

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

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| <b>PEOPLE OF THE STATE OF ILLINOIS,</b> | ) |                         |
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| <i>Respondent,</i>                      | ) |                         |
|   | ) |                         |
| <b>-vs-</b>                             | ) | <b>No. 93 CR 14710</b>  |
|   | ) |                         |
|   | ) |                         |
| <b>THADDEUS JIMENEZ,</b>                | ) | <b>Honorable</b>        |
|   | ) | <b>Stanley Sacks,</b>   |
| <i>Petitioner,</i>                      | ) | <b>Judge Presiding.</b> |

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**VERIFIED PETITION FOR POST-CONVICTION RELIEF**

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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.<sup>1</sup>

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.

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<sup>1</sup> 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.<sup>2</sup>

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

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<sup>2</sup> 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)<sup>3</sup>

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)

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<sup>3</sup> 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)<sup>4</sup>

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<sup>4</sup> 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

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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).

occurred, (*Id.*) eventually, informing Larry that Phil Torres had named T.J. as the shooter. (S-24, 38; Chicago Police Department Supplemental Report dated February 4, 1993, attached hereto as Exhibit 3, at 6)

30. After being told this information, in the midst of a mid-night interrogation, and in the wake of repeated accusations that he was lying, fourteen year old Larry acquiesced and revised his account of the crime to mirror precisely Phil Torres's new version of events. (R-169)

31. After he "finished his conversation" with Larry Tueffel, Detective Bogucki headed directly to T.J.'s grandmother's house and to take T.J. into custody. (A-46)

**Thaddeus Jimenez is Taken Into Custody at his Grandmother's Home: Numerous Witnesses Report That He Had Been at the Home Since the Early Afternoon**

32. T.J. was asleep on his grandmother's couch when Detective Bogucki pounded on her door sometime in the early morning hours of February 4, 1993. Without any explanation, T.J. was told to put on clothes and to come down to the police station with Detective Bogucki.

33. According to numerous witnesses, T.J. had spent the entire evening of February 3, 1993, at his grandmother's house, after arriving there at 4:30 in the afternoon. (S-5, 7, 12-13, 110)

34. T.J.'s mother, Victoria Jimenez, one of the many friends and family members who had seen T.J. at his grandmother's house that afternoon and evening, did not learn of T.J.'s arrest until later that morning when she returned from work. She then tried multiple times to get through to Detective Bogucki (S-9) in order to inquire about the time T.J.'s alleged crime had taken place. (S-11) When Ms. Jimenez was finally told what time the incident occurred, she told Detective Bogucki that "it was impossible [T.J.] could have done [it]," because he was at his

grandmother's home. (S-16) Victoria Jimenez was "distracted" during this conversation and emphatic that her son could not have committed the crime. (S-126)

**The Morning After: Sandra Elder and Tina Elder, Arriving at the Police Station with Phil Torres, Also Change Their Stories to Conform to Phil Torres's New Version of Events**

35. After arresting T.J., police officers contacted Phil Torres, Sandra Elder and Tina Elder to ask them to view a line-up. They agreed, and all three, who knew each other quite well (R-107, R-109), drove to the police station together. (R-124; A-25, 16, 34)

36. Phil Torres, Tina Elder and Larry Tueffel – who also viewed the lineup – all identified T.J. (A-51, 52)

37. When Sandra Elder viewed the lineup, "[s]he picked out two people as looking too close alike, one of which was Mr. Jimenez." (A-52)

**The Second Offender, Victor Romo, Names Individual A as the Shooter**

38. Victor Romo was arrested on February 10, 1993. (A-53) Victor told Detective Bogucki that he had been with his friend, Individual A, on the day of the shooting, and that Individual A had murdered Eric. (C-24; Chicago Police Department Supplemental Report dated February 10, 1993, attached hereto as Exhibit 4, at 3-4)

39. Victor would later reaffirm this identification of Individual A as the shooter, under oath, at three separate proceedings. (C-24, 34) (April 27, 1993 Tr. of Juvenile Proceeding, attached hereto as Exhibit 5, at 13-18)<sup>5</sup>

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<sup>5</sup> Counsel will seek leave to file this exhibit under seal pursuant to the rules governing the confidentiality of juvenile court records, 705 ILCS 405/1-8.

