidentiary hearing, "to be utterly lacking in credibility."

Defendant included two newspaper articles, reporting that Orange settled his lawsuits against Chicago and Cook County for $5.5 million and $525,000, respectively, and that Elton Houston and Robert Brown settled their lawsuit for $1.1 million.

¶ 21 Defendant also attached transcripts of testimony from Melvin Jones, Andrew Wilson, Sylvester Green, Darrell Cannon, Michael Coleman, James Cody, Leonard Hinton, and Leroy Orange that they delivered at various hearings between 1982 and 1985, summarized as follows:

- Jones testified that Burge and Flood electrocuted his penis with a device that looked like a little, brown, wooden box with a long cord attached and a "long nail" at the end of it.
- Wilson testified that Burge, Officer John Yucaitis, and several unidentified officers beat, choked, and burned him. Wilson also said that Yucaitis and Burge attached clamps to his nose and ears that were attached to a little black box and electrocuted him.
- Green testified that Burge and Officers McCabe and Raymond McNally beat and choked him.
- Cannon testified that Officers Byrne and Dignan beat him, put a shotgun in his mouth, and shocked his testicles with a cattle prod.
- Coleman said that Officer Robert Dwyer beat him and pulled stitches out of his face that he had received before his interrogation.
- Cody testified that Detectives John Paladino, McNally, and George Basile beat him with a flashlight, punched him, and used a "long stick" to electrocute his testicles.

- Leonard Hinton testified that Burge and several unidentified officers beat him, covered his head with a plastic bag, and electrocuted his genitals and anus with a long rod attached to a black box.
- Leroy Orange testified that Area 2 detectives inserted a device into his anus that electrocuted him.

¶ 22 The State moved to dismiss defendant's third postconviction petition, arguing that his claims were barred by either *res judicata* or forfeiture, because they had been or could have been raised in earlier postconviction proceedings. The State also argued that the evidence defendant had submitted did not support his claims, since none of the evidence related to abuse or torture by Manos, Wilson, DiGiacomo, or Solecki.

¶ 23 The trial court granted the State's motion to dismiss. The court took issue with the notion that the abuse at Area 2 was an "open secret," saying, "I don't think that was, in my view, substantiated by anything other than urban legend." The court said that "just because [defendant] had the happenstance to be arrested in Area 2 *** doesn't automatically mean that his allegations should be taken as the truth." The court found that defendant had "lied about this case from start to finish" and that he had "zero credibility about anything." The court noted that it defied common sense to believe defendant about the abuse when the police let him speak to his family members and alone with an ASA during his interrogation.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 A. *Res Judicata*/Forfeiture

¶ 27 Before reaching the merits of defendant's appeal, we must address the State's claim that defendant's *Brady* claim is barred by the principles of *res judicata* and forfeiture. The State

claims that defendant "had more than sufficient information to raise [his] claim during his 1994 initial post-conviction petition."

¶ 28 In a postconviction proceeding, the doctrines of *res judicata* and forfeiture prohibit a defendant from raising claims that were or could have been adjudicated on direct appeal or, if applicable, in an earlier postconviction proceeding. *People v. Rogers*, 197 Ill. 2d 216, 221 (2001); *People v. Blair*, 215 Ill. 2d 427, 443 (2005); *People v. Pitsonbarger*, 205 Ill. 2d 444, 458 (2002); see 725 ILCS 5/122-3 (West 2006) (in successive postconviction petition, "[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived."). Specifically, *res judicata* deals with issues that were actually raised and decided on direct appeal or in an earlier postconviction proceeding, whereas forfeiture deals with those issues that could have been raised in those earlier proceedings but were not. *Blair*, 215 Ill. 2d at 443-44. "The doctrines of *res judicata* and [forfeiture] will be relaxed, however, in three situations: where fundamental fairness so requires, where the alleged [forfeiture] stems from the incompetence of appellate counsel, and where the facts relating to the claim do not appear on the face of the original appellate record." *People v. Hobley*, 182 Ill. 2d 404, 428 (1998).

¶ 29 The State claims that both *res judicata* and forfeiture apply here. The basis for its argument is that defendant could have raised his *Brady* claim in his 1994 petition. The State does not contend, nor does the record show, that defendant actually raised his *Brady* claim back then. Thus, *res judicata* is not applicable. The better fit is forfeiture—whether defendant could have raised his *Brady* claim at that time but failed to do so. See *Blair*, 215 Ill. 2d at 443-44.

