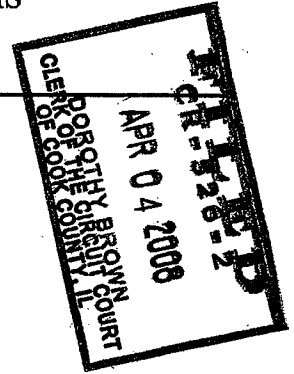


IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION



PEOPLE OF THE STATE OF ILLINOIS,)
)
Respondent,)
)
-vs-)
)
THADDEUS JIMENEZ,)
)
Petitioner,)

No. 93 CR 14710

Honorable
Stanley Sacks,
Judge Presiding.

VERIFIED PETITION FOR POST-CONVICTION RELIEF

Petitioner, THADDEUS JIMENEZ, by his attorneys, STEVEN A. DRIZIN, ALISON R. FLAUM, BLUHM LEGAL CLINIC, NORTHWESTERN UNIVERSITY SCHOOL OF LAW, STUART J. CHANEN, RACHEL M. VORBECK, and PATRICK C. HARRIGAN, of the law firm of KATTEN MUCHIN ROSENMAN LLP, respectfully requests relief pursuant to the Illinois Post Conviction Hearing Act, 725 ILCS 5/122-1 *et seq.*, and in support of this request, alleges and states the following:

INTRODUCTION

Petitioner Thaddeus Jimenez seeks relief based on actual innocence, a claim he has made consistently and unflaggingly since his arrest, some fifteen years ago, at the age of thirteen. Specifically, this Petition presents (1) the recanted testimony of the State's key eyewitness, (2) the recanted testimony of a second, essential State witness, and (3) how this new evidence alters the entire landscape of the State's case and would have changed the outcome of Mr.

Jimenez's trial. Mr. Jimenez requests that the Court conduct an evidentiary hearing with respect to this new evidence and ultimately reverse his conviction and order a new trial

FACTUAL SUMMARY

On the evening of February 3, 1993, at approximately 6:30 p.m., eighteen year-old Eric Morro was walking eastbound on the 3100 block of Belmont Avenue with his friend Larry Tueffel, who was just fourteen at the time. As Eric and Larry walked down Belmont, two other boys – twelve year-old Victor Romo and another young man who, for the purposes of this Petition shall be referred to “Individual A,” – approached them from behind.¹

Words were exchanged over debts Eric Morro allegedly owed and, as the encounter escalated, Eric threw a punch at Victor Romo. Individual A then pulled a gun out of his jacket, put the gun directly to Eric's chest, and pulled the trigger. The single shot proved fatal; Eric Morro tragically died at the scene.

All three of the young men who witnessed this murder – Larry Tueffel, Victor Romo and Individual A – have now identified Individual A as the person who murdered Eric Morro. Victor Romo, for his part, has always identified Individual A as the shooter, telling the police of Individual A's involvement from the very beginning of their investigation and naming Individual A as the person who committed this crime in three different trials. Victor Romo, who was standing next to Individual A at the time of the murder, has never wavered from his testimony that Individual A was the shooter, nor has he ever wavered from his testimony that at the time of the shooting he had never even met Thaddeus Jimenez.

¹ Though the identity of Individual A is known to counsel, the Court and the State, counsel have omitted his name from his filing out of deference to the State's ongoing reinvestigation of this case. For this same reason, counsel has redacted all references to the name of Individual A in the Exhibits attached to this Petition.

Similarly, Individual A confessed to shooting Eric Morro, just days after the crime, during a secretly tape-recorded conversation with Victor Romo's father. Indeed, Individual A not only confesses on this tape to having committed the shooting but also expresses relief that authorities had already "pinned the blame" on another young man.²

Now, Larry Tueffel, Eric Morro's close friend and the person standing right next to Eric during the entire incident, has come forward and also identified Individual A as the murderer. Moreover, Larry Tueffel now explains in detail how he was pressured into wrongly accusing Thaddeus Jimenez of Individual A's crime.

In addition, a second essential State witness, Tina Elder, has also recanted her testimony identifying Thaddeus Jimenez as the shooter of Eric Morro. Significantly, too, Tina Elder now explains the circumstances surrounding her misidentification of Thaddeus Jimenez. Specifically, Ms. Elder provides new information regarding certain suggestive aspects of the police lineup and the fact that she was never asked to view a photograph of, or a lineup containing, Individual A.