### **Individual A's Taped Confession and the Limited Police Investigation of Individual A's Involvement in the Shooting**

40. In the days following the shooting but preceding his arrest, Victor Romo also told his father, Ezequiel Romo, about the events surrounding the shooting of Eric Morro. (C-30) The Romos then made arrangements to meet Individual A. (C-30-32) At that meeting, at a local restaurant just days after the shooting, Eric's father spoke with Individual A. (C-32)

41. As the court, but not the jury, had heard pre-trial, Ezequiel Romo secretly tape-recorded this conversation. (11/3/97 Motion in Limine Transcript, attached hereto as Exhibit 6, at 10, 16) Ezequiel Romo chose to record the conversation because Victor had told his father that Individual A had shot Eric Morro (*Id.* at 8, 25) and Ezequiel Romo wanted to capture Individual A's candid description of the crime to prevent Individual A from falsely inflating, at a later date, Victor's role in the shooting. (*Id.* at 8, 10, 22) Ezequiel Romo took pains to assure that Individual A was not aware that the conversation was being recorded. (*Id.* at 10, 16, 17)

42. As the Court, but not the jury, would also learn, Individual A freely confessed on this tape to having committed the shooting. (Transcript of Confession of Individual A, attached hereto as Exhibit 7)

43. Individual A also notes on the tape – which was recorded after T.J.'s arrest (C-31) – that “they pinned the blame on another one...the other gang boy” who “they already ha[d]...in jail.” (Transcript of Confession of Individual A, attached hereto as Exhibit 7, at 4)

44. After Victor's arrest, Ezequiel Romo advised law enforcement of the tape of Individual A's confession and also provided law enforcement with Individual A's address, drawing a map that included the location of Individual A's home. (A-63-64)

45. Authorities, however, undertook only a very limited investigation of Individual A. (A-62-64) Detective Bogucki interviewed Individual A, but never took any kind of formal statement. Even though Individual A had curly hair (C-33) and thus matched the description of several of the witnesses in the case, Detective Bogucki did not take a photograph of Individual A or arrange a lineup in order to show Individual A to the witnesses in the case. (A-63) In addition, there is no testimony or evidence that any efforts were made to investigate Individual A's whereabouts at the time of the shooting, to investigate whether or not Individual A was affiliated with the Triangle Brothers street gang, to determine if Victor Romo had any motive for falsely naming Individual A, to corroborate any proffered alibi, to question any witnesses about Individual A or to search Individual A's home for any of the clothing described by the witnesses or for the gun that fired the fatal shot – which to this day remains undiscovered. Indeed, Detective Bogucki's report on the subject suggests that there was no investigation of Individual A of any kind beyond brief conversations at Individual A's home.

46. One month later, on March 8, 1993, the police received a copy of Individual A's taped confession from Assistant State's Attorney Gina Savini, who had received it from Romo's defense attorney. (Chicago Police Department Supplemental Reports dated March 8, 1993 and June 15, 1993, attached hereto as Exhibit 8). The police report documenting receipt of this evidence suggests that law enforcement may not have in fact even listened to the tape as the report erroneously describes the tape as containing a "an alleged *telephone* confession from [Individual A] concerning the murder" and notes that "the conversation was *allegedly* in Spanish" and ..."[a]llegedly... contained an admission by ... [Individual A] that he shot the victim." (*Id.*) (emphasis added). In any event, law enforcement took no steps to determine if the voice on the tape provided to them by Ezequiel Romo – the voice admitting to shooting Eric

Morro and expressing relief that authorities had pinned the crime on another boy – was, in fact, the voice of Individual A. Nor did the police verify in any way the meeting and the confession that Ezequiel Romo had described to them. Indeed, the March 8, 1993 police report indicates that the only additional investigation conducted based on the tape was a re-interview of Individual A, once again at his home and once again in the presence of his family. The report indicates that after Individual A “denied ever making such admission” and denied ever having “a telephone conversation with Victor Romo’s father” during this informal interview, no additional questioning or investigation occurred. (*Id.*)

### **NEW EVIDENCE OF ACTUAL INNOCENCE**

#### **The Recantation of Larry Tueffel: Larry Tueffel Now Explains that His Original Statement – that Thaddeus Jimenez was Not Involved in the Shooting of Eric Morro – Was the Truth All Along And That His Trial Testimony Regarding Thaddeus Jimenez Was Coerced and Untrue**

47. Larry Tueffel has now entirely recanted his testimony implicating Thaddeus Jimenez in the shooting of Eric Morro and confirmed that it was Individual A who in fact committed the crime. (Statement of Larry Tueffel, attached hereto as Exhibit 9)

48. Thus, all three people involved in the altercation that cost Eric Morro his life – Larry Tueffel, Victor Romo and Individual A himself– have now identified the real shooter as Individual A.