¶ 30 We will find a claim to be forfeited where the defendant had evidence to support his claim at the time he filed an earlier postconviction petition but failed to raise it. See 725 ILCS 5/122-3 (West 2006) ("Any claim of substantial denial of constitutional rights not raised in the

original or an amended petition is waived."); *People v. Anderson*, 375 Ill. App. 3d 121, 135-36 (2007) (defendant forfeited claim in successive postconviction petition regarding voluntariness of confession, as case law and Goldston report were available at time he filed his initial postconviction petition).

¶ 31 "In the context of a successive post-conviction petition *** the procedural bar [of forfeiture] is not merely a principle of judicial administration; it is an express requirement of the statute." *Pitsonbarger*, 205 Ill. 2d at 458; see also *Anderson*, 375 Ill. App. 3d at 134; *People v. Smith*, 341 Ill.App.3d 530, 539 (2003) (in successive postconviction proceeding, doctrine of forfeiture, "which would be a procedural affirmative defense for purposes of the first petition, becomes a substantive consideration going to the merits of a successive postconviction petition").

¶ 32 In *Orange*, 195 Ill. 2d at 445, the defendant had previously filed a postconviction petition alleging ineffective assistance of counsel for "failing to investigate and discover other complaints of torture that would have corroborated his allegations regarding coercive activities at Area 2." He later filed a successive postconviction petition in which he alleged that the prosecution violated *Brady* by failing to disclose "evidence of a pattern and practice of abuse at Area 2 [that] would have been material to a motion to suppress his confession and would have bolstered his claim of coercion at trial." *Id*. at 456. Our supreme court held that the defendant was barred from raising this claim in his successive petition, because:

> "the *Brady* claim is certainly one that could have been raised in the earlier proceeding but was not. The defendant had the Goldston report at the time of his first postconviction petition [in 1993] and was obviously aware of the facts that would have supported a

claim that the State should have disclosed evidence of a pattern and practice of abuse." *Id*. at 456-57.

¶ 33 Likewise, here, much of the evidence defendant cites to support his *Brady* claim was available at the time of his first two postconviction petitions, which he filed in 1994 and 2001, respectively. Three of the opinions and orders defendant used to support his petition were filed before 1994 or 2001. See, *e.g.*, *United States v. Wilson*, 120 F.3d 681, 685 (7th Cir. 1997); *Houston v. Partee*, 978 F.2d 362 (7th Cir. 1992); *People v. Green*, 136 Ill. App. 3d 361, 363 (1985).

¶ 34 And all of the transcripts of testimony from other cases cited in the third postconviction petition were taken between 1982 and 1985, years before defendant filed his *first* postconviction petition—the testimony of Melvin Jones (1982), Andrew Wilson (1982), Sylvester Green (1983), Darrell Cannon (1984), James Cody (1984), Leonard Hinton (1985), and Leroy Orange (1985). Indeed, defendant's first postconviction petition in 1994 *also* contained sworn testimony from Andrew Wilson, and each of these torture victims listed in this paragraph were mentioned at least twice in the exhibits to his 1994 petition—in the "fact sheet" summary of victims prepared by an attorney, and in the chart summarizing the claims of 58 different victims, both of which chronicled with some specificity these victims' claims.

¶ 35 Even more significant is the Goldston report. Like the defendant in *Orange*, defendant here not only had access to the Goldston report in his earlier postconviction proceedings but used it, attaching it to his initial postconviction petition in 1994. The conclusions from the Goldston report, as we mentioned earlier, were not only that the abuse at Area 2 was "systematic" and involved various forms of beating and torture—but notably that "[p]articular command members were aware of the systematic abuse and perpetuated it either by actively participating in same or

failing to take any action to bring it to an end." Thus, the conclusion underlying defendant's *Brady* claim here—that the State was aware of the abuse or at least should have been—was part of the conclusions in the report attached to his first postconviction petition.

¶ 36 Under these circumstances, the only conclusion we can possibly draw, based on *Orange*, is that "the *Brady* claim is certainly one that could have been raised in the earlier proceeding but was not." *Orange*, 195 Ill. 2d at 456.