Ultimately, this new evidence, along with the other information detailed in this Petition, reveals how the investigation of Eric Morro's shooting went radically awry from the start, when, seven hours after the incident, the police were lead astray by a phone call from an alleged eyewitness, Phil Torres. Phil Torres was acquainted with Thaddeus Jimenez from having lived in the area, where Mr. Jimenez, a junior or "pee wee" member of the local Simon City Royals street gang, was known as something of a troublemaker. It was this reputation, combined with neighborhood rumors regarding a fight that had allegedly taken place between Thaddeus Jimenez and Eric Morro earlier on the day of the shooting, that lead Phil Torres to eventually conclude that Thaddeus Jimenez must have been the shooter, despite the fact that Phil Torres never

² As discussed below, this tape was excluded at trial on hearsay grounds. It is likely, however, that this tape would be admitted at a re-trial as the newly discovered recantations now greatly enhance the reliability of Individual A's confession.

mentioned Thaddeus Jimenez to the police when they interviewed him immediately after the shooting. Phil Torres, in turn, convinced two other witnesses, that it must have been Thaddeus Jimenez who committed the crime at issue in this case, even though they, too, never mentioned or described Thaddeus Jimenez to the police in their original interviews.

Despite these circumstances – as well as the inconsistencies and contradictions pervading these witnesses' reports, the fact that Victor Romo identified Individual A as the person who shot Eric Morro, and existence of the surreptitiously taped conversation in which Individual A confessed to committing the crime – Thaddeus Jimenez, and not Individual A, was prosecuted for and convicted of first degree murder.

This conviction was based solely on witness testimony; no physical evidence of any kind has ever established a connection between Thaddeus Jimenez and the shooting, and no jury has ever heard the tape of Individual A's confession. Indeed, the prosecution exploited the exclusion of Individual A's confession to great advantage at trial, suggesting to the that Individual A was nothing but a fanciful invention. The prosecution also relied on the very same rumors and reputation that caused Phil Torres to jump to the conclusion that Thaddeus Jimenez had to have committed the crime – his affiliation with a "pee wee" chapter of a local gang and his alleged altercation with Eric on the very day of the shooting. These rumors, however, did not and do not establish Thaddeus Jimenez's guilt. On the contrary, they help explain why he was identified and convicted even though he was entirely innocent.

Now, some fifteen years later, two of the four witnesses who testified at trial that Thaddeus Jimenez shot Eric Morro have now recanted their testimony and revealed, for the first time, the truth of what happened that night.

PROCEDURAL HISTORY

1. On October 4, 1994, Thaddeus Jimenez was found guilty of first degree murder after a jury trial in which the recorded confession of Individual A was excluded on hearsay grounds. On November 3, 1994, the Hon. Christy Berkos sentenced Mr. Jimenez to 50 years in prison.

2. On December 3, 1996, the Illinois Appellate Court, First District, Fifth Division, reversed Mr. Jimenez's conviction and remanded the case for a new trial, holding that the trial court's refusal to allow defense counsel to voir dire jurors regarding possible prejudice against gang members was reversible error. *People v. Jimenez*, 284 Ill. App. 3d. 908 (1st Dist. 1996). Although Mr. Jimenez had also challenged the exclusion of Individual A's confession in this appeal, the appellate court elected not to reach the issue and instead directed the trial court to re-evaluate the trustworthiness of the confession upon remand. *Id.* at 914-15.

3. Mr. Jimenez was re-tried in November of 1997, before this Honorable Court. Again, Individual A's confession was excluded on hearsay grounds. Again, Mr. Jimenez was convicted of first degree murder. On December 10, 1997, the Court sentenced Mr. Jimenez to 45 years in prison.

4. Mr. Jimenez appealed this second conviction and, on January 18, 2000, in an unpublished opinion issued pursuant to Ill. Sup. Ct R. 23, the Illinois Appellate Court, First District, Fifth Division, affirmed.

5. This is Mr. Jimenez's first post-conviction petition. Because it is based upon newly discovered evidence of actual innocence, 725 ILCS 5/122-1(c), it is not barred by any statutory time limitations. *People v. Washington*, 171 Ill. 2d. 475, 489 (1996).