49. Moreover, Larry Tueffel has provided a compelling and detailed explanation for his false testimony so many years ago, describing a harrowing scene in which a nervous and scared fourteen year-old boy was roused from his sleep and removed from his home by two detectives in the middle of the night and brought, without his parents, to a station house interrogation room. Larry Tueffel now explains that the officers who came for him “scream[ed]”

at and insisted he was lying until, finally, he broke down and agreed to implicate Thaddeus Jimenez. (*Id.* at 13, 15)

50. In addition, Larry Tueffel's recantation reaffirms the description of the events that he initially and repeatedly told the police and at least one other witness. In fact, the trial record indicates that Larry Tueffel insisted Thaddeus Jimenez was not involved in the shooting at least four times – (a) to the police, at the crime scene, immediately after the shooting (R-188); (b) to Phil Torres, en route to the police station, immediately after the shooting (R-165); (c) during his initial police interview on the evening of the shooting (S-60); and (d) at the outset of his 3:30 a.m. interrogation (S-24; R-169).

51. Similarly, Larry Tueffel's current description of his middle-of-the-night interrogation is entirely consistent with his descriptions of this encounter at trial. At trial, Larry Tueffel also described being called a liar (R-169), being told that the adult witnesses were contradicting him (*id.*), being told that Phil Torres had implicated Thaddeus Jimenez (S -26-27, 38, 51) and being told that the police believed Phil Torres was the one who was telling the truth (R-169).

52. Larry Tueffel's reluctance to falsely implicate Thaddeus Jimenez is further corroborated by his efforts to avoid testifying at trial and his demeanor on the witness stand. As the trial record shows, Larry Tueffel was so desperate to avoid testifying that he refused to honor his subpoena for the 1994 trial (R-167) and had to be arrested and detained pending his testimony. (R-168). Later, during the 1997 trial, Larry Tueffel testified in such hushed tones that he had to be admonished to speak louder no less than nine times. (R-153, 153, 163, 165, 166, 170, 171, 171, 173)

53. At the time, and throughout the 1997 trial, the prosecution contended to the jury that Larry Tueffel's reluctance to testify stemmed from a fear of Thaddeus Jimenez and gang-related reprisal (R-184), even though Larry Tueffel freely admitted that he had never in fact been harmed or threatened by Thaddeus Jimenez in any way (R-185). Now, Larry Tueffel explains the real reason he tried so hard to avoid testifying in this case – because he “knew it was wrong” and “didn't want to lie.” (Statement of Larry Tueffel, attached hereto as Exhibit 9, at 16)

**The Recantation of Tina Elder: Tina Elder Now Explains How and Why She Mistakenly Identified Thaddeus Jimenez**

54. Like Larry Tueffel, Tina Elder has now come forward and recanted her trial testimony.

55. Specifically, Tina Elder has now revealed, that “[i]n reality,” she is “not certain of who the shooter of Eric Morro was.” (Affidavit of Tina Elder, attached hereto as Exhibit 10, at ¶ 3)

56. This revelation is corroborated by the circumstances under which Tina Elder witnessed the Eric Morro shooting. As she candidly explained at trial, a number of factors compromised her ability to perceive the incident, including (a) that she was looking upwards, to talk to Phil Torres in his third floor window at the time (R-94); (b) that she had her young daughter with her (R-80, 84, 85); (c) that she was 45 feet away from the boys during the shooting (R-96); (d) that the offenders fled the scene – in the opposite direction from where she was standing – immediately after the shot was fired (R- 97); and (e) that the entire incident “happened very fast” (R-98). Indeed, Tina Elder was never able to identify the other assailant (R-106).