¶ 37 Defendant says that he could not have adequately raised his *Brady* claim earlier, because the widespread nature of the torture was not fully known until the Special State's Attorney released a report in 2006 issuing its findings about the use of torture at Area 2. But defendant did not include that report with his postconviction petition. We decline to assess the effect of that report on defendant's claims for the first time on appeal. See, *e.g.*, *Anderson*, 375 Ill. App. 3d at at 138-39 ("[I]t would be wrong for us to consider [the 2006 Special State's Attorney] report for the first time on appeal without it first being attached to defendant's postconviction petition for initial scrutiny and evaluation at the trial court level.").

¶ 38 Thus, we hold that, to the extent that defendant relies on information available to him prior to 1994 or 2001, he has forfeited his *Brady* claim.

¶ 39 That brings us to information and materials that were not available to defendant in either 1994 or 2001. More than arguably, the later arrival of this information does not rescue defendant from forfeiture as to this evidence. The orders and opinions that post-dated 2001 were simply different rulings in civil cases relating to the abuse and torture. In fact, several of those cases said nothing about the validity of the factual basis for the claims. See, *e.g.*, *Jones*, No. 11-CV-4143, 2012 WL 2192272, at *5-7 (N.D. Ill. 2012) (dismissing federal civil complaint against several police defendants because claims were time-barred); *Cannon*, No. 05 C 2192, 2011 WL

4361529, at *4 (N.D. Ill. 2011) (granting defendants summary judgment because prior settlement barred lawsuit). The factual basis for defendant's claim—that there had been widespread torture at Area 2 around the time that defendant was interrogated—was available to defendant via the Goldston report and the testimony of Jones, Wilson, Green, Cannon, Coleman, Cody, Hinton, and Orange. And all of that evidence, which formed the foundation for defendant's *Brady* claim, was available before defendant filed either of his previous postconviction petitions. The fact that some courts ruled a certain way in civil cases stemming from that evidence, or that Chicago and Cook County settled certain lawsuits, does not change the fact that defendant could have raised his claim at an earlier proceeding with the same amount of factual support that he did in his third postconviction petition.

¶ 40 But as we will discuss next, even if this post-2001 information could avoid the forfeiture doctrine, defendant's *Brady* claim must fail.

¶ 41 B. *Brady* Violation

¶ 42 Defendant's postconviction petition comes to us having been dismissed at the second stage of postconviction proceedings. The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)) establishes a three-stage process for the litigation of postconviction claims. In a successive postconviction case, such as this one, a defendant must also obtain leave to file the petition, as defendant did here. *People v. Edwards*, 2012 IL 111711, ¶ 24.

¶ 43 If, as here, the court advances the petition to the second stage, the defendant must make a substantial showing of a constitutional violation. *Domagala*, 2013 IL 113688, ¶ 33. The issue at the second stage is the legal sufficiency of the petition. *Id.* ¶ 35. We thus take the defendant's well-pleaded allegations as true and refrain from making credibility determinations or performing any fact-finding. *Id.*

¶ 44 Under *Brady*, the prosecution has a duty to disclose evidence favorable to a defendant where the evidence is material either to the defendant's guilt or punishment, regardless of the good faith of the prosecution. *Brady*, 373 U.S. at 87. In order to establish a *Brady* violation, the defendant must show three things: (1) that the undisclosed evidence was favorable to the defendant because it is either exculpatory or impeaching; (2) that the evidence was suppressed by the State either willfully or inadvertently; and (3) that the defendant was prejudiced because the evidence was material to his guilt or punishment. *People v. Beaman*, 229 Ill. 2d 56, 73-74 (2008). For purposes of the third element, evidence is considered material if there is a reasonable probability that the result of the proceeding would have been different if the prosecution had disclosed the evidence. *Id.* at 74.

¶ 45 The decision in *Orange*, 195 Ill. 2d at 457-58, applies here once more. The supreme court there held that the defendant could not establish a *Brady* violation based on the evidence of the abuse at Area 2, as the evidence of abuse arose after the defendant's trial. The defendant could not establish the prejudice prong of *Brady*, because the evidence the defendant had submitted regarding Area 2 torture—specifically the Goldston report—was not available at the time of the defendant's trial in 1985, and thus there was nothing that the prosecution would have known to disclose. The court noted that the investigations leading to report "did not begin until 1989." *Id.* at 458. The court concluded that *Brady* did not require "the prosecution to disclose information about misconduct in unrelated cases known only to individual police officers where the nexus between the other cases of alleged abuse and the defendant's case was not known until years after the defendant's trial." *Id.*

¶ 46 Here, like *Orange*, defendant is claiming that the prosecution should have disclosed evidence that did not arise until after his trial had concluded. All of the court cases and

newspaper articles that defendant has submitted to support his petition were published well after his conviction in 1986, as was the Goldston report. Pursuant to *Orange*, defendant cannot show that the prosecution violated its duty under *Brady* when the allegedly exculpatory evidence was not available to it at the time of defendant's trial.