EVIDENCE INTRODUCED AT TRIAL

February 3, 1993, 3:00 p.m.: An Alleged Confrontation between Eric Morro and Thaddeus Jimenez

6. On the afternoon of February 3, 1993, fifteen year-old Shawn Cosmen was standing with his sister, Donna, and his friend, Eric Morro, on the corner of Belmont and Sacramento Avenues. (C-9)³

7. According to Shawn, as a bus full of grammar school students drove by, Shawn saw thirteen year-old Thaddeus "T.J." Jimenez, who Shawn knew from the neighborhood, "throwing gang signs" to the students on the bus. (C-9) According to Shawn, Eric then told T.J. to take his gang-related talk elsewhere and started to walk toward a nearby park. (C-10, 11) Shawn also testified that he heard T.J. curse at Eric before walking away. (C-14)

The Death of Eric Morro: The Offenders Flee Immediately After a Single Shot is Fired

8. At approximately 6:30 p.m. on the same day, Eric and his friend Larry Tueffel were walking eastbound down the 3100 block of Belmont Avenue. (R-157) Walking behind them were Victor Romo and another young man. (C-26) Larry turned around as he heard Victor and the other boy approaching. (R-157)

9. Victor asked Eric about a debt Eric owed to someone named Leo. (R-157) Eric told Victor to mind his own business, and kept walking down the street. (R-158) Following this exchange, directly in front of a Honey Baked Ham store located at 3018 W. Belmont Avenue, Victor grabbed Eric and pushed him against a wall. (R-159) Eric then threw a punch at Victor, but missed him. (R-159) In response, the boy with Victor pulled out a gun, placed it directly on Eric's upper left chest, and fired a single shot. (R-169)

³ Unless otherwise noted, cites are to the transcript of the 1997 trial in this case.

10. Victor and the other boy immediately fled, running west on Belmont. (C-29)

Larry ran in the opposite direction, through the lot just east of the Honey Baked Ham. (R-160)

11. It was "dark out" at the time (R-50) and the incident "happened very fast." (R-98)

Crime Scene Interviews: No Mention of Thaddeus Jimenez or T.J. and a Description of the Shooter's Curly Hair

12. Responding Chicago Police Department Officer Lawrence Ryan identified three witnesses at the crime scene: Larry Tueffel, Phil Torres and Sandra Elder. (R-41) Tina Elder, an additional witness, who was Sandra's daughter, would be identified later that night. (R-86)

13. Larry – who knew T.J. from the neighborhood (R-134) – stated on the scene that he didn't recognize the shooter, but described the shooter's clothing and the fact that he had "curly black hair." (S-57-58; Chicago Police Department General Office Case Report dated February 3, 1993, attached hereto as Exhibit 1)

16. Larry and Phil Torres were then taken to the police station together. (R-164) During the car ride to the police station, Phil – who also knew T.J. (R-154) – asked Larry if T.J. was the shooter. Larry said "no." (R-165)

Initial Police Interviews: No Mention of Thaddeus Jimenez or T.J. and a Description of the Shooter's Curly Hair

17. At the police station, Larry Tueffel and Phil Torres were separated and placed into different rooms. Their descriptions of the incident, and of the offenders, did not match. (A-44) In addition, neither Phil Torres nor Larry Tueffel mentioned the names "Thaddeus Jimenez" or "T.J.", even though both Larry and Phil Torres knew Thaddeus Jimenez at the time. (R-134, 154)

18. Larry told Detective Jerome Bogucki that the shooter was a boy he believed to be named "Frankie": a white/Hispanic male, thirteen to fourteen years old, approximately 5'3" and 100 pounds, wearing a blue, three-quarter length Georgetown Starter jacket. Larry identified the boy with the shooter as "Victor" (R-187, 188; R-42-43) and reported that during the altercation Eric had yelled "Triangle killers" at the assailants, a derogatory reference to the Triangle Brothers' street gang that was a rival of the Simon City Royals. (Chicago Police Department General Office Case Report dated February 3, 1993, attached hereto as Exhibit 1; Chicago Police Department General Progress Report, undated, regarding witness interview with Larry Tueffel, attached hereto as Exhibit 2). Larry accordingly advised the police that he believed that Victor and the other offender were members of the Triangle Brothers gang. (*Id.*; S-40).