57. In addition, Tina Elder now states that immediately prior to observing the lineup in which she identified Thaddeus Jimenez, she was directed to sit at a desk on which there were only two photographs – one of Eric Morro and one of Thaddeus Jimenez, whom she would see in the lineup room only a few moments later. (Affidavit of Tina Elder, attached hereto as Exhibit 10, at ¶ 9)

58. This second revelation, that Tina Elder was exposed to a picture of Thaddeus Jimenez immediately prior to the line up, is extremely significant in that it answers for the first time a question pointedly raised by the prosecution throughout the trial in this case – how likely is it that Tina Elder could have erroneously selected Thaddeus Jimenez in the lineup if she had never seen him before? (T-12-13, 57, 60.) According to social science research regarding eyewitness identification, such a misidentification was quite likely, given her exposure, just beforehand, to Thaddeus Jimenez’s photograph.<sup>6</sup>

**THIS NEWLY DISCOVERED EVIDENCE IS MATERIAL, NON-CUMULATIVE AND WOULD HAVE CHANGED THE OUTCOME OF THE TRIAL**

**Larry Tueffel Was – and Is – the Most Important Witness**

59. Larry Tueffel was the State’s most important witness at trial. Standing right beside Eric Morro during both the shooting and the argument that preceded it (R-155-160), Larry Tueffel had the clearest and most sustained vantage point of any witness. Moreover, Larry Tueffel knew Thaddeus Jimenez (R-154) and was a close friend of Eric Morro (R-155) – both facts that would seem to support the reliability of his recantation.

60. Indeed, Larry Tueffel’s testimony was so essential that the State had him arrested

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<sup>6</sup> See generally, Gary L. Wells, *Eyewitness Identification: Systemic Reforms*, 479 Wis. L. Rev. 615 (2006).

and detained when he failed to appear at Thaddeus Jimenez's first trial (R-167-8), despite the fact that the State still had in its arsenal the testimony of Phil Torres, Sandra Elder and Tina Elder. As demonstrated below, this decision was necessitated by the weakness of the testimony provided by the balance of the State witnesses and the strength, especially in comparison, of Larry Tueffel's account.

61. Larry Tueffel's testimony was accordingly the linchpin of Thaddeus Jimenez's conviction. Without it – and with all the factors that speak to its reliability now weighing in favor of the defense – the State would never have been able to prevail at trial.

#### **Phil Torres Was Not and Is Not Reliable**

62. Although the State's case relied principally on the testimony of Larry Tueffel, it was, as explained above, Phil Torres who first suggested to authorities that Thaddeus Jimenez might have been the assailant. Ironically, of all of the State witnesses, Phil Torres's ability to clearly view the shooting was among the most limited. His testimony was not and is not reliable, and in light of the other recantations, would not have been sufficient to sustain a conviction in this case.

63. Phil Torres was not a part of the altercation, as Larry Tueffel and Victor Romo were, and was not even outside when the shooting happened. Instead, Phil Torres claimed to have observed the shooting from his apartment window – three stories above and forty-five feet down the street from the Honey Baked Ham storefront where the incident occurred. (R-94, 96, 112.) Phil Torres's ability to view was further compromised because the incident happened at night (R-113, 133). Moreover, at the time of the shooting, Phil Torres was not facing westbound, toward the Honey Baked Ham storefront; rather, he was looking straight down to the sidewalk in front of his apartment and was speaking with Tina Elder. (R-94,115, 138.)

64. Phil Torres's limited ability to view the incident is corroborated by the fact that he 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)

65. Phil Torres's limited ability to view the incident is also corroborated by the fact that he was not able to provide much descriptive information about the shooter when police first interviewed him; he testified at trial that he could only recall telling on-scene investigators that the shooter had "spiked hair." (R-145-146.) Torres's ability to accurately perceive events may also have been comprised by the use of marijuana as Torres was using marijuana approximately twice a week at the time. (R-111)

66. In addition, Phil Torres had a significant criminal background. Prior to the first trial he had been convicted of three separate offenses – possession of cannabis with intent to deliver (R-111-112), theft, and burglary – and had a fourth burglary charge pending. (Transcript of 1994 at B-82-83)