¶ 47 Defendant asks us not to follow *Orange*, but that is not a viable option for an appellate court, especially when, as here, the facts are so startlingly similar. See, *e.g.*, *Schiffner v. Motorola, Inc.*, 297 Ill. App. 3d 1099, 1102 (1998) ("the doctrine of *stare decisis* requires courts to follow the decisions of higher courts"). We are bound by *Orange*. See *People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 72 ("Because *Orange* binds this court," holding that State's failure to disclose evidence that former Area 2 detective perjured himself on other occasions did not amount to viable *Brady* claim).

¶ 48 Just as importantly, defendant cannot establish the materiality of any of the evidence he presents, because none of it—pre- or post-1994—implicated any of the officers involved in questioning him. None of the documents submitted by defendant suggested that Officers Manos, Wilson, DiGiacomo, or Solecki had engaged in the abuse at Area 2. While defendant did testify at the suppression hearing that McDermott—who has been implicated in the Area 2 scandal—questioned him, defendant said that McDermott "treated [him] with *** more kindness" than the other officers.

¶ 49 To be sure, defendant was questioned at Area 2 during the period in which systematic abuse of suspects was taking place. But without evidence linking the officers who interrogated defendant to the pattern of abuse, we cannot say that there is a reasonable probability that the outcome of the suppression hearing would have been different had the prosecution disclosed the evidence included with defendant's postconviction petition. See *Anderson*, 375 Ill. App. 3d 121,

137 ("Generalized claims of misconduct [at Area 2], without any link to defendant's case, *i.e.*, some evidence corroborating defendant's allegations, or some similarity between the type of misconduct alleged by defendant and that presented by the evidence of other cases of abuse, are insufficient to support a claim of coercion").

¶ 50 In fact, the evidence of other officers' misconduct may not have even been admissible. "The trial court may properly exclude evidence of prior allegations of misconduct involving different officers if the prior allegation is factually dissimilar to the officer's conduct in the pending case, and if the officer did not receive discipline from his department." *People v. Porter-Boens*, 2013 IL App (1st) 111074, ¶ 17. Here, counsel's subpoena of the OPS records for the four officers who questioned defendant yielded no records of discipline. And while defendant alleged that he was electrically prodded like other suspects who had been tortured by Burge and his cohorts, there were other factual dissimilarities between his case and the other cases of abuse including—most importantly, the fact that defendant met alone with an assistant state's attorney and was allowed to consult with his family during the interrogation process.

¶ 51 Defendant also notes that the city of Chicago found that he was entitled to compensation under the Reparations for Burge Torture Victims Ordinance. Chicago Ordinance No. SO2015-2687 (approved May 6, 2015). That ordinance provided that individuals could apply to the Chicago Torture Justice Memorials (CTJM) organization for reparations. *Id.* In a letter that defendant has appended to his brief, CTJM told him that he was entitled to $100,000 as reparations under the ordinance because he had "a credible claim of torture and/or physical abuse by *** Burge or one of the officers under his command at Area 2."

¶ 52 But defendant did not submit this letter to the trial court along with his third postconviction petition. As we stated above, we cannot consider documents supporting a petition

for the first time on appeal. *Anderson*, 375 Ill. App. 3d at 138-39. Nor does the letter disclose the information on which CTJM based its determination or the standard applied by CTJM in awarding reparations. Thus, even if the letter were properly before us, we fail to see how it could constitute a substantial showing of a *Brady* violation.

¶ 53 Nothing in this Order should be read as condoning the systematic abuse that occurred under Commander Burge's watch at Area 2. That is not the question before us. Nor are we presented with the question whether defendant was one of those victims. The only question before this court is whether defendant has a viable *Brady* claim in this, his third postconviction petition. Under clear precedent from our supreme court regarding forfeiture and *Brady*, he does not. We are compelled to affirm the trial court's dismissal of defendant's third postconviction petition.

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we affirm the dismissal of defendant's postconviction petition.

¶ 56 Affirmed.