19. Phil Torres could not provide nearly as detailed a description, having viewed the incident while leaning out of his third floor window (R-114) – some forty-five feet down the street from the Honey Baked Ham (R-96) – whereas Larry had been walking and standing with Eric throughout both the shooting and the argument that preceded it. (R-156-60) His identification of the shooter was accordingly quite limited – he recalled at trial merely that he had described the shooter as having "spiked" hair. (R-145-46) Moreover, Phil Torres erroneously claimed in his first police interview that the offenders had been walking westbound, not eastbound, down Belmont and did not recall any exchange of words before the physical altercation began. (Chicago Police Department Supplemental Report dated February 4, 1993, attached hereto as Exhibit 3, at 5-6)

20. Detective Bogucki would eventually receive similarly scant information from Sandra Elder, who also gave conflicting explanations of her own location time of the incident, variously placing herself on the South side of Belmont Avenue and in the middle of traffic on

Belmont, at the time of the incident. (Chicago Police Department Supplemental Report dated February 4, 1993, attached hereto as Exhibit 3, at 5). (At trial, Sandra Elder would place herself in a third location at the time she allegedly observed the shooting – on the North side of Belmont. (A-7).)

21. Sandra Elder also admitted that when the shooting happened, she had just stepped out of Wally's Lounge, a bar located on the South side of Belmont Avenue across the street from the Honey Baked Ham, where she had been drinking with her husband. Sandra Elder also conceded that did not even notice Eric Morro and other boys until after the punch had been thrown (A-26) and she acknowledged that the shooter's back was toward her during and after the portion of the incident that she had been able to witness. (S-29) Nonetheless, she gave Bogucki two descriptions: one offender was 5'5" and 120 pounds, and the second offender had a waist-length blue nylon jacket and short curly hair. (S-28, 29)

22. Thus, both Larry Tueffel and Sandra Elder described, at various times, an offender with "curly" hair. (S-57-8, 28) Thaddeus Jimenez did not have curly hair. (T-28) Individual A did. (C-33)

23. In addition, not one of these witnesses mentioned the named Thaddeus Jimenez during their initial police interviews, though it would later become clear that all three – Larry Tueffel, Sandra Elder and Phil Torres – knew him from the neighborhood at that time. (R-154; A-33; R-134)⁴

⁴ The fourth eyewitness, Tina Elder, Sandra's daughter, did not provide her account until the following day, after the lineup had been conducted, and never provided any descriptive information to the police. Like her mother and Phil Torres, Tina Elder also viewed only part of incident, from some distance away. When the shooting occurred, Tina Elder had been standing approximately 45 feet away from the boys, looking up at Phil Torres, who was speaking to her from his third floor window. (R-94) Tina Elder also had her four year-old daughter with her at the time (R-80, 84, 85) and noticed the incident only when the physical fighting began; she did not witness the preceding argument. (R-98) As Tina Elder would

The 1:00 A.M. Phone Call: Phil Torres “Remembers” the Shooter

24. After Phil Torres left the police station, he went to his mother’s house. (R-122) When he got there, he spoke with his step-siblings. (R-150) Included in this gathering was Phil Torres’s step-brother, Shawn Cosmen, who claimed to have witnessed the alleged altercation between Eric and T.J. earlier in the day. (C-8-11)

25. At 1:00 a.m., Phil Torres called Detective Bogucki from his mother’s house. (R-122) Phil Torres told the detective that, “after... sp[ea]k[ing] with family members,” he was “finally able to remember what [he] really saw.” (R-140) It was at that point that Phil Torres, for the first time, named Thaddeus Jimenez as the shooter. (R-123)

26. Armed with Phil Torres’s new version of events, Detective Bogucki set out to re-interview Larry Tueffel. (A-46)

The 3:30 a.m. Interrogation of Larry Tueffel: Detectives Succeed in Getting Larry Tueffel’s Statement to Match Phil Torres’s New Account

27. At approximately 3:30 or 4:00 a.m. (R-181), Detective Bogucki drove to Larry Tueffel’s house, woke him up and took the fourteen year-old back down to the police station. (R-165)

28. The nature and tone of this pre-dawn interview was confrontational. When Larry began by repeating the account of the crime that he had given earlier, Detective Bogucki interrupted him and accused him of lying. (S-24; R-169)

29. Insisting that Larry was not telling the truth (R-159), Detective Bogucki told Larry that there were witnesses who had painted a different picture of how the shooting had

later concede at trial, what little she had seen “happened very fast” (R-98), with the offenders running away from her, her mother and Phil Torres immediately after the shot was fired. (R-106).