67. Most significantly, although Phil Torres testified that he knew Thaddeus Jimenez's face and his identity well at the time of the shooting (R-138-139, 147-148), he did not identify Thaddeus Jimenez as Eric Morro's shooter either on the scene (R-117, 120-121) or during his initial police station interview. (R-122) Similarly, Phil Torres only *asked* Larry Tueffel *if* Thaddeus Jimenez was the shooter when they spoke immediately after the incident. When Larry Tueffel responded that Thaddeus Jimenez was not involved, Phil Torres said nothing to contradict that statement. (R-121, 136-137, 165, 179) Indeed, it was only after Phil Torres met with family members later on the evening of the shooting – including Shawn

Cosmen, who claimed to have seen Thaddeus Jimenez arguing with Eric earlier in the day – that Phil Torres changed his account and first claimed that Thaddeus Jimenez had been the shooter.

(R-140)

### **Sandra Elder Was Not and Is Not Reliable**

68. Finally, the State's sole remaining witness, Sandra Elder, has repeatedly changed her story about what she saw before, during, and after the shooting as well as where she was and what she was doing when the shooting occurred. These inconsistencies, coupled with the clear influence that Phil Torres' change of his story had on Sandra Elder's own continuously evolving descriptions of the shooter, make clear that Sandra Elder was not and is not a reliable eyewitness – and, in fact, may not have witnessed anything at all.

69. To begin, it is uncontested that within hours of the commencement of the criminal investigation in this case, Phil Torres had ample opportunity to speak with both Tina and Sandra Elder and to convince them of his newfound belief in Thaddeus Jimenez's guilt. Indeed, the morning after the shooting, Phil Torres and both Elders traveled together to the police station to view the lineup of potential suspects (R-124; A-15-16, 34) and, as Tina Elder now reveals in her affidavit, all three had a conversation in the parking lot of the police station just before going inside. (Tina Elder affidavit, attached hereto as Exhibit 10, at ¶. 8) Moreover, both of the Elder women were longtime friends of Phil Torres; at trial they testified that their friendships with Torres spanned some twenty years. (R-107, 109, 138; A-34) Given this relationship, given their consultation with Phil Torres prior to the identification procedure and given what must have been

a powerful desire to assist in the investigation given their very close relationship to Eric Morro,<sup>7</sup> Phil Torres's ability to influence the Elders about Thaddeus Jimenez's involvement becomes clear. This is especially true with respect to Sandra Elder who, like Phil Torres, knew Thaddeus Jimenez from the neighborhood (A-33) and no doubt knew his reputation as well.

70. It is therefore no surprise that, although Sandra Elder provided almost no detail in her initial police interviews, she was able, after speaking with Phil Torres, to provide a much more detailed description of the shooter – a description that matched Phil Torres's new version of events. (R-86; A-27-30). In contrast, when Sandra Elder was first interviewed by the police, her description was not only minimal, it clearly did not match Thaddeus Jimenez as she stated in her initial police interview that the shooter had curly or "jerri curl[ed]" hair. (A28, S28, S56). At no time did Thaddeus Jimenez have curly or jerri curled hair. (T-28)

71. Sandra Elder has also repeatedly changed her story about where she was when the shooting occurred and what she saw that night:

a. *Sandra Elder has changed her story about how the incident began.* When asked by the police in the initial interview which way the perpetrators were walking prior to the shooting, Sandra Elder stated that they were walking westbound on Belmont and passed the victim, who was walking eastbound. (Chicago Police Department Supplemental Report dated February 4, 1993, attached hereto as Exhibit 3, at 5) Later, at Thaddeus Jimenez's trial, however, she changed her story to conform to other witnesses and stated that the perpetrators were walking eastbound prior to the attack, the same

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<sup>7</sup> As Sandra Elder testified at trial, Eric Morro was "like a step son" to her, having lived with her and her family for a number of years. (A-9) Eric was also best friends with Sandra Elder's son. (*Id.*)

direction as the victim and Larry Tueffel. (A -10, A -11)<sup>8</sup>

b. *Sandra Elder has changed her story about where she was and what she was doing when the incident occurred.* In her February 1993 statement to the police, Sandra Elder provided two different, directly contradictory accounts of her whereabouts and vantage point. Specifically, Sandra Elder told police both that, at the time of the incident, she was “on the South side of Belmont at approx. 3015 West,” and also that “she was standing in the middle of Belmont Ave.” (Chicago Police Department Supplemental Report dated February 4, 1993, attached hereto as Exhibit 3, at 5) During her trial testimony, she provided a third version of events, this time claiming that she had already crossed over to the North side of Belmont, where she handed Tina Elder a radio, when she witnessed the shooting. (A -17) Moreover, all of this testimony is contradicted by a November 2006 interview (a summary of which is contained in the affidavit of Luke Netzel, attached hereto as Exhibit 11) in which Sandra Elder stated that she was “sitting inside Wally’s [bar]” when she “heard a gunshot outside the bar and went outside to see what was going on.” (*Id.* at 1)

c. *Sandra Elder has changed her story about what occurred after the incident ended.* When police asked Sandra Elder during her initial interview which way the two perpetrators ran after the shooting, she told police that they “fled W/B [westbound] toward Whipple.” (Chicago Police Department Supplemental Report dated February 4, 1993, attached hereto as Exhibit 3, at 5) At trial, however, Sandra Elder

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<sup>8</sup> Interestingly, Phil Torres made this same initial error. Like Sandra Elder, Phil Torres claimed in his first police interview that the offenders had been walking westbound, not eastbound, down Belmont. (Chicago Police Department Supplemental Report dated February 4, 1993, attached hereto as Exhibit 2, at 5-6) Also like Sandra Elder, Phil Torres changed his account during his trial testimony to conform to the testimony of other witnesses. (R-116)

testified that she could not say which way the assailants ran after the shooting “because [she] was tending to Eric.” (A.27.) In November 2006, Sandra Elder changed her story yet again, stating that when she exited Wally’s bar, she saw Victor Romo, one of the alleged perpetrators walking – not running –on the *South* side of Belmont, *eastbound* toward Sacramento. (Affidavit of Luke Netzel, attached hereto as Exhibit 11, at 1.) Significantly, no other witness has ever indicated that Victor Romo was at any time on the South side of Belmont Avenue or that he fled the scene to the East.

70. Finally, even leaving aside Sandra Elder’s recent admission that she was not, in fact, outside on Belmont when the shooting happened, the circumstances surrounding her previously described observations reveal those observations to be limited and compromised, especially when compared with the vantage points of Larry Tueffel and Victor Romo, who were standing right next to Eric Morro. Indeed, the record reveals that at the time Sandra Elder allegedly witnessed the shooting, it was dark out (R-50) and she had been drinking (A-6). Moreover, according to Sandra, she was either crossing or in the middle of traffic on a busy stretch of Belmont Avenue (A-7, A-18) at the time of the incident and the assailants were facing away from her (A-27).

71. For all of these reasons, and given Sandra Elder’s failure to actually identify Thaddeus Jimenez at the line up, her testimony would never be sufficient to support a conviction beyond a reasonable doubt, even coupled with the problematic testimony of Phil Torres, the only other State eyewitness who has not recanted.

72. Thus, the newly discovered evidence – that (1) the State’s strongest witness, Larry Tueffel, recants his identification of Thaddeus Jimenez; (2) another essential State witness, Tina Elder, recants her identification of Thaddeus Jimenez; (3) both Larry Tueffel and Tina Elder now

provide compelling explanations of how they came to erroneously identify Thaddeus Jimenez; and (4) Larry Tueffel now corroborates Victor Romo's testimony that the real shooter was Individual A – would have changed the outcome of the trial.

### **CONCLUSION**

WHEREFORE, Petitioner Thaddeus Jimenez requests that this Court:

1. Docket this petition for further proceedings;
2. Grant Petitioner sufficient time and leave to amend this petition to add additional claims and supporting affidavits and factual material as his investigation continues;
3. Grant Petitioner the authority to obtain subpoenas for witnesses, documents and other discovery necessary to prove the facts alleged in the petition, including but not limited to access to the evidentiary material admitted at trial, to which Petitioner and his counsel have not had access;
4. Conduct an evidentiary hearing;
5. Reverse Petitioner's conviction or order a new trial; and
6. Grant such other relief as may be appropriate.

Respectfully Submitted,

